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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–108–1]

Unshu Oranges From Honshu Island, Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of citrus fruit to allow Unshu oranges grown on Honshu Island, Japan, to be imported without fumigation if the distribution of the fruit within the United States is limited to non-citrus-producing States. We will continue to require fumigation if the fruit is distributed to citrus-producing States. This action is warranted to relieve a restriction that is not needed to mitigate pest risk.

DATES: This interim rule is effective March 3, 2003. We will consider all comments that we receive on or before May 2, 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. 02–108–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–108–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–108–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne VanDersal, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a disease that affects citrus and is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The strain of citrus canker that occurs in Japan infects the twigs, leaves, and fruit of a wide spectrum of citrus species.

Currently, the regulations in 7 CFR 319.28 (referred to below as the regulations) prohibit the importation of citrus from designated areas, with certain exceptions. One exception is for Unshu oranges (*Citrus reticulata* Blanco var. *unshu,* also known as Satsuma mandarin) grown in citrus canker-free areas in Japan or on Cheju Island, Republic of Korea. After meeting certain growing, packing, and inspection requirements, Unshu oranges from these areas of Japan and the Republic of Korea may be imported into approved areas of the United States. Also, under the regulations in 7 CFR 301.11, the Unshu oranges may not be moved interstate from an approved area into or through any State, territory, or possession where importation is prohibited under part 319.

Unshu oranges from Kyushu Island, Japan, and Cheju Island, Republic of Korea, may be imported into any area of the United States except American Samoa, Arizona, California, Florida, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands. The importation of Unshu oranges from Honshu Island, Japan, had been similarly restricted, but in a final rule published in the **Federal Register** on February 1, 2002 (67 FR 4873–4877, Docket No. 99–099–2), we amended the regulations to provide for the importation of Unshu oranges from Honshu Island, Japan, into the citrus-producing States of Arizona, California, Florida, Hawaii, Louisiana, and Texas and required those oranges be fumigated with methyl bromide after harvest and prior to exportation to the United States. As a result of that final rule, Unshu oranges from Honshu Island, Japan, may be imported into any area of the United States except American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

The fumigation requirement was to ensure that Unshu oranges moved into citrus-producing areas of the United States would not introduce mealybugs, mites, and scale insects that could become established in climates where citrus is grown.

In the proposed rule (66 FR 19892–19898, Docket No. 99–099–1, published April 18, 2001) that preceded the February 2002 final rule, we acknowledged that these pests, if introduced into non-citrus-producing areas, would likely not survive due to the effects of climate and lack of host material. We applied the fumigation requirement to all shipments of Unshu oranges from Honshu Island so that there would be no restrictions on the distribution of the fruit within those areas of the United States where its importation is authorized.

We were unaware, however, of the potential economic consequences of this action for producers of Unshu oranges on Honshu Island who had, prior to the February 2002 final rule, been able to ship the Unshu oranges to non-citrus-producing areas of the United States without the mandatory fumigation. The government of Japan has informed us that the fumigation requirement has seriously curtailed this market, creating an economic hardship for Japanese growers and exporters.

Because fumigation is not a necessary pest risk mitigation measure if the Unshu oranges are not distributed in citrus-producing areas of the United States, this interim rule removes the

fumigation requirement for Unshu oranges from Honshu Island that will be distributed only in non-citrus-producing areas of the United States. To effect this change, we have amended § 319.28(b)(5) to specify that fumigation is required only for Unshu oranges from Honshu Island, Japan, that are to be imported into Arizona, California, Florida, Hawaii, Louisiana, or Texas. In addition, we have revised § 319.28(b)(7) to specify the different importation restrictions that apply to fumigated and unfumigated fruit produced on Honshu Island. This latter change will also serve to support the box marking provisions of § 319.28(b)(6)(i), which require the individual boxes in which the oranges are shipped to be stamped or printed with a statement specifying the States into which the Unshu oranges may be imported and from which they are prohibited removal.

Miscellaneous

In order to distinguish between *Citrus reticulata* Blanco varieties *unshu* and *satsuma,* we are removing the reference to Unshu oranges as also being known as Satsumas. Instead, we will refer to Unshu oranges as also being known as Satsuma mandarins. This distinction is important because the Unshu orange or Satsuma mandarin (*Citrus reticulata* Blanco var. *unshu*) is the variety imported from Japan. This variety is not grown commercially in the United States; however, another variety, the Satsuma (*Citrus reticulata* Blanco var. *satsuma*) is grown commercially in California.

Immediate Action

This rule relieves a restriction that is not necessary to mitigate pest risk. Immediate action is warranted to alleviate the negative economic effects that Japanese growers and exporters face as a result of our requirement to fumigate Unshu oranges from Honshu Island that are shipped to non-citrus-producing areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the regulations governing the importation of citrus fruit to allow Unshu oranges grown on Honshu Island, Japan, to be imported without fumigation if the distribution of the fruit within the United States is limited to non-citrus-producing States. We will continue to require fumigation if the fruit is distributed to citrus-producing States. This action is warranted to relieve a restriction that is not needed to mitigate pest risk.

Our economic analysis for the changes in this document is set forth below. It provides an analysis of the potential effects on small entities as required by the Regulatory Flexibility Act.

Unshu oranges are a variety of mandarin orange currently allowed to be imported to the United States from Honshu Island, Japan, as long as they are fumigated with methyl bromide after harvest and before exportation. As a consequence of this interim rule, only Unshu oranges from Honshu Island that are destined for citrus-producing States will still require fumigation. Shipments of Unshu oranges from Honshu Island that are imported into non-citrus-producing States will not require methyl bromide fumigation, and the phytosanitary requirements will essentially revert to those that were in place before January 28, 2002.

Unshu oranges are a specialty fruit associated with the Christmas holiday season. They have a limited area of distribution in the United States and are significantly higher priced than domestically grown mandarin varieties that are similarly loose-skinned and seedless. The analysis focuses on these characteristics in describing the expected economic effects of this interim rule on small entities.

Unshu oranges from Japan are imported into the United States during a 1-month period, from about Thanksgiving until the latter part of December.[1] The fruit is purchased as a Christmas season specialty, and serves a traditional gift-giving role among Asian ethnic groups in particular, although demand is broadening to include all segments of the population.

In addition to a relatively short period of importation, the U.S. market for Unshu oranges is geographically limited. An estimated 70 percent of Unshu orange imports from Japan are sold in Alaska, and the remaining 30 percent are sold in the northwestern United States.

The niche market for Unshu oranges in the United States is all the more apparent when the quantity imported is compared to Canadian import levels. Whereas 8 to 10 containers of Unshu oranges from Japan may be imported in 1 season by the United States, as many as 300 containers are shipped per season to Canada, with sales beginning at least a month earlier than in the United States.

One type of citrus grown commercially in California that is somewhat similar to the Unshu orange is the Satsuma. The wholesale price of Satsumas is less than 50 cents per pound.[2] The wholesale import price of Unshu oranges ranges between $0.80 and $1 per pound.[3] This price difference is another indication of the distinct market for Unshu oranges in the United States. It is unlikely that they would substitute for domestically grown mandarins, particularly given their current geographical distribution.

Even if there were greater likelihood of substitutability, the quantity of Unshu oranges imported is too small to significantly affect U.S. demand for domestically grown mandarins. Table 1 shows imports of Unshu oranges from Japan and South Korea, 1998–2001. There was a significant increase in 2001 over 2000, due to imports from Korea increasing eleven-fold. Over the 4-year period, Japan's exports to the United States averaged about 282 metric tons. When the total quantity of imports for 2001 (3,087 metric tons) is compared to total U.S. tangerine production for the 2001–2002 season (419,000 metric tons), Unshu orange imports represent less than 1 percent of domestic tangerine production.[4]

[1] Information on Unshu orange imports from Japan into the United States and Canada provided by Rob Johns and Jerry Kraft of David Oppenheimer Ltd & Associates, the sole North American importer of Unshu oranges from Japan.

[2] Nearly all commercial production takes place in Fresno, Kern, and Tulare Counties, CA. Of these, only Fresno County has maintained information specific to Satsuma: In 1999, there were 650 acres, yields averaged 4.94 tons of fresh fruit per acre, and the price was about $1,000 per ton (Bruce Clayton, Office of the Fresno County Agricultural Commissioner).

[3] $18 to $22 per 22-pound box, Jerry Kraft, personal communication.

[4] NASS, ''Citrus Fruits, 2002 Summary,'' p. 4. NASS data aggregate mandarin citrus under the heading ''tangerine.'' Tangerine and mandarin both refer to *Citrus reticulata* varieties. If in fact the significant increase in imports from South Korea in 2001 was recorded in error, then Unshu orange

TABLE 1.—UNSHU ORANGE IMPORTS (IN KILOGRAMS) FROM JAPAN AND SOUTH KOREA, 1998–2001

Year	Japan	South Korea	Total
2001	247,681	2,839,200	3,086,881
2000	100,830	255,120	355,950
1999	388,918	403,050	791,968
1998	392,289	None	392,289

Source: APHIS port of entry data.
NOTE: Product designation varies by port, and therefore the annual totals may be subject to error.

There were no Unshu oranges imported into the United States from Japan for the 2002 season. The reason given by the importing firm is that there is a high risk that much of the fruit would not be marketable because of the effects of methyl bromide fumigation on quality. This interim rule, by rescinding the methyl bromide fumigation requirement for Unshu oranges imported from Honshu Island into non-citrus-producing States, will remove this marketing risk. Imports should then resume at a level comparable to that of recent years. The fumigation requirement will remain for imports into citrus-producing States. There is no history of such imports, and given the possible ill effects of fumigation on the quality of the fruit, near term sales to citrus-producing States would appear unlikely.

The entities affected by this rule will be U.S. retailers who sell Unshu oranges from Japan. Supermarkets and other grocery stores are considered small entities by the Small Business Administration if they have annual receipts of $23 million or less, and establishments primarily engaged in retailing fresh fruits and vegetables are considered small if their annual receipts are $6 million or less.[5] Most retailers that are expected to be affected by this rule are small entities. However, given the brief import period for this fruit and its geographically limited distribution, the number of retail establishments that may be affected is not expected to be substantial. Stores that do sell Unshu oranges will benefit from not having to rely solely on imports from South Korea. However, the benefit should be relatively small given that South Korea is the dominant supplier. In 2001, 92 percent of Unshu orange imports were supplied by South Korea and 8 percent by Japan.[6]

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

Executive Order 12988

This rule allows Unshu oranges to be imported into non-citrus-producing areas of the United States from Honshu Island, Japan, without fumigation. State and local laws and regulations regarding Unshu oranges imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 is revised to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, 7751–7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.28, paragraph (b) is amended as follows:

a. In the introductory text, by adding the word ''mandarin'' after the word ''Satsuma''.

b. By revising paragraphs (b)(5) and (b)(7) to read as set forth below:

§ 319.28 Notice of quarantine.

* * * * *

(b) * * *

(5) To be eligible for importation into Arizona, California, Florida, Hawaii, Louisiana, or Texas, each shipment of oranges grown on Honshu Island, Japan, must be fumigated with methyl bromide after harvest and prior to exportation to the United States. Fumigation must be at the rate of 3 lbs./1,000 cu. ft. for 2 hours at 59 °F or above at normal atmospheric pressure (chamber only) with a load factor of 32 percent or below. Fumigation will not be required for shipments of oranges grown on Honshu Island, Japan, that are to be imported into States other than Arizona, California, Florida, Hawaii, Louisiana, or Texas.

* * * * *

(7) The Unshu oranges may be imported into the United States only through a port of entry listed in § 319.37–14 that is located in an area of the United States into which their importation is authorized. The following importation restrictions apply:

(i) Unshu oranges from Honshu Island, Japan, that have been fumigated in accordance with paragraph (b)(5) of this section may be imported into any area of the United States except American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(ii) Unshu oranges from Honshu Island, Japan, that have not been fumigated in accordance with paragraph (b)(5) of this section; Unshu oranges from Kyushu Island, Japan (Prefectures of Fukuoka, Kumanmoto, Nagasaki, and Saga only); and Unshu oranges from Cheju Island, Republic of Korea, may be imported into any area of the United

imports would represent that much smaller a percentage of domestic tangerine production.

[5] North American Industrial Classification System (NAICS) code 445110, Supermarkets and Other Grocery (except Convenience) Stores, and NAICS code 445230, Fruit and Vegetable Markets.

[6] If fumigated fruit had been imported in 2002 under the regulations in place for the shipping season, then a benefit of this rule would be any price reduction resulting from forgone fumigation expenses. However, since fumigated Unshu oranges are not being imported, the appropriate comparison is imports without fumigation versus no imports.

States except American Samoa, Arizona, California, Florida, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands.

* * * * *

Done in Washington, DC, this 26th day of February, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–4875 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM240, Special Conditions No. 25–227–SC]

Special Conditions: Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes modified by Royal Air, Inc. These airplanes, as modified, will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of the Innovative Solutions & Support (IS&S) Air Data Display Units (ADDU) and Air Data Sensor. The applicable airworthiness regulations do not contain adequate or appropriate safety 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 that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is February 21, 2003. Comments must be received on or before April 2, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM240, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM240. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA's Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance. However, the FAA invites interested persons to participate in this rulemaking by submitting comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On August 17, 2002, Royal Air, Inc., 2141 Airport Road, Waterford, Michigan 48327, applied for a supplemental type certificate (STC) to modify Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes approved under Type Certificate No. A10CE. The Learjet Model 24/25 series airplanes are small transport category airplanes powered by two turbojet engines, with maximum takeoff weights of up to 15,000 pounds. These airplanes operate with a 2-pilot crew and can seat 6 to 8 passengers. The modification incorporates the installation of the Innovative Solutions & Support (IS&S) Air Data Display Units (ADDU) and Air Data Sensor. The ADDU digital air data computing altimeter provides flight critical functions. These advanced systems have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Royal Air must show that the Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The original type certification basis for the modified Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes includes 14 CFR part 25, dated February 1, 1965, through Amendments 25–2 and 25–4; and 14 CFR part 25, dated February 1, 1965, through Amendment 25–18, except for special conditions and exceptions noted in Type Certificate Data Sheet (TCDS) A10CE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and

25F airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirement of part 36, including Amendment 36–1.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Royal Air apply at a later date for design change approval to modify any other model already included on the same type certificate to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes will incorporate new Air Data Display Units (ADDU) and Air Data Sensor that will perform critical functions. These systems have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes modified by Royal Air, Inc. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the following table for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

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 of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes modified by Royal Air, Inc. Should Royal Air apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes modified by Royal Air. 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 the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. 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 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704

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 Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes modified by Royal Air, Inc.

1. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF). Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated 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 Renton, Washington, on February 21, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4796 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 304

Rules and Regulations Under the Hobby Protection Act

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests public comment on the overall costs, benefits, and regulatory and economic impact of its Rules and Regulations Under the Hobby Protection Act (''Rule''), as part of the Commission's systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until May 2, 2003.

ADDRESSES: Six paper copies of each written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format.)

Alternatively, the Commission will accept papers and comments submitted to the following e-mail address: *hobby@ftc.gov,* provided the content of any papers or comments submitted by e-mail is organized in sequentially numbered paragraphs. All comments and any electronic versions (*i.e.,* computer disks) should be identified as ''16 CFR Part 304 Comment—Hobby Protection Act Rule. The Commission will make this notice and, to the extent possible, all papers and comments received in electronic form in response to this notice available to the public through the Internet at the following address: *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326–3038.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1973, Congress issued the Hobby Protection Act (''Act''), 15 U.S.C. 2101–2106. The Act requires manufacturers and importers of ''imitation political items'' [1] to mark ''plainly and permanently'' such items with the ''calendar year'' such items were manufactured. 15 U.S.C. 2101(a). The Act also requires manufacturers and importers of ''imitation numismatic items'' [2] to mark ''plainly and permanently'' such items with the word ''copy.'' 15 U.S.C. 2101(b). The Act further provides that the Commission is to promulgate regulations for determining the ''manner and form'' that imitation political items and imitation numismatic items are to be permanently marked with the calendar year of manufacture or the word ''copy.'' 15 U.S.C. 2101(c).

Pursuant to the Act, in 1975 the Commission issued Rules and Regulations under the Hobby Protection Act, 16 CFR Part 304. The Rule tracks the definitions of terms used in the Act and implements the Act's ''plain and permanent'' marking requirements by establishing the sizes and dimensions of the letters and numerals to be used, the location of the marking on the item, and how to mark incusable and nonincusable items.[3] In 1988, the Rule was amended to provide additional guidance on the minimum size of letters for the word ''copy'' as a proportion of the diameter of coin reproductions.[4] 53 FR 38942 (Oct. 4, 1988).

II. Regulatory Review Program

The Commission has determined to review all current Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comment on, among other things, the economic impact of its Rules and Regulations Under the Hobby Protection Act; possible conflict between the Rule and state, local, or other federal laws; and the effect on the Rule of any technological, economic, or other industry changes.

III. Request For Comment

The Commission solicits written public comment on the following questions:

(1) Is there a continuing need for the Rule as currently promulgated?

(2) What benefits has the Rule provided to purchasers of the products or services affected by the Rule?

(3) Has the Rule imposed costs on purchasers?

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[1] An imitation political item is ''an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item.'' 15 U.S.C. 2106(2). The Act defines original political items as being any political button, poster, literature, sticker or any advertisement produced for use in any political cause. *Id.* at 2106(1). Political items dealers sell items such as presidential, local election, and cause-type buttons, pins, posters, tie clasps, cuff links, mugs, photos, inauguration invitations, marshal's badges, medals, ribbons and the like.

[2] An imitation numismatic item is ''an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item.'' 15 U.S.C. 2106(4). The Act defines original numismatic items to include coins, tokens, paper money, and commemorative medals which have been part of a coinage or issue used in exchange or used to commemorate a person or event. *Id.* at 2106(3).

[3] Incusable items are those that can be impressed with a stamp.

[4] Prior to the amendment, if a coin were too small to comply with the minimum letter size requirements, the manufacturer or importer had to individually request from the Commission a variance from those requirements. Because imitation miniature coins were becoming more common, the Commission determined that it was in the public interest to allow the placing of the word ''copy'' on miniature imitation coins in sizes that could be reduced proportionately with the size of the item.

(4) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers? How would these changes affect the costs the Rule imposes on firms subject to its requirements? How would these changes affect the benefits to purchasers?

(5) What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements? Has the Rule provided benefits to such firms? If so, what benefits?

(6) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements? How would these changes affect the benefits provided by the Rule?

(7) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(8) Since the Rule was issued, what effects, if any, have changes in relevant technology, such as e-mail and the Internet, or economic conditions had on the Rule?

List of Subjects in 16 CFR Part 304

Hobbies, Labeling, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–4868 Filed 2–28–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 375 and 388

[Docket Nos. RM02–4–000, PL02–1–000; Order No. 630]

Critical Energy Infrastructure Information

February 21, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this final rule establishing a procedure for gaining access to critical energy infrastructure information (CEII) that would otherwise not be available under the Freedom of Information Act (FOIA). These restrictions and the final rule were necessitated by the terrorist acts committed on September 11, 2001, and the ongoing terrorism threat. The final rule adopts a definition of critical infrastructure that explicitly covers proposed facilities, and does not distinguish among projects or portions of projects. The rule also details which location information is excluded from the definition of CEII and which is included. The rule addresses some issues that are specific to state agencies, and clarifies that energy market consultants should be able to get access to the CEII they need. Finally, the rule modifies the proposed CEII process and delegates responsibility to the CEII Coordinator to process requests for CEII and to determine what information qualifies as CEII.

The final rule will affect the way in which companies submit some information, and will add a new process in addition to the FOIA for requesters to use to request information that is not already publicly available. These new steps will help keep sensitive infrastructure information out of the public domain, decreasing the likelihood that such information could be used to plan or execute terrorist attacks.

EFFECTIVE DATE: The rule will become effective April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Carol C. Johnson, Wilbur T. Miller, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6457.

SUPPLEMENTARY INFORMATION:

1. In this final rule, the Federal Energy Regulatory Commission (Commission) amends its regulations to address the appropriate treatment of critical energy infrastructure information (CEII) in the aftermath of the September 11, 2001, terrorist attacks on the United States of America. Under the Policy Statement issued in Docket No. PL02–1–000 on October 11, 2001 (Policy Statement), the Commission removed from easy public access certain documents that previously had been public.[1] In order to accomplish this step quickly, staff identified categories of document types that were likely to contain CEII, and those documents were removed from unrestricted public access. Persons seeking removed documents were directed to request the records using the Freedom of Information Act.[2]

2. On January 16, 2002, the Commission issued a Notice of Inquiry (NOI) in RM02–4–000 to determine what changes, if any, should be made to its regulations to restrict unfettered general public access to critical energy infrastructure information, but still permit those with a need for the information to obtain it in an efficient manner.[3] On September 5, 2002, the Commission issued a Notice of Proposed Rulemaking and Revised Statement of Policy (NOPR) in Docket Nos. RM02–4–000 and PL02–1–000.[4] The NOPR proposed procedures for submitting and requesting CEII, and proposed the creation of a new position of CEII Coordinator. The final rule adopts most of the procedures proposed in the NOPR and creates the new position.

3. The process adopted in the final rule offers a more efficient alternative to handling requests for previously public documents than does the FOIA, which the Policy Statement established as the short-term method for requesting previously public documents. The FOIA was useful in the short term where a great deal of information had been removed from public access, some of which the Commission ultimately ascertained did not actually contain CEII. As discussed in the NOPR, however, the FOIA process is not well suited for handling CEII requests.[5] The FOIA mandates disclosure of agency records unless the record falls within one of several specifically enumerated exemptions. Therefore, in order for CEII to be protected from disclosure, it must qualify for a FOIA exemption. For this reason, it is unlikely that requesters will obtain CEII through the FOIA process, although they could use the FOIA to obtain non-CEII portions of documents. In addition, under the FOIA, an agency may not distinguish among requesters based on their particular need for the information. Information given to one FOIA requester must be given to all requesters. The agency also may not restrict the recipient's use or dissemination of the information. All these factors make FOIA an unsatisfactory tool for the agency to use if it wishes to afford requesters with a specific need for information access to exempt and potentially dangerous information. Therefore, the Commission is adding § 375.313 to its regulations to authorize a Critical Energy Infrastructure Information Coordinator to process non-FOIA requests for CEII and make determinations regarding such requests.[6]

[1] *See* 67 FR 3129 (Jan. 23, 2002), IV FERC Stats. & Regs. ¶ 35,542.

[2] 5 U.S.C. 552.

[3] *See* 67 FR 3129, IV FERC Stats. & Regs. ¶ 35,542.

[4] *See* 67 FR 57994 (Sept. 13, 2002), IV FERC Stats. & Regs. ¶ 32,564.

[5] *Id.* at p. 57995, ¶ 32,564 at p. 34,539.

[6] Of course, the Commission emphasizes that requesters always retain the option of seeking information under the FOIA.

4. The NOPR revised the Policy Statement to restrict public access to documents containing detailed specifications of proposed facilities as well as existing facilities, while at the same time determining that basic location information should not be treated as CEII.[7] The final rule formalizes these policies in the regulations.

5. The Commission is issuing this rule under the authority of the Federal Power Act[8] and the Natural Gas Act[9] as the rule establishes a procedure for gaining access to documents collected or created pursuant to those acts that would not otherwise be available under the Freedom of Information Act, 5 U.S.C. 552. Accordingly, this order is subject to rehearing under section 313(b) of the Federal Power Act, 16 U.S.C. 824*l*(b), and section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b), and jurisdiction to review the order lies in the United States Courts of Appeals as provided in those sections.

I. Background

A. The Policy Statement

6. The September 11, 2001, terrorist attacks prompted the Commission to issue a policy statement on October 11, 2001, in PL02–1–000, addressing the treatment of previously public documents.[10] The Commission announced there that it would no longer make available to the public through its Internet site, the Records and Information Management System (RIMS), which has been replaced by the Federal Energy Regulatory Records Information System (FERRIS), or the Public Reference Room, documents such as oversized maps that detail the specifications of energy facilities already licensed or certificated under Part I of the Federal Power Act[11] and section 7(c) of the Natural Gas Act,[12] respectively. Rather, anyone requesting such documents was directed to follow the procedures set forth in section 388.108 of the Commission's regulations (Requests for Commission records not available through the Public Reference Room (FOIA Requests)).[13] The Policy Statement also instructed staff to report back to the Commission within 90 days on the impact of this newly announced policy on the agency's business.

B. Implementation of the Policy Statement

7. To implement the policy, the Commission's staff first disabled RIMS access to all oversized documents, which frequently contain detailed infrastructure information, and also removed them from the Public Reference Room.[14] Staff next identified and disabled or denied access to other categories of documents dealing with licensed or exempt hydropower projects, certificated natural gas pipelines, and electric transmission lines that appeared likely to include critical energy infrastructure information. This effort, which was undertaken as cautiously and methodically as possible, affected tens of thousands of documents.

8. From the issuance of the Policy Statement until mid-January 2003, the Commission received 212 FOIA requests for documents that were not available to the public because of the Policy Statement. The Commission has responded to or otherwise resolved all of these requests. To date, only two CEII requesters have filed timely administrative appeals of the decisions to withhold documents, both of which involved requests for FERC Form No. 715. Nothing is pending in court.

C. The Notice of Inquiry

9. Three months after the Commission issued the Policy Statement, it issued the Notice of Inquiry (NOI).[15] The NOI set forth the Commission's general views on how it intended to treat previously public documents, and asked specific questions on the scope and implications of maintaining the confidentiality of certain previously public documents. The NOI advised infrastructure owners that they could seek confidential treatment of filings or parts of filings that, in their opinion, contain CEII, following the existing procedures in § 388.112 of the Commission's regulations,[16] and by referencing Docket No. PL02–1–000 on the first page of the filing. Approximately 50 entities responded to the NOI, with a handful of commenters filing some portion of their filing nonpublic.

D. The Notice of Proposed Rulemaking and Revised Policy Statement

10. On September 5, 2002, the Commission issued the Notice of Proposed Rulemaking and Revised Statement of Policy (NOPR) in Docket Nos. RM02–4–000 and PL02–1–000.[17] The NOPR proposed to establish a CEII Coordinator with delegated authority to process requests for CEII, and proposed regulations governing submission of CEII and requests for CEII.[18] It also revised the Policy Statement to extend CEII protection to information regarding proposed facilities and eliminate CEII protection for information that only reveals the location of the facility.[19] The Commission received more than forty comments in response to the NOPR. A list of commenters is attached as Appendix A.

II. Discussion

A. The Need for Action

11. As was the case with the NOI, most commenters agree that security considerations make it advisable for the Commission to continue to protect CEII. A few commenters, however, maintain that such protection is either unnecessary to protect the public or outweighed by the benefits of making the information available. Some contend that CEII will be of little use to terrorists,[20] an assertion with which some commenters specifically disagree.[21] Some commenters believe that the NOPR did not adequately take into account the value of making information such as CEII available to the public, and specifically the media.[22]

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[7] 67 FR 57994 at p. 57995, FERC Stats. & Regs. ¶ 32,564 at p. 34,539.

[8] 15 U.S.C. 717, *et seq.*

[9] 16 U.S.C. 791a, *et seq.*

[10] *See* 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,030. Shortly after the attacks, the Commission issued another policy statement in Docket No. PL01–6–000, in which it provided guidance to regulated companies regarding extraordinary expenditures necessary to safeguard national energy supplies. *See* 96 FERC ¶ 61,299 (2001). The Commission recognized there that electric, gas, and oil companies may need to adopt new procedures, update existing procedures, and install facilities to further safeguard their systems, and that these efforts might result in extraordinary expenditures. The Commission assured these companies that it would give its highest priority to processing any filing made for the recovery of such expenditures. *See, e.g., Colonial Pipeline Co.,* 100 FERC ¶ 61,035 (2002) (approving Colonial's security surcharge mechanism).

[11] 16 U.S.C. 719a, *et seq.*

[12] 15 U.S.C. 717f(c).

[13] 18 CFR 388.108 (2002).

[14] OMB Watch has misunderstood what was meant by oversized documents, stating ''[c]learly file size was used as a criterion for removal of information,'' terming this a ''blunt and clumsy approach.'' OMB Watch at p. 3. As explained in the Policy Statement, the Commission removed ''documents, such as oversized maps.'' ''Oversized'' refers to the size of the page itself, not the length of the document. Oversized documents generally contain maps and detailed diagrams, both of which were deemed likely to contain CEII, keeping in mind that location information of existing facilities was being protected at that time.

[15] *See* 67 FR 3129, IV FERC Stats. & Regs. ¶ 35,542.

[16] 18 CFR 388.112.

[17] *See* 67 FR 57994, IV FERC Stats. & Regs. ¶ 32,564.

[18] *Id.* at p. 58001, ¶ 32,564 at p. 34,550.

[19] *Id.* at p. 58000, ¶ 32,564 at pp. 34,547–48.

[20] *E.g.,* American Library Association at p. 2; Lydia Olchoff at p. 1; Reporters Committee for Freedom of the Press and the Society of Environmental Journalists (Reporters Committee) at p. 3.

[21] *E.g.,* GE Power Systems Energy Consulting (GE) at pp. 2–3.

[22] *E.g.,* American Library Association at p. 1; OMB Watch at p. 1, 4.

One commenter contends, for example, that the media has used such information to expose safety hazards in pipelines.[23]

12. The Commission remains convinced that the responsible course is for it to protect CEII. The arguments that such protection is unnecessary are speculative and unconvincing. For instance, one commenter points to an estimate that seventy percent of infrastructure attacks come from insiders as evidence that CEII is unlikely to aid an attack,[24] while another states that ''the possibility that terrorists will study government records and take advantage of perceived weaknesses is speculative.''[25] The Commission is not prepared to stake the public's safety on this reasoning. According to the National Infrastructure Protection Center, the energy sector is considered one of the most attractive terrorist targets.[26] According to media reports, the FBI identified ''multiple casings of sites'' where users routed through switches in Saudi Arabia, Indonesia, and Pakistan examined ''emergency phone systems, electrical generation and transmission, water storage and distribution, nuclear power plants and gas facilities.''[27] Where vulnerable areas exist, the Commission believes its responsibility is to reduce risks rather than to wait for proof that an attack is imminent or even likely.

13. The Commission also is unconvinced that the general public's need for information warrants the risk of disclosure of CEII. The ''need to know'' has never been absolute: the FOIA itself recognizes this principle by having nine exemptions, and the NOPR proposed to do nothing more than rely upon FOIA exemptions in withholding CEII.[28] The Commission received no convincing arguments in response to the NOPR that there are practical benefits from public availability of CEII that would outweigh possible dangers from attacks on energy infrastructure. Furthermore, this rulemaking is intended to provide an avenue for disclosure in instances where there might be some benefit. The Commission has attempted to strike the best balance possible between the benefits of information and the protection of people and property.

B. Legal Authority to Protect CEII

14. In the NOI that initiated this rulemaking, the Commission invited comments on statutes that might affect the Commission's ability to protect CEII. The FOIA was identified as the statute that could mandate disclosure of some sensitive information. After receiving comments from many commenters, the Commission set out its view, in the NOPR, that one or more of several FOIA exemptions would most likely apply to CEII,[29] namely: (1) Exemption 2, which exempts ''records related solely to the internal personnel rules and practices of an agency''; [30] (2) Exemption 4, which protects from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential''; [31] and (3) Exemption 7, which protects from disclosure certain law enforcement information, including information the disclosure of which might jeopardize a person's life or safety.[32]

15. Most commenters agree with the Commission's belief that one or more of these three exemptions would apply to CEII,[33] and the Commission adopts the analysis in the NOPR to support its decision here.[34] Some, however, either express concerns about the Commission's analysis of one or more exemptions or outright disagree with that analysis.[35] A few commenters assert that the Commission was somehow overriding the FOIA [36] by creating an ''extra-legal category of protected information,'' [37] or by making CEII non-requestable under the FOIA.[38]

16. The comments asserting that the Commission is somehow attempting to abrogate or circumvent the FOIA reflect a fundamental misunderstanding of this rulemaking. The Commission expressly acknowledged in the NOPR its continuing obligation to comply with the FOIA.[39] This rule does not exempt any information from disclosure under that statute unless it falls within an existing exemption, abrogate in any way the right of any person to submit a request under the FOIA, or make any document or category of documents non-requestable or otherwise not subject to the FOIA. It is not the function of this rule to make any document unavailable that would otherwise be available absent this rulemaking. Instead, the purpose of this rulemaking is to establish a mechanism for making available certain categories of documents that would otherwise be unavailable.

17. The discussion of the FOIA exemptions in the NOPR reflects the Commission's view that a re-evaluation of information access policies, including analysis of the FOIA provisions, is dictated by the changed understanding of safety issues resulting from the 9/11 tragedy.[40] That re-evaluation would be needed regardless of any regulation governing access to CEII. It becomes relevant here as a part of the reasoning behind this rulemaking, but it should not be mistaken for a determination as to whether any specific piece of information is accessible under the FOIA. A FOIA requester has a right to receive an individualized determination based on the document(s) requested. The Commission has not made, and cannot properly make, generic determinations as to whether FOIA exemptions apply. Accordingly, specific arguments with respect to Exemptions 2, 4, and 7 addressed in the NOPR,[41] and raised again here,[42] are best

[23] Reporters Committee at p. 3–4. The Commission does not, however, have jurisdiction over pipeline safety issues, which belongs to the Department of Transportation. *See* 49 U.S.C. Chapter 601.

[24] American Library Association at p. 2.

[25] Reporters Committee at p. 3.

[26] *See* National Infrastructure Protection Center Advisory 02–007 (September 10, 2002) (identifying most attractive targets as transportation and energy sectors and ''[f]acilities or gatherings that would be recognized worldwide as symbols of American power or security.'') The National Infrastructure Protection Center's mission is to serve as the United States government's focal point for threat assessment, warning, investigation and response for threats or attacks against critical infrastructures, including energy and water systems.

[27] *See The Washington Post, Cyber-Attacks by Al Qaeda Feared,* June 27, 2002, p. A01.

[28] 67 FR 57994 at p. 57996, FERC Stats. & Regs. ¶ 32,564 at p. 34,541.

[29] *Id.* at pp. 57997–800, ¶ 32,564 at pp. 34,542–46.

[30] 5 U.S.C. 552(b)(2).

[31] 5 U.S.C. 552(b)(4).

[32] 5 U.S.C. 552(b)(7)(F).

[33] *E.g.,* American Electric Power System at p. 1; Duke Energy Corporation (Duke) at p. 7; Edison Electric Institute (EEI) at pp. 6–7; Southern California Edison Company (SCE) at p. 10; Southern Company Services, Inc. (Southern) at p. 2; Washington Legal Foundation and Public Interest Clinic, George Mason University School of Law (Washington Legal Foundation) at pp. 5–6.

[34] For the public's convenience, the Commission's FOIA analysis is reiterated in Appendix B.

[35] *E.g.,* Hydropower Reform Coalition (HRC) at p. 3; Massachusetts Energy Facilities Siting Board at p. 3; National Association of Regulatory Utility Commissioners (NARUC) at pp. 3, 7–10, 12–15; OMB Watch at pp. 4–6; Reporters Committee at pp. 2, 4, 7; joint comments of the Public Utilities Commission of Ohio, the Michigan Public Service Commission and the Oklahoma Corporation Commission (States) at pp. 3, 7–10, 12–17; Whitfield Russell Associates at p. 8.

[36] OMB Watch at pp. 4–5; Reporters Committee at pp. 2, 7.

[37] American Library Association at p. 2.

[38] OMB Watch at p. 4.

[39] 67 FR 57994 at p. 57996, FERC Stats. & Regs. ¶ 32,564 at p. 34,541.

[40] *Id.* at pp. 57996–800, ¶ 32,564 at pp. 34,541–46.

[41] *Id.*

[42] *E.g.,* NARUC at p. 12; States at p. 13; OMB Watch at p. 5; Whitfield Russell Associates at p. 8 (harm resulting from terrorist attacks would not constitute competitive harm under Exemption 4); Reporters Committee at p. 7; OMB Watch at p. 6 (information that was previously public is not protected under the FOIA).

resolved in the context of particular FOIA requests, where submitters have the opportunity to enumerate potential competitive harm associated with release, and where the Commission can evaluate the harm of releasing that particular information. For purposes of this rulemaking, however, the Commission continues to believe that the types of information it has identified as CEII are exempt from disclosure under the FOIA.

18. As a separate matter, some commenters raise issues concerning the Commission's experience with Exemption 7 and question whether it applies outside the context of criminal investigations.[43] In particular, OMB Watch wonders how the Commission could have removed from public access tens of thousands of documents on the basis that they were compiled for law enforcement purposes and asks whether the Commission ever relied upon Exemption 7 prior to the 9/11 attack.[44] With respect to OMB Watch's first argument, the Commission did not remove thousands of documents from public access in October 2001 based on Exemption 7. The Commission removed them because they fit within certain categories of documents that were identified as likely to contain information that could be harmful in the hands of terrorists. The Commission did not do a document-by-document review of these documents to determine whether they contained information exempt from disclosure under the FOIA. In response to OMB Watch's second point, the Commission has relied from time to time on Exemption 7 prior to 9/11.[45] More to the point, it has long been recognized that Exemption 7 applies to civil as well as criminal law enforcement.[46] OMB Watch is likewise mistaken that the Commission will claim that all information it collects constitutes law enforcement information.[47] The Commission has no such intention because it recognizes that Exemption 7 does not protect all law enforcement information, but only certain limited types, such as information the disclosure of which might interfere with enforcement proceedings or endanger the safety of an individual.[48]

19. Some commenters raise administrative issues. They assert, for example, that this rulemaking will improperly remove functions from qualified ''access professionals,'' and that the Commission has not adequately explained what qualifications the CEII Coordinator must possess.[49] These concerns are misplaced. As stated above, FOIA requests will continue to be processed according to the Commission's established FOIA procedures and the Commission's FOIA staff. The Commission's goal in appointing the CEII Coordinator will be the same as its goal in assigning staff to handle FOIA requests, or for that matter all of its staff: to ensure that employees are qualified and properly trained to handle their appointed responsibilities. Moreover, as explained below in the discussion on the use of a CEII Coordinator, the Coordinator will be free and indeed encouraged to consult with the staff who provides advice and recommendations on FOIA responses.

20. Some commenters ask whether the Commission will automatically transfer a FOIA request to the CEII Coordinator if it turns out that the requested information is CEII.[50] The answer is, generally no. If a requester files a FOIA request and does not follow the procedures for seeking access to CEII, the request will be handled as a FOIA request and, if the requested information is exempt from disclosure, it will be withheld. The requester will, however, be notified that the information, although exempt from disclosure under the FOIA, may be accessible under the CEII procedures. If the requester seeks access under both the FOIA and CEII procedures, Commission staff will coordinate the response.

21. The Commission received comments questioning whether a utility must claim CEII status for information in order for it to qualify for protection under Exemption 4.[51] The information either is or is not CEII. Thus, a claim that information is CEII is not necessary for the information to qualify as such. For the same reason, a claim that information is CEII will not necessarily qualify it as CEII. Accordingly, a submitter's ability to claim protection under Exemption 4 in particular is not, and cannot be, conditioned on a claim of CEII status. Information may qualify for Exemption 4 protection and not be CEII, just as information may qualify for CEII protection and not fit within Exemption 4, as long as it fits within another FOIA exemption.

22. As stated above, the Commission recognizes that it is bound by the FOIA. Where the FOIA affords certain rights to submitters of information, the Commission remains obligated to recognize those rights, just as it remains obligated to recognize the rights of FOIA requesters. Nevertheless, if a utility fails to claim CEII status for information that would qualify as CEII, the risk that the information will be disclosed is increased because Commission staff may not become fully aware of the dangers of disclosing it. Commission staff will endeavor to identify CEII in processing requests, including information for which submitters have not claimed CEII status, but proper determinations about what information should be released under the FOIA will be easier to make where submitters identify information they believe to constitute CEII.

23. Finally, some requesters express concern whether the Commission will provide adequate information about decisions not to disclose CEII, including information that would allow requesters to challenge claims of competitive harm.[52] Determinations of competitive harm would occur as part of the FOIA process and would be subject to existing FOIA procedures. The Commission informs a FOIA requester of the reason(s) for withholding information and the requester may appeal that determination to the Commission's General Counsel and ultimately to a United States District Court.[53] This rulemaking makes no changes to that procedure. Where information that is exempt from disclosure under the FOIA is found to be CEII, as noted, the Commission will so notify the requester.

C. Definition of CEII

24. The NOPR proposed to define CEII in § 388.113(c)(1) of the Commission's regulations [54] as:

> Information about proposed or existing critical infrastructure that: (i) Relates to the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the

[43] *E.g.,* OMB Watch at p. 7; Reporters Committee at p. 6.

[44] OMB Watch at p. 7.

[45] A review of the Commission's Annual FOIA reports for FY 1998 through 2001 indicates that the Commission relied on Exemption 7 in Fiscal Years 2001 and 1998, specifically citing exemption 7(A) eight times, 7(B) two times, 7(C) three times, 7(D) two times, and 7(E) five times during those two fiscal years. The Commission also relied on Exemption 7(F) more recently in modifying its practice of making the entirety of FERC Form No. 715 available to the public. *See* Order on Treatment of Information Collected in Form No. 715, 100 FERC ¶ 61,141 (2002).

[46] *E.g., Detroit Free Press, Inc.* v. *DOJ,* 73 F.3d 93, 96 (6th Cir. 1996); *Williams* v. *IRS,* 479 F.2d 317, 318 (3rd Cir. 1973).

[47] *See* OMB Watch at p. 7.

[48] 5 U.S.C. 552(b)(7).

[49] OMB Watch at p. 7; Reporters Committee at pp. 4–5.

[50] NARUC at p. 24; States at p. 24.

[51] NARUC at p. 13; States at p. 14.

[52] NARUC at pp. 23–24; States at pp. 24–25.

[53] 18 CFR 388.108(c)(1), 388.110 (2002).

[54] 18 CFR 388.113(c)(1) (2002).

Freedom of Information Act, 5 U.S.C. 552; and (iv) Does not simply give the location of the critical infrastructure.[55]

This definition departed from the prior policy in that it covered proposed facilities as well as existing facilities, and in that it excluded from the definition of CEII information regarding the location of the infrastructure. The majority of comments regarding the proposed CEII definition involve the meaning of ''critical infrastructure,'' the exclusion of location information, and the inclusion of information about proposed facilities.

1. Definition of Critical Infrastructure

25. A crucial element in defining CEII is determining what qualifies as ''critical infrastructure.'' The NOPR proposed to define critical infrastructure as:

Systems and assets, whether physical or virtual, that are so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on the security, national economic security, national public health or safety, or any combination of those matters.[56]

The NOPR proposed definition of critical infrastructure was taken directly from the USA PATRIOT Act (Act).[57] In proposing that definition, the Commission believed that all components of the energy infrastructure would qualify as critical infrastructure based on a finding in the Act that ''[p]rivate business, government, and the national security apparatus increasingly depend on an interdependent network of critical physical and information infrastructures, including telecommunications, energy, financial services, water and transportation sectors.''

26. Some commenters agree with the proposed CEII definition, with EEI noting that ''[e]lectricity is an essential public service that sustains public health and welfare, including * * * the provision of power for heating and air conditioning, water supply, street and building, hospital services, food storage and processing, computers, and other electrical equipment,'' and as such, is vital to the nation's health, security, and economy.[58] Other commenters, however, are concerned that the language could be read to extend CEII coverage only to very large or ''vital'' projects. For example, the Interstate Natural Gas Association of America (INGAA) requests that the Commission revise the definition of ''critical infrastructure'' to include ''all facilities used in the production, generation, transportation, transmission, or distribution of energy.'' [59] Conversely, the HRC recommends that the Commission consider ''only certain documents of high-risk, high priority cases to be available for CEII protections.'' [60] Some commenters recommend that the Commission leave it up to the infrastructure owner to determine whether its project qualifies as critical infrastructure,[61] while other commenters voice concern that the definition of CEII is too broad.[62] In this regard, Reporters Committee states that ''[b]y defining CEII in a way that can have all major energy infrastructure fall under the CEII rubric, FERC maximizes the control it maintains over information.'' [63]

27. No matter how broadly or narrowly the Commission defines critical infrastructure, in order to qualify for protection as CEII, the information must be useful to terrorists in planning an attack, be exempt from disclosure under the FOIA, and not merely give the location of the infrastructure. This effectively limits the scope of CEII protection. Moreover, the Commission does not want to define CEII in an ambiguous way that will invite disputes over which facilities are covered. The definition of critical infrastructure should encompass all facilities and components of facilities, not just facilities above a certain threshold. Even though a project may be small, destruction of the project could have serious consequences, particularly where it is part of a larger overall system. It is also important to the Commission that computer systems that control or are part of the energy infrastructure are covered. Therefore, the final rule defines critical infrastructure in new § 388.113(c)(2) of the Commission's regulations [64] as ''existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.''

2. Information on Location of Facilities

28. The majority of commenters object to the Commission's decision not to classify location information as CEII.[65] In this regard, some question the Commission's assumption that location information is still publicly available in the wake of September 11.[66] Others posit that the Commission should be a trailblazer, protecting location information even where it is publicly available elsewhere.[67] Certain commenters argue that while the Commission should not protect information that is publicly available from other sources, such as USGS or commercial maps, other location information may warrant protection.[68] Still others contend that information above a certain level of detail should be protected,[69] for example, ''location of

[55] 67 FR 57994 at p. 58000, FERC Stats. & Regs. ¶ 32,564 at p. 34,548.

[56] *Id.* at pp. 58000–01, ¶ 32,564 at p. 34,548.

[57] Pub. L. 107–56.

[58] EEI at p. 2.

[59] INGAA at p. 3.

[60] HRC at p. 5.

[61] *E.g.,* MidAmerican Energy at p. 3; National Grid USA at p. 5.

[62] *E.g.,* HRC at p. 4; Reporters Committee at p. 8; Society of Professional Journalists at p. 2.

[63] Reporters Committee at p. 8.

[64] *See* new 18 CFR 388.113(c)(2).

[65] *E.g.,* American Gas Association at pp. 1–2; Bonneville Power Administration (BPA) at pp. 3–4; Duke at p. 14; INGAA at pp. 8–11; MidAmerican Energy Company (MidAmerican) at pp. 6–7; National Grid USA at pp. 3 and 5; National Hydropower Association at p. 5; Northwest Natural Gas Company (Northwest Natural) at pp. 4–8; Pacific Gas & Electric (PG&E) at p. 1; Williston Basin Interstate Pipeline Company (Williston Basin) at pp. 4–6.

[66] *E.g.,* BPA at p. 4; Duke at p. 13 (citing articles claiming that numerous groups, including the Bureau of Transportation Statistics, the Department of Energy (DOE), the International Nuclear Safety Center, the Department of Transportation (DOT), the National Imagery and Mapping Agency and the United States Geological Survey, removed geographic information from open public access after September 11); EEI at pp. 8–9 (stating that DOE has removed information regarding nuclear facilities containing weapons-grade plutonium or highly enriched uranium, DOT has removed interactive oil pipeline maps, and the Energy Information Agency has removed similar information); and INGAA at p. 10.

[67] *E.g.,* American Gas Association at p. 2; Northwest Natural at pp. 7–8; INGAA at pp. 10–11; PG&E at p. 1; Williston Basin at pp. 4–5. These commenters believe that if the Commission protects this information, others may follow suit, eventually ''aging'' the information in the public domain, making it less useful to potential terrorists. The Commission appreciates these commenters' views, but believes that while this information might gradually become outdated in the public domain, the probability is remote given the availability of GPS equipment and commercial satellite images.

[68] *E.g.,* PJM Interconnection (PJM) at p. 2, SCE at p. 5. For its part, INGAA, an advocate of protecting location information, concedes ''[t]o the extent that maps and/or location information are generally and readily available to the public and contain only non-detailed information of the location of energy facilities [such as state- or county-level maps],'' such information could be excluded from the definition of CEII. INGAA at p. 8.

[69] *E.g.,* GE at p. 6 (location of certain types of equipment, such as ''phase-angle regulators or critical FACTS devices'' should be protected); MidAmerican at p. 6; National Hydropower Association at p. 5 (protect information that provides ''details of the sensitive parts of facilities''); North American Electric Reliability Council (NERC) at pp. 4–5 (protect ''detailed network topology maps and the details of the interactions performed by Supervisory Control and Data Acquisition (SCADA) and Energy Management Systems (EMS)''; Northwest Natural at p. 5 (''assumes that medium to highly detailed facility location maps'' will be protected); PG&E at p. 6.

key communication facilities, control centers, and switching facilities,'' [70] and information that ''identifies major transmission interconnections and other system components.'' [71]

29. The Commission has considered the commenters' arguments and suggestions especially with respect to protecting information that may otherwise be available to the public. For this purpose, a check of the Internet revealed that some of the information that had been removed after September 11 is once again available. For instance, the International Nuclear Safety Center currently has interactive maps available on its web site,[72] and the United States Geological Survey lists a variety of maps for sale, including 7.5 minutes maps.[73] Although some information, such as the DOT pipeline maps have not been restored to public access, the Commission believes that there are publicly available sources that would enable a terrorist to locate most energy infrastructure. Without further guidance from the Congress or the Administration, the Commission is reluctant to withhold from public access location information that is otherwise available.

30. The Commission concludes nevertheless that there is some ''location'' information that does warrant protection as CEII. The Commission intends to release location information generally needed to participate in the National Environmental Policy Act (NEPA) process, while protecting information containing technical details not usually needed by most NEPA participants. Accordingly, the Commission considers the following types of gas and hydropower location information as outside the definition of CEII: (1) USGS 7.5-minutes topographic maps showing the location of pipelines, dams, or other aboveground facilities; (2) alignment sheets showing the location of pipeline and aboveground facilities, right of way dimensions, and extra work areas; (3) drawings showing site or project boundaries, footprints, building locations and reservoir extent; and (4) general location maps. In order to alleviate commenters' concerns about making this information so easily available, the Commission instructs filers to segregate this non-CEII location information into a separate volume or appendix, label it clearly ''Non-Internet Public,'' and submit it with instructions that it not be placed on the Internet.[74] To the extent permissible and practical, the Commission will adhere to those instructions, but the information will still be publicly available through the Public Reference Room.

31. Conversely, the Commission considers the following gas information to qualify as CEII because it provides more than just location: (1) Diagrams of valve and piping details at compressor stations, meter stations, LNG facilities, and pipeline interconnections; (2) flow diagrams and other drawings or diagrams showing similar details such as volumes and operating pressures like those found in Exhibit G; (3) environmental resource reports for LNG facilities, and (4) drawings matching labels with specific buildings at the site, *e.g.*, central gas control centers or gas control buildings.

32. Similarly, examples of hydropower location-related information that the Commission considers to be CEII include: (1) General design drawings of the principal project works (*e.g.*, plan, elevation, profile, and section of dam and powerplant), such as those found in Exhibit F; (2) maps of projects (including location of project works with respect to water bodies, permanent monuments, or other structures that can be noted on the map and recognized in the field), such as those found in Exhibit G; (3) drawings showing technical details of a project, such as plans and specifications, supporting design reports, Part 12 independent consultant reports,[75] facility details, electrical transmission systems, and communication and control center information; (4) locations of critical or vulnerable components of the project; (5) innundation information; and (6) global positioning system (GPS) coordinates of any project features (precise surveyed or GPS coordinates at or above two decimal points of accuracy of equipment and structures).

33. A filing such as a license or certificate application could contain a variety of information falling into one or more of the following categories: public, non-Internet public information, nonpublic CEII, and other nonpublic privileged. In that case, the preferred method of filing would be to segregate each type of information into separate volumes or appendices, each clearly marked with the appropriate heading, and with a cover letter explaining the treatment each volume/appendix should receive as follows:

- The public volume/appendix should be marked ''Public,'' although public is the default treatment for unmarked documents
- The non-internet public volume/appendix containing non-CEII location information should be marked ''Non-Internet Public''
- The CEII volume/appendix should be marked ''Contains Critical Energy Infrastructure Information—Do Not Release,'' in accordance with § 388.112(b), and
- Any other nonpublic privileged volumes/appendices should be marked ''Contains Privileged Information—Do Not Release.''

Filers should note that any filing containing non-Internet public, CEII or other privileged information currently may not be submitted using the electronic filing process.

34. The electric transmission grid differs from dams and pipelines in that the Commission does not have regulatory responsibilities over the siting or licensing of these facilities. Therefore, the Commission is not charged with conducting the NEPA reviews on these facilities. For that reason, there is far less need for the public as a whole to have unfettered access to location information submitted to the Commission regarding the electric grid. Some companies state that portions of FERC Form No. 715, Annual Transmission Planning and Evaluation Report, should fall outside the definition of CEII because it is location information.[76] The Commission disagrees. Certain information in Part 3 of FERC Form No. 715 is not intended primarily to identify the location of the facilities, but rather to show the interrelationship of facilities. Therefore, the Commission considers Part 3 transmission system maps and diagrams used by the utility for transmission planning to be CEII.

3. Information Regarding Proposed Facilities

35. In the NOPR, the Commission reversed its earlier position that information relating to proposed facilities should not be treated as CEII.[77] As noted in the NOPR, ''[t]he major concern initially about withholding information about proposed projects was that people might not be able to participate effectively in the National Environmental Policy Act (NEPA) process.'' [78] After the Policy Statement was issued in October 2001, the

[70] BPA at p. 4.

[71] National Grid USA at p. 3.

[72] *See http://www.insc.anl.gov/pwrmaps/map/world_map.php.*

[73] *See http://mapping.usgs.gov/digitalbackyard/topobkyd.html#5.*

[74] Until instructed otherwise, filers may not submit non-Internet public documents through the electronic filing process. Document submitted through that process are automatically placed in public FERRIS, and are visible on the Internet.

[75] *See* 18 CFR part 12, subpart D.

[76] *E.g.*, Commonwealth Associates, Inc. at p. 2; Whitfield Russell Associates at p. 8.

[77] 67 FR 57994 at p. 58000, FERC Stats. & Regs. ¶ 32,564 at p. 34,548.

[78] *Id.*

Commission treated information that identified location of existing, certificated or licensed facilities as CEII. It recognized that it would be nearly impossible for people to participate effectively in the NEPA process without access to specific information regarding the location of the proposed facility, the area it affects, and the resources it impacts. For that reason, the Policy Statement contemplated the release of CEII regarding proposed facilities, and then the protection of the information as CEII once a certificate or license was issued.[79] This resulted in a fairly cumbersome process and raised the concern that a patient terrorist could collect CEII-type information on proposed projects and then use that information to cause harm to the project and the people living and working in its vicinity once it was built.

36. In the NOPR, recognizing the inconsistency in this approach, the Commission revised the Policy Statement to restrict access to detailed technical information relating to proposed facilities, while at the same time revising the policy to cease protecting location information as CEII.[80] The majority of commenters approve of the decision to include proposed facilities,[81] with only the HRC explicitly disagreeing.[82] As explained in the NOPR, the Commission believes that as long as basic location information is not treated as CEII, protection of other sensitive information about proposed facilities will help protect the infrastructure without interfering with the NEPA process.[83] For example, most NEPA commenters will want to know the location of a proposed pipeline and the footprint of aboveground facilities, but few will need diagrams of valve and piping details, or flow diagrams, or need to know which building will house security and which one will house the computer operations center. Those who do have such a need may file a request for that information using the CEII request procedures in new § 388.113(d) of the Commission's regulations.[84]

37. Duke Energy suggests that the Commission clarify that the definition of CEII extends to ''component parts of such systems or assets or * * * formal proposals to create such systems or assets including component parts thereof,''[85] voicing concern that the requirement that the infrastructure be vital to the nation's health, security, and economy ''presupposes that the ''infrastructure'' in question is already in place,'' effectively excluding information about proposed facilities.[86] As discussed above, the Commission is changing the definition of critical infrastructure in new § 388.113(c)(2) of its regulations[87] to encompass ''existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.'' This revised definition makes it clear that information regarding proposed facilities may be protected as CEII.

D. Requester's Status and Need for the Information

38. The NOPR proposed a procedure that would not restrict CEII to certain types of applicants, but would take an applicant's identity and need into account.[88] A person seeking access to CEII under proposed § 388.113 would be required to submit information about his identity and need for the information.[89] The NOPR emphasized the importance of intervenors, landowners and other persons being able to participate meaningfully in Commission proceedings.[90] The Commission also expressed its belief that market participants who are not participants in proceedings would be able to access necessary information, either under proposed § 388.113 or through other means, such as the Open Access Same-time Information System (OASIS).[91] The NOPR also proposed to permit owners and operators to get information about their own facility without the need to file a request under the CEII process, and to require agents of an owner/operator to obtain information from the owner/operator.[92] The NOPR pointed out that these requirements would have no application to FOIA requests.[93]

39. Several commenters express concern over the ability of energy market consultants and other participants to obtain data that is important to efforts to expand the energy infrastructure and develop new energy resources.[94] Among the concerns is the possibility that transmission owners might restrict access to CEII in an unfair manner so as to deprive some market participants of the ability to conduct needed research.[95] Some commenters suggest that the Commission adopt a method of pre-qualification for market participants who are not participants in Commission proceedings or include consultants and other market participants in a list of categories of CEII users who would be permitted access.[96]

40. The procedures proposed in the NOPR were intended to provide access to CEII to requesters with legitimate need for the information.[97] Generally speaking, market participants seeking to develop new or expanded energy resources would present such a need. Certainly, continued development of energy infrastructure is one aspect of the nation's defense against attacks upon that infrastructure. The Commission prefers to proceed on a case-by-case basis rather than creating categories of ''pre-approved'' users, because such an approach is better tailored to ensuring that inappropriate users do not gain access to CEII. The Commission understands that extensive delays in obtaining data could hinder development of energy resources, and has no intention of allowing the CEII process to result in any undue delays in the processing of facilities applications. In addition, once the CEII Coordinator has approved access to CEII on the part of a particular requester on a few occasions, subsequent requests by the same requester for similar information should, in most cases, require less time to process.

41. One matter requires clarification. As National Grid USA points out,[98] owner/operators often are corporations that can act only through agents. The reference to ''agent or representative'' in § 388.113(d)(2) of the Commission's

[79] 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,030.

[80] 67 FR 57994 at p. 57995, FERC Stats. and Regs. ¶ 32,564 at p. 34,539.

[81] *E.g.,* EEI at p. 9; Industrials (Process Gas Consumers Group, American Forest & Paper Ass'n, American Iron & Steel Institute, Georgia Industrial Group, Florida Industrial Gas Users, Industrial Gas Users of Florida, and United States Gypsum Company) at p. 4; INGAA at p. 4; National Hydropower Association at p. 5; Southern at p. 3; Washington Legal Foundation at p. 2; Williston Basin at p. 4.

[82] HRC at p. 4.

[83] *See* 67 FR 57994 at p. 58000, FERC Stats. & Regs. ¶ 32,564 at p. 34,548.

[84] *See* new 18 CFR 388.113(d).

[85] Duke Energy at p. 12.

[86] *Id.* at pp. 10–11.

[87] *See* new 18 CFR 388.113(c)(2).

[88] 67 FR 57994 at p. 58001, FERC Stats. & Regs. ¶ 32,564 at p. 34,549.

[89] *Id.* at p. 58001, ¶ 32,564 at p. 34,550.

[90] *Id.* at p. 58001, ¶ 32,564 at pp. 34,549–50.

[91] *Id.* at p. 58001, ¶ 32,564 at p. 34,550.

[92] *Id.* at p. 58001, ¶ 32,564 at pp. 34,549–50.

[93] *Id.* at p. 58001, ¶ 32,564 p. 34,549.

[94] *E.g.,* BPA Power Administration at p. 5; Pace Global Energy Services at p. 3; Reliant Resources, Inc. (Reliant) at pp. 2–4.

[95] *E.g.,* Reliant at pp. 4–5.

[96] *E.g.,* Pace Global Energy Services at p. 3; GE at p. 4; Reliant at pp. 4–5.

[97] 67 FR 57994 at p. 58001, FERC Stats. & Regs. ¶ 32,564 at p. 34,550.

[98] National Grid USA at p. 9.

regulations [99] is not intended to refer to employees or officials of an owner/operator. They would be covered by § 388.113(d)(1) of the Commission's regulations.[100] That subsection has been clarified accordingly.

E. Verification and Access Issues

1. CEII Coordinator

42. Most commenters approve of the creation of a CEII Coordinator position [101] with some indicating that the agency was better suited to respond to requests than the industry.[102] However, a few commenters believe that owners, operators, and applicants should have more of a role in granting access to CEII. For example, the National Hydropower Association requests that the Commission amend the regulations to permit owners, operators, and applicants to serve as CEII Coordinator in some circumstances,[103] and EEI advocates that submitters of information be able to object to intervenor requests for CEII.[104] The Commission believes that the National Hydropower Association's suggestion would impermissibly interfere with the Commission's administration of the program. EEI's suggestion, however, is consistent with the proposed CEII Coordinator process, which is adopted here. Accordingly, under § 18 CFR 388.112(d) of the Commission's regulations,[105] submitters are given an opportunity to comment on requests for CEII that they submitted.

43. At least one commenter, Reporters Committee, disagrees with the establishment of a CEII Coordinator, voicing concern that the proposed process removes access decisions from the hands of experienced access professionals and permits the agency to avoid the FOIA time limits.[106] As discussed above in paragraph 18, the CEII Coordinator will have access to the same professional staff who evaluate and draft recommended decisions on FOIA requests, so that expertise will be utilized. Also, the time frames set out in new § 388.113(d)(3)(iii) of the Commission's regulations [107] for the CEII Coordinator to process a request are the same as provided by the Commission's regulations for processing FOIA requests. To be sure, missing the CEII deadlines does not have the same legal implications as missing the FOIA deadlines.[108] Nevertheless, the Commission is committed to processing requests for CEII as timely as possible as if it were under the same legal obligations as imposed under the FOIA. Also, of course, if a requester is concerned about the timing for a CEII response running beyond the FOIA statutory time limits, the requester always has the option of filing a FOIA request and seeking access under that statute.

44. Certain commenters request clarification of the authority of the Coordinator. Southern believes that the NOPR did not make it clear that the CEII Coordinator has the authority to make determinations of when information qualifies as CEII. The Commission agrees that the proposed version of § 375.313 of its regulations [109] did not specifically delegate this authority to the Coordinator. The final rule revises proposed 18 CFR 375.313 to add this delegation, and includes language in new § 388.113(d)(3)(ii) of the Commission's regulations [110] to explicitly add this step into the processing of CEII requests.

45. Other commenters request that the Commission provide more concrete standards or guidance for the Coordinator. For example, National Grid USA recommends that the Commission provide ''standards that will govern the CEII Coordinator's decision whether to release CEII,'' explaining that stated criteria may give requesters insight into which requests will be granted and reduce fruitless requests.[111] The National Hydropower Association, the NERC, PJM, and Southern also request that the Commission provide criteria for the Coordinator to use in determining whether information qualifies as CEII, whether a requester has a need for the information, and whether to require a non-disclosure agreement (NDA) as a condition of release.[112] The Commission believes that the standards the Coordinator should use to determine whether information qualifies as CEII are adequately detailed in the definition in new § 388.113(c)(1) of its regulations.[113] That is, does the information relate to the production, generation, transportation, transmission, or distribution of energy; could it be useful to a person in planning an attack on critical infrastructure; is it exempt from disclosure under the FOIA; and does it do more than provide location information?

46. Commenters also ask that the Commission develop guidelines for the Coordinator to use in determining whether to release information to a particular requester.[114] The Commission does not intend to provide within the regulation itself a list of the types of requesters who would be deemed to have a need for CEII. First of all, that determination is fact specific. However, in the preamble to the NOPR and this final rule, the Commission has indicated that intervenors, market participants, energy market consultants, state agencies, landowners, environmental groups, and market participants may be found to have a need for information in a particular situation.[115] It will be in the requester's best interest to explain as fully as possible why he or she needs the information in question. One factor that the Coordinator should factor into a decision is whether the requester's need for the information outweighs the potential harm from release of the information. For instance, if the Commission developed a hierarchical listing of the most critical portions of the infrastructure, it would be highly unlikely to release that information to most requesters, although it might be released to the FBI or the Office of Homeland Security. The final rule has been changed to reflect this balancing in new § 388.113(d)(3)(ii) of the Commission's regulations.[116]

2. Use of PINS and Passwords

47. Some commenters are concerned that adequate security measures be taken to protect access to CEII. For instance, certain commenters favor the use of a password system to provide Internet access to CEII.[117] GE believes it may be beneficial to maintain records on each individual's access to CEII to facilitate investigation of potential inappropriate access.[118] Other

[99] *See* 18 CFR 388.113(d)(2).

[100] *See* 18 CFR 388.113(d)(1).

[101] *E.g.,* EEI at pp. 10–11; Electric Power Supply Association (EPSA) at p. 4; Industrials at pp. 3–4; INGAA at pp. 5 and 7; MidAmerican at pp. 3–4; National Hydropower Association at pp. 3–4; NERC at p. 3; Washington Legal Foundation at p. 2; Whitfield Russell Associates at p. 9.

[102] *E.g.,* American Electric Power at p. 1; Industrials at pp. 3–4; Reliant at p. 5.

[103] National Hydropower Association at pp. 3–4.

[104] EEI at p. 14.

[105] 18 CFR 388.112(d).

[106] Reporters Committee at p. 4.

[107] 18 CFR 388.113(d)(3)(iii).

[108] A FOIA requester may treat an agency's failure to respond within the statutory time limit as constructive exhaustion of administrative remedies, and proceed directly to court without first filing an administrative appeal. *See* 5 U.S.C. § 552(a)(6)(C)(i). Normally, a requester must file an administrative appeal prior in order to exhaust his or her administrative remedies prior to filing in court. *See Stebbins* v. *Nationwide Mutual Ins. Co.,* 757 F.2d 364, 366 (D.C. Cir. 1985) (*per curiam*).

[109] 18 CFR 375.313.

[110] *See* new 18 CFR 388.113(d)(3)(ii).

[111] National Grid USA at pp. 6–7.

[112] National Hydropower Association at p. 4; NERC at p. 5; PJM at p. 1; Southern at pp. 4–6.

[113] *See* new 18 CFR 388.113(c)(1).

[114] *E.g.,* PJM at p. 1; Southern at pp. 4–5.

[115] 67 FR 57994 , FERC Stats. & Regs. ¶ 32,564.

[116] *See* 18 CFR 388.113(d)(3)(ii).

[117] *E.g.,* Duke at p. 17; National Hydropower Association at p. 8; GE at p. 5; SCE at p. 8.

[118] *See* GE at p. 5.

commenters have concerns about the security issues associated with providing Internet access to CEII.[119] For the time being, the Commission does not plan to give requesters access to Commission databases containing CEII. If and when that time comes, it is expected that identifications and passwords will be used.

3. Verification/Checks on Requesters

48. In the NOPR, the Commission proposed to require each individual requester to obtain access to information instead of granting access on an organization-by-organization basis.[120] Several commenters urge the Commission to rethink its decision not to grant requesters generic access to nonpublic information. Some note that such generic access would reduce burdens on the Commission and requesters.[121] INGAA, among others, believes that access decisions should be made on a case-by-case basis,[122] while GE recommends a hybrid approach that would allow entities with ''continuous legitimate need for information'' to gain generic access, while utilizing a case-by-case system for those with more occasional need for the information.[123] For the time being, the Commission is most comfortable granting access on a case-by-case basis. As mentioned in the discussion on standards to be used by the Coordinator, whether someone has a need for information can vary from circumstance to circumstance. The Commission's goal is to limit CEII access to those with a need for the information. Even though a requester may not be a terrorist, the more people who have access to information, the greater likelihood that it may find its way into the wrong hands. As also noted above, someone who requests access frequently will probably be cleared more quickly than a first-time requester, so the burden of multiple requests should not be too great.

49. In the NOPR, the Commission concluded that since the majority of requesters were expected to be entities and individuals who were well known to the Commission, it was not necessary to use the services of outsiders to verify the identity and legitimacy of requesters.[124] The Commission is reconsidering that position and is in the process of evaluating existing databases that it may use to screen requesters.[125] For that reason, the Commission is revising proposed § 388.113(d)(3)(i) to add a requirement that the requester provide his or her date and place of birth and to request that each requester provide his or her social security number[126] in addition to the other information initially proposed in the NOPR.[127] This will help verify that the name that the individual provides is their true name, thus facilitating an accurate screening.

F. State Agency Issues

50. As indicated in the NOI and the NOPR, there are some unique issues with respect to state agency access to CEII.[128] A primary concern is the ability of state agencies, which likely will be subject to their own FOIA rules, to protect CEII received from the Commission. State Commissions[129] also raise the following additional issues:

Whether and on what basis FERC proposes that its CEII rule will preempt state open records laws and rules?

Whether State Commissions will automatically be permitted to obtain all CEII data from FERC or whether State Commission access may be limited on a ''need to know'' basis?

Whether FERC's rule will adequately preclude utilities from invoking the FERC rule to avoid providing CEII data to State Commissions?

Whether State Commissions will have requisite access to CEII data from utilities not within a State Commission's jurisdiction (*e.g.*, for purposes of examining regional transmission or generation capability)?

Whether State Commissions or their staff will be required to enter into an NDA, and if so, on what terms?[130]

51. As an initial matter, the Commission emphasizes that its goal is to cooperate as fully as possible with the State Commissions, which share the Commission's objective to ensure that CEII does not get into the wrong hands. That said, the Commission grants the National Association of Regulatory Commissioners' (NARUC's) requested clarification on the Federal preemption issue. NARUC states that the Commission has no basis to preempt authority over the totality of access to information regarding gas and electric utility regulation, and that much of the information at issue is not ''Federal information,'' that is, generated by or for the Federal government, but instead is generated by non-Federal entities that have provided similar or identical information to state regulators.[131] The Commission agrees.

52. The NOPR discussion on preemption related to state agency requests to FERC for CEII that the Commission had generated or collected.[132] As NARUC correctly points out, ''the NOPR itself declares that FERC's rule does not propose to alter the traditional ability of State Commissions to obtain such data directly'' from the companies.[133] Therefore, as requested by NARUC, the Commission confirms that it does not intend that public utilities may rely on this rule to refuse to provide information directly to State Commissions.

53. In addition, State Commissions will be presumed to have a need to know information within their state involving issues within their responsibilities. They also may submit requests for information regarding entities outside of their jurisdictions with an explanation of the need. Such requests should be capable of being resolved in a timely manner. On the other hand, as discussed below, release of CEII to State Commissions and other State Agencies will normally be subject to signing an NDA. It does not make sense for the Commission to release the

[119] *E.g.,* National Hydropower Association at p. 8; GE at p. 5.

[120] 67 FR 57994 at p. 58002, FERC Stats. & Regs. ¶ 32,564 at p. 34,550.

[121] *E.g.,* Duke Energy at p. 17; EPSA at p. 4.

[122] *See* INGAA at p. 7; PJM at p. 2.

[123] *See* GE at p. 3.

[124] 67 FR 57994 at p. 58002, FERC Stats. & Regs. ¶ 32,564 at p. 34,550.

[125] One possibility is to use the Interagency Border Inspection Service (IBIS) database, which keeps track of information on suspect individuals, businesses, etc., and which may also be used to access the FBI's National Crime Information Center containing records on wanted persons, criminal histories, etc.

[126] Under the section 7(a)(1) of the Privacy Act, 5 U.S.C. 552a, an agency may not deny a right or benefit provided by law because an individual did not provide his or her social security numbers. Therefore, a requester has the option of not disclosing his or her social security number.

[127] 67 FR 57994 at p. 58001, FERC Stats. & Regs. ¶ 32,564 at p. 34,550.

[128] 67 FR 3129 at pp. 3132–33, FERC Stats. & Regs. ¶ 35,542 at pp. 35,830–33; 67 FR 57994 at p. 58002, FERC Stats. & Regs. ¶ 32,564 at p. 34,551.

[129]

[130] NARUC also raises two miscellaneous issues which go beyond the scope of this rule. First, NARUC encourages the Commission to clarify how the CEII rule relates to the Commission's Standard Market Design (SMD) NOPR, ''Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design,'' IV FERC Stats. & Regs. ¶ 32,563 (2002). Without more, and given the comprehensive nature of the SMD NOPR, the Commission is uncertain as to what NARUC's specific concerns are. The Commission believes, however, that there is nothing in this final rule that conflicts with the goals of the SMD NOPR. Second, NARUC suggests that the Commission set a benchmark for what reasonable costs of complying with the CEII rule may be passed through in companies' rates. To start with, not every one who complies with this rule will necessarily be a jurisdictional company whose rates the Commission sets. To the extent jurisdictional companies do incur costs to comply with the rule, the Commission believes that the current rules and policies for recovery of administrative costs are adequate to address the recovery of such compliance costs.

[131] NARUC at pp. 17–18.

[132] 67 FR 57994 at p. 58002, FERC Stats. & Regs. ¶32,564 at p. 34,551.

[133] NARUC at p. 18.

information to the State Agencies with no agreement to protect the information, at least to the extent permitted by law. The Commission has no intention of asking a state agency to ignore state law, but merely to give the Commission notice and an opportunity to take action to prevent release of the information.

G. Timing Issues

54. The NOPR proposed to provide in § 388.112(d) of the Commission's regulations [134] notice and an opportunity for a CEII submitter to comment when a request was received for its information, and to provide in § 388.112(e) [135] notification to the submitter prior to release.[136] Under the proposal, a submitter would have at least five days in which to submit its comments, and at least five-days notice prior to release of information submitted as CEII.[137] Several commenters claim that these time limits are too short, and advocate having at least 10 days to comment, and up to 30 days notice prior to release.[138] At the same time, other commenters are concerned that the time frames are too long in some circumstances, for instance, where a time for filing a protest or intervention may expire in the interim.[139] At least one, Duke Energy, raises the possibility that the Commission could extend other deadlines where someone is delayed in getting access to information.[140]

55. The Commission has considered these arguments and examined the filings that have very short time limits, for instance responses to rate filings under Sections 205 of the Federal Power Act,[141] or Section 4 of the Natural Gas Act,[142] and does not believe anyone will be prejudiced by the time frames proposed in the NOPR. It is unlikely there will be CEII in most of these filings, and if there is, there should still be sufficient information available for parties to make the required filings in a timely manner. This same issue could arise whenever a company claims confidential treatment for a portion of its filing. To date, that has not proved to be an obstacle to meaningful, timely participation by other parties, and there is no reason to expect that the CEII regulation will cause a problem where none has existed previously.

56. The Commission also has examined the arguments that the proposed time limits do not give submitters adequate time to respond. First of all, the rule provides minimum times. Where circumstances permit, the Coordinator may give submitters a longer amount of time. However, the shorter minimum is needed to permit a quick turnaround where necessary and to facilitate response within the FOIA time limits. Prior to 9/11, the five-day minimums existed in § 388.112 of the Commission's regulations for other requests for nonpublic treatment.[143] For years parties have been able to respond within the time permitted. The Commission sees no reason to extend these time limits for cases involving CEII.

H. Use of Non-Disclosure Agreements (NDAs)

57. The NOPR proposed to require most CEII requesters to sign an NDA as a condition of gaining access to CEII.[144] The major exception was laid out in proposed 18 CFR 388.113(d)(2), which provided that owner/operators would be exempt from the requirement to sign an NDA prior to gaining access to CEII regarding their own projects.[145] The reason for this is that they have at least as great an incentive to protect this information as the Commission has, and probably have access to even more damaging information in the event a rogue employee wanted to cause harm to the facility. The Commission adopts here the proposed exception for owner/operators, and also retains the requirement that agents/representatives (other than employees or officers) of owner/operators obtain CEII directly from the owner/operator, who will be in a better position to judge the agent/representative's need for the information and to impose restrictions on its use.

58. In addition, as explained in the NOPR, NDAs for Federal agency CEII requesters will differ from others in part because the Commission will remind the requester of his or her responsibilities under the Federal Records Act,[146] and will require that the requesting agency refer any subsequent FOIA requests for information provided by the Commission back to the Commission for a determination as to whether the information is subject to release under the FOIA.[147] Similarly, NDAs for State Agency requesters will specify that the information is Federal information that is ''on loan'' to the State Agency and that the Commission has the right to request return of the information. The Commission will also require that the State Agency notify the Commission whenever a request for the information is received.

59. Several commenters ask the Commission to elaborate on possible penalties for violation of an NDA.[148] There are two that readily come to mind. First, a violation of an NDA could result in the Commission's refusing to give similar information to the violator in the future under the CEII process. Indeed, the Commission would be violating the public's trust if a requester were permitted to violate his or her obligations under an NDA with impunity. Second, the Commission could rightly bar someone from representing people before the Commission for a stated period of time under § 385.2102(a)(2) of the Commission's regulations.[149]

I. Submission of CEII to the Commission

60. In the NOPR, the Commission proposed to make submission of CEII a subcategory of submission of documents subject to claims of privilege under § 388.112 of its regulations,[150] with the same number of copies and the same requirement for a written statement supporting the request for privileged treatment.[151] As adopted here, CEII submissions under that section have to indicate that the information is CEII, paralleling the existing requirement for information submitted with a request for privileged treatment.[152] The Commission proposed to have the submitter determine how best to segregate CEII and non-CEII, such as by creating a separate nonpublic appendix or simply redacting CEII from the public filing.[153] The Commission further cautioned that it would take disciplinary action against submitters

[134] 18 CFR 388.112(d).

[135] 18 CFR 388.112(e).

[136] 67 FR 57994 at p. 58003, FERC Stats & Regs. ¶32,564 at p. 34,552.

[137] *ID.* at pp. 58002–03, ¶32,564 at p. 34,552.

[138] *E.g.,* Duke Energy at p. 5 (advocating a ten-day comment period); EEI at p. 12 (advocating at least 15 days notice prior to release); National Hydropower Association at pp. 7–8, 12 (advocating at least ten business days to comment and ten business days notice prior to release); NERC at p. 4 (advocating 30 days to respond to determination to release CEII to non-governmental requester); Southern at p. 10 (advocating 30 days notice prior to release).

[139] *See, e.g.,* Industrials at pp. 6–8; Massachusetts Energy Facilities Siting Board at p. 5; Transmission Access Policy Study Group at pp. 5–6.

[140] Duke Energy at p. 17.

[141] 16 U.S.C. 824d.

[142] 15 U.S.C. 717c.

[143] *See* 18 CFR 388.112(d) and (e).

[144] 67 FR 57994 at p. 58002, FERC Stats. Regs. ¶ 32,564 at pp. 34,551–52.

[145] *Id.*

[146] 44 U.S.C. § 3510(b).

[147] 67 FR 57994 at p. 58002, FERC Stats. & Regs. ¶ 32,564 at p. 34,551.

[148] *E.g.,* EEI at p. 15; Duke at pp. 16–17; MidAmerican at p. 3.

[149] *See* 18 CFR 385.2102(a)(2).

[150] 18 CFR 388.112.

[151] 67 FR 57994 at p. 58003, FERC Stats. & Regs. ¶ 32,564 at p. 34,552.

[152] *Id.*

[153] *Id.*

who abuse the CEII process by claiming CEII status for extensive portions of non-CEII.[154] Under both the NOPR and the final rule, a claim of privilege has the same effect regardless of whether the privileged information is CEII or other nonpublic information.[155] Under § 388.112 of the Commission's regulations,[156] the portions for which privileged treatment is sought will be placed in the nonpublic file, and will not be released before the submitter has an opportunity to comment on its release, and receives notice of the impending release.

61. Some commenters dislike the practice of creating public and nonpublic documents, expressing concern over potential confusion between versions. These commenters urge the Commission to redesign its forms so that CEII and other nonpublic information are included as a separate attachment.[157] Commonwealth Associates, Inc. (CAI) objects to allowing submitters to designate CEII, out of fear that system owners/operators will abuse the process by making CEII available to their agents, while forcing others to wait for a decision by the CEII Coordinator by making sweeping claims of CEII status. CAI suggests that the Commission determine CEII status in the first instance. Other commenters suggest that the Commission specify penalties for violations of the CEII procedures.[158]

62. The Commission believes, as it did in formulating the NOPR, that the process for submitting CEII will work best if it tracks as closely as possible the existing procedures for submitting other privileged information, procedures that have proven satisfactory over time. It consequently is reluctant to depart from those procedures for fear of creating confusion and encountering unforeseen problems. The suggestion that the CEII Coordinator, rather than the owner of the information, designate CEII in the first instance, rather than reduce any prejudice from delays, will more likely increase the delays. Commission staff would be required to examine every page of a submission to make the determination, as opposed to examining only those portions that are claimed to constitute CEII.

63. The concern that some submitters will make unjustified claims of CEII status is not one that the Commission takes lightly, as it indicated in the NOPR.[159] The Commission will take action against submitters who abuse the system. It does not intend, however, to specify the form that action may take, as it will depend on the circumstances. Admittedly, the Commission's ability to impose penalties is not extensive, but it can disqualify a person from practice before the Commission in the event of ''unethical or improper professional conduct.''[160]

64. With respect to the process of separating CEII from non-CEII, the Commission agrees with the commenters preferring a separate appendix for documents containing protected information rather than two entire copies, one public and one nonpublic. Accordingly, the Commission will modify § 388.112(b) of its regulations [161] to state a strong preference for an appendix containing protected information. The Commission will, however, leave the option of separate public and nonpublic versions for situations where the use of an appendix would render the document difficult to read. This revision will apply to non-CEII protected information as well. As stated above, the Commission believes that the procedures for CEII and non-CEII protected information should be as similar as possible to avoid confusion.

65. The suggestion that the Commission redesign its forms to place CEII in attachments or appendices is outside the scope of this rulemaking. As discussed below, however, the Commission does intend to re-examine its forms and reports to determine whether changes are needed to provide better protection for CEII. This issue can be addressed at that time. For now, the Commission will add a requirement to § 388.112 of its regulations [162] that all submissions for which CEII status is claimed be stamped ''Contains CEII—Do Not Release'' on every page containing CEII rather than just on the front page. A similar provision will be added for other types of protected information as well. In addition, the Commission is revising § 388.112(b)(2) of its regulations [163] to direct those who file on electronic media [164] to provide a list of the names of each file containing CEII or other privileged material, and to mark the outside of the media (CD, diskette, tape) itself to indicate CEII or other privileged material. Hopefully these additional steps will prevent inadvertent disclosure of material.

J. Challenges to CEII Status

66. As with the submission of CEII, the NOPR proposed to handle challenges to CEII status through the existing procedures of § 388.112 of the Commission's regulations.[165] Under proposed § 388.112(d), the CEII Coordinator would afford the submitter notice in the event of a request for CEII, and give the submitter at least five days in which to oppose the request.[166] Under proposed § 388.112(e), if the CEII Coordinator denies the claim of privilege, the submitter would receive notice of the denial at least five days prior to release of the information.[167]

67. Several commenters have concerns about the time frames proposed in § 388.112 of the Commission's regulations.[168] They assert that a five-day notice period is insufficient, both for the time in which a submitter must respond to a request for CEII and for the notice of a proposed release. For the former, commenters favor a 10-day notice period.[169] For the latter, commenters prefer anywhere from a 10 to 30-day notice period.[170] The Commission also received suggestions that the time run from receipt of notice and that the notice be ''actual'' rather than constructive, such as in a **Federal Register** notice.[171] Some commenters also suggest that the Commission provide for an automatic stay of a decision to release CEII in the event of a request for rehearing, arguing that the time limit for making such a request is 30 days and that the information will otherwise be released before that time runs.[172]

68. The Commission continues to believe that the currently existing procedures are adequate. The

[154] *Id.*

[155] *See id.*

[156] *See* new 18 CFR 388.112.

[157] *E.g.,* NERC at p. 3; National Hydropower Association at pp. 11–12.

[158] *E.g.,* EEI at p. 15; MidAmerican at p. 3.

[159] 67 FR 57994 at p. 58003, FERC Stats. & Regs. ¶ 32,564 at p. 34,552.

[160] 18 CFR 385.2102(a)(2).

[161] *See* new 18 CFR 388.112(b).

[162] *See* new 18 CFR 388.112.

[163] *See* 18 CFR 388.112(b)(2).

[164] At the present time, nonpublic documents are filed on electronic media such as CDs, diskettes, and tapes. At some point in the future, the Commission will accept nonpublic and non-Internet public documents through its electronic filing process. Certain filers also use Commission-created submission software (*e.g.,* FERC Form No. 2 software) that enables the filer to ''flag'' certain fields for nonpublic treatment. The Commission will be examining that software and revising it and the associated filing instructions to permit filers to flag CEII and non-Internet Public information as well.

[165] 67 FR 57994 at pp. 58002–3, FERC Stats. & Regs. ¶ 32,564 at p. 34,552.

[166] *Id.* at p. 58003, ¶ 32,564 at p. 34,552.

[167] *Id.* at pp. 58002–3, ¶ 32,564 at p. 34,552.

[168] *See* 18 CFR 388.112.

[169] *E.g.,* Duke at p. 5; National Hydropower Association at pp. 7–8, 12.

[170] *E.g.,* EEI at p. 12; National Hydropower Association at pp. 7–8; National Grid USA at p. 10; NERC at p. 4; Southern at p. 10.

[171] National Hydropower Association at pp. 7–8, 12.

[172] *E.g.,* National Hydropower Association at pp. 7–8, 12; National Grid USA at p. 10.

Commission has not encountered a problem with submitters of privileged information subject to a FOIA request not being able to respond timely. These time frames come into play in situations involving confidential business information that is highly sensitive to submitters. If the current time frames are adequate in such situations, they should be adequate where CEII is requested. It should be noted that the Commission does send notice directly to the submitter, usually by facsimile as well as by mail and frequently alerts the submitter by telephone too, and does not rely on constructive notice.

69. Moreover, as discussed in the NOPR,[173] decisions by the CEII Coordinator, which will be made pursuant to authority delegated here in new § 375.313 of the Commission's regulations,[174] will be subject to requests to the Commission for rehearing.[175] As is true for all orders issued under delegated authority, the time limit for a request for rehearing is thirty days.[176] In addition, the Commission's rules specifically provide that a request for rehearing does not stay the order being challenged unless the Commission orders otherwise.[177] The Commission has found these procedures to be workable in various contexts over the years and believes they will continue to function well in connection with requests for CEII.

K. Other Issues

70. In response to the NOPR, several commenters suggested that the Commission review the information that it collects to determine if such collections are necessary. They reason that if the Commission does not have the information, it cannot be subject to disclosure under the FOIA. Southern is concerned about this, particularly where the information may be available through the Open Access Same-time Information System (OASIS).[178] The Commission agrees with these commenters' logic. As noted in the NOPR, the Commission will be examining its information collections to see where collections can be scaled back or eliminated without compromising fulfillment of its statutory responsibilities.[179] This will most likely be done in conjunction with the periodic Office of Management and Budget clearance process.

71. Commenters also seek Commission action to amend requirements that companies make information available where the Commission is protecting the same information from disclosure.[180] Conversely, at least one commenter, the Transmission Access Policy Study Group, requested that the Commission confirm that it is not eliminating requirements that companies make this information available.[181] The Commission intends to eliminate the inconsistent treatment, and will be making future modifications to its regulations to effect these changes. Until those regulations are changed, the requirements remain in place unless a company successfully obtains a waiver from the requirement.

III. Information Collection Statement

72. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule. [182] In the NOPR, the Commission estimated the annual public reporting burden as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–603	200	200	.25	50

Total Annual Hours for Collection (reporting + record keeping, if appropriate) = 50 hours. Information Collection Costs: The NOPR estimated the cost to comply with these requirements. It projected the average annualized cost of all respondents to be: Annualized Capital Startup Costs: The Commission estimated that to respond to this information collection will be a one-time cost of $12.50 per respondent. (50 hours @ $50 hourly rate ÷ 200).

73. None of the commenters challenged the estimates provided in the NOPR. On October 1, 2002, OMB approved without change, the Commission's request for approval of the information collection required by the proposed rule, and assigned it OMB No. 1902–0197. The only information collection changes from the NOPR to the final rule are the added requirement in new § 388.113(d)(3)(i) of the Commission's regulations [183] that requesters provide their date and place of birth and the request that they provide their social security number. OMB regulations provide an exemption where a person is required to provide only facts that are necessary for identification.[184] The requirement that a requester provide his or her date and place of birth and the request that a requester provide his or her social security number are intended to verify the identity of the requester. For that reason, this collection need not be resubmitted to OMB for approval.

IV. Environmental Analysis

74. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[185] Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantively change the effect of the regulations being amended.[186] This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

V. Regulatory Flexibility Act Certification

75. The Regulatory Flexibility Act of 1980 (RFA) [187] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this rule does not have such an impact on small entities.

[173] 67 FR 57994 at p. 58001, FERC Stats. & Regs. ¶ 32,564 at p. 34,550.

[174] 18 CFR 375.313.

[175] 18 CFR 385.1902(a).

[176] 18 CFR 385.713(b).

[177] 18 CFR 385.713(e).

[178] Southern at p. 11.

[179] 67 FR 57994 at p. 58000, n. 41, FERC Stats. & Regs. ¶ 32,564 at p. 34,547, n. 41.

[180] *E.g.,* INGAA at p. 12; Puget Sound Energy, Inc. at pp. 5–6.

[181] Transmission Access Policy Study Group at p. 7.

[182] 5 CFR part 1320 (2002).

[183] *See* new 18 CFR 388.113(d)(3)(i).

[184] 5 CFR 1320.3(h)(1).

[185] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[186] 18 CFR 380.4(a)(2)(ii).

[187] 5 U.S.C. 601–612.

VI. Document Availability

76. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

77. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number of this document excluding the last three digits in the docket number field.

78. User assistance is available for FERRIS and the FERC's website during normal business hours from FERC Online Support (by phone at 1–866–208–3673 (toll-free) or 202–502–6652, or by e-mail at *FERCOnlineSupport@ferc.gov*) or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date

79. These regulations are effective April 2, 2003.

80. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules does not apply to this final rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects in 18 CFR Parts 375 and 388

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 388

Confidential business information, Freedom of information.

By the Commission.

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission amends parts 375 and 388, chapter I, title 18, Code of Federal Regulations, as follows.

PART 375—THE COMMISSION

1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645, 42 U.S.C. 7101–7352.

2. Add § 375.313 to subpart C to read as follows:

§ 375.313 Delegations to the Critical Energy Infrastructure Information Coordinator.

The Commission authorizes the Coordinator or the Coordinator's designee to:

(a) Receive and review all requests for critical energy infrastructure information as defined in § 388.113(c)(1).

(b) Make determinations as to whether particular information fits within the definition of CEII found at § 388.113(c)(1).

(c) Make determinations as to whether a particular requester's need for and ability and willingness to protect critical energy infrastructure information warrants limited disclosure of the information to the requester.

(d) Establish reasonable conditions on the release of critical energy infrastructure information.

(e) Release critical energy infrastructure information to requesters who satisfy the requirements in paragraph (b) of this section and agree in writing to abide by any conditions set forth by the Coordinator pursuant to paragraph (c) of this section.

PART 388—INFORMATION AND REQUESTS

3. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

4. Section 388.112 is revised to read as follows:

§ 388.112 Requests for privileged treatment of documents submitted to the Commission.

(a) *Scope.* (1) Any person submitting a document to the Commission may request privileged treatment by claiming that some or all of the information contained in a particular document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, and should be withheld from public disclosure.

(2) Any person submitting documents containing critical energy infrastructure information (CEII) as defined in § 388.113 should follow the procedures specified in this section.

(b) *Procedures.* A person claiming that information is privileged under paragraph (a) of this section must file:

(1) For documents submitted in hard copy,

(i) A written statement requesting privileged treatment for some or all of the information in a document, and the justification for nondisclosure of the information;

(ii) One of the following:

(A) In all cases where the privileged information or CEII can, as a practical matter, be segregated into a separate document or appendix:

(*1*) Fourteen copies of the original document, indicating in bold print on the front page either ''Privileged Information Contained in Attachment'' or ''Critical Energy Infrastructure Information Contained in Attachment,'' and

(*2*) One separate document or appendix, indicating in bold print on the front page either ''Contains Privileged Information—Do Not Release'' or ''Contains Critical Energy Infrastructure Information—Do Not Release,'' with every page in the document or appendix marked either ''Privileged Information—Do Not Release'' or ''Critical Energy Infrastructure Information—Do Not Release,'' or

(B) In cases where the privileged information or CEII cannot reasonably or coherently be separated into a separate document or appendix:

(*1*) The original document, indicating in bold print on the front page either ''Contains Privileged Information—Do Not Release,'' or ''Contains Critical Energy Infrastructure Information—Do Not Release'' and, on every page containing privileged information or CEII, the marking ''Privileged Information—Do Not Release,'' or ''Critical Energy Infrastructure Information—Do Not Release,'' with the privileged information or CEII clearly identified, and

(*2*) Fourteen copies of the document without the information for which privileged treatment is sought, and with a statement indicating that information has been removed for privileged treatment, and

(iii) The name, title, address telephone number, e-mail address, and facsimile number of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Commission.

(2) For documents submitted on electronic media,

(i) A written statement requesting privileged treatment for some or all of the information on the electronic media,

and the justification for non-disclosure of the information;

(ii) One of the following:

(A) In all cases where the privileged information or CEII can, as a practical matter, be segregated into a separate document or appendix:

(*1*) One copy of the electronic media and fourteen paper copies of a filing all without the privileged information or CEII, and all marked either ''Privileged Information Contained in Separate Attachment'' or ''Critical Energy Infrastructure Information Contained in Separate Attachment,'' and

(*2*) One copy of the electronic media and one paper copy of a separate document or appendix, in both cases marked on media itself and on the front page either ''Contains Privileged Information—Do Not Release'' or ''Contains Critical Energy Infrastructure Information—Do Not Release,'' with every page in the document or appendix marked either ''Privileged Information—Do Not Release'' or ''Critical Energy Infrastructure Information—Do Not Release,'' and

(*3*) An index identifying each file on the media and whether it is public, contains Critical Energy Infrastructure Information, or contains other privileged information; or

(B) In cases where the privileged information or CEII cannot reasonably or coherently be separated into a separate document or appendix:

(*1*) One copy of a complete filing on the electronic media and a paper copy, both marked on the media itself and on the front page either ''Contains Privileged Information—Do Not Release''or ''Contains Critical Energy Infrastructure Information—Do Not Release,'' with every page containing privileged information or CEII marked either ''Privileged Information—Do Not Release'' or ''Critical Energy Infrastructure Information—Do Not Release'' and with the privileged information or CEII clearly and specifically identified, and

(*2*) One copy of the electronic media without the information for which privileged treatment is sought and with a statement that information has been removed for privileged treatment, together with fourteen paper copies without the information for which privileged treatment is sought,

(*3*) An index identifying each file on the media and whether it is public, contains Critical Energy Infrastructure Information, or contains other privileged information, and

(iii) The name, title, address, telephone number, e-mail address, and facsimile number of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Commission.

(c) *Effect of privilege claim—(1)*For documents filed with the Commission. (i) The Secretary of the Commission will place documents for which privileged treatment is sought in accordance with paragraph (b)(1)(ii) of this section in a nonpublic file, while the request for privileged treatment is pending. By placing documents in a nonpublic file, the Commission is not making a determination on any claim for privilege. The Commission retains the right to make determinations with regard to any claim of privilege, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.

(ii) The Secretary of the Commission will place the request for privileged treatment described in paragraph (b) of this section and a copy of the original document with the privileged information removed in a public file while the request for privileged treatment is pending.

(2) *For documents submitted to Commission staff.* The notification procedures of paragraphs (d), (e), and (f) of this section will be followed by staff before making a document public.

(d) *Notification of request and opportunity to comment.* When a FOIA or CEII requester seeks a document for which privilege is claimed, or when the Commission itself is considering release of the information, the Commission official who will decide whether to make the document public will notify the person who submitted the document and give the person an opportunity (at least five days) in which to comment in writing on the request. A copy of this notice will be sent to the requester.

(e) *Notification before release.* Notice of a decision by the Commission, the Chairman of the Commission, the Director, Office of External Affairs, the General Counsel or General Counsel's designee, a presiding officer in a proceeding under part 385 of this chapter, or any other appropriate official to deny a claim of privilege, in whole or in part, will be given to any person claiming that information is privileged no less than five days before public disclosure. The notice will briefly explain why the person's objections to disclosure are not sustained by the Commission. A copy of this notice will be sent to the FOIA or CEII requester.

(f) *Notification of suit in Federal courts.* When a FOIA requester brings suit to compel disclosure of information for which a person has claimed privileged treatment, the Commission will notify the person who submitted the documents of the suit.

5. Add § 388.113 to read as follows:

§ 388.113. Accessing critical energy infrastructure information.

(a) *Scope.* This section governs access to critical energy infrastructure information (CEII). The rules governing submission of CEII are contained in 18 CFR 388.112(b). The Commission reserves the right to restrict access to previously filed documents as well as Commission-generated documents containing CEII.

(b) *Purpose.* The procedures in this section are available at the requester's option as an alternative to the FOIA procedures in § 388.108 where the information requested is exempted from disclosure under the FOIA and contains CEII.

(c) *Definitions.* For purposes of this section:

(1) *Critical energy infrastructure information* means information about proposed or existing critical infrastructure that:

(i) Relates to the production, generation, transportation, transmission, or distribution of energy;

(ii) Could be useful to a person in planning an attack on critical infrastructure;

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and

(iv) Does not simply give the location of the critical infrastructure.

(2) *Critical infrastructure* means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

(d) *Optional procedures for requesting critical energy infrastructure information.*

(1) An owner/operator of a facility, including employees and officers of the owner/operator, may obtain CEII relating to its own facility directly from Commission staff without going through the procedures outlined in paragraph (d)(3) of this section.

(2) An agent or representative of an owner/operator must obtain information from the owner/operator.

(3) If any other requester has a particular need for information designated as CEII, the requester may request the information using the following procedures:

(i) File a written request with the Commission's CEII Coordinator. The request shall contain the following: Requester's name, date and place of

birth, title, address, and telephone number; the name, address, and telephone number of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. Requesters are also requested to include their social security number for identification purposes.

(ii) Once the request is received, the CEII Coordinator will determine if the information is CEII, and, if it is, whether to release the CEII to the requester. The CEII Coordinator will balance the requester's need for the information against the sensitivity of the information. If the requester is determined to be eligible to receive the information requested, the CEII Coordinator will determine what conditions, if any, to place on release of the information. Where appropriate, the CEII Coordinator will forward a non-disclosure agreement (NDA) to the requester for execution. Once the requester signs any required NDA, the CEII Coordinator will make the critical energy infrastructure information available to the requester. The CEII Coordinator's decisions regarding release of CEII are subject to rehearing as provided in § 385.713 of this chapter.

(iii) The CEII Coordinator will attempt to respond to the requester under this section according to the timing required for responses under the Freedom of Information Act in § 388.108(c), and will provide notice to the submitter in accordance with § 388.112(d) and (e).

Appendix A

List of Commenters

Adirondack Mountain Club
American Electric Power System
American Gas Association
American Library Association
Bonneville Power Administration (BPA)
Commonwealth Associates, Inc.
City Public Service of San Antonio
Duke Energy Corporation (Duke)
Edison Electric Institute (EEI), including the EEI Alliance of Energy Suppliers, and EEI Transmission Group
Electric Power Supply Association (EPSA)
Exelon Generation Corporation on behalf of its public utility subsidiaries PECO Energy Company and Commonwealth Edison Company
Federation of American Scientists
Hydropower Reform Coalition (HRC)
The Industrials: Process Gas Consumers Group, American Forest & Paper Ass'n, American Iron & Steel Institute, Georgia Industrial Group, Florida Industrial Gas Users, Industrial Gas Users of Florida, and United States Gypsum Company
Interstate Natural Gas Association of America (INGAA)
Massachusetts Energy Facilities Siting Board
MidAmerican Energy Company (MidAmerican)
National Association of Regulatory Utility Commissioners (NARUC)
National Grid USA
National Hydropower Association
New York State Public Service Commission
North American Electric Reliability Council (NERC)
Northwest Natural Gas Company (Northwest Natural)
Oklahoma Corporation Commission
Oklahoma Gas and Electric Company
Lydia Olchoff
OMB Watch
Pace Global Energy Services
Pacific Gas & Electric Company (PG&E)
PJM Interconnection, L.L.C. (PJM)
GE Power Systems Energy Consulting (GE)
Puget Sound Energy, Inc.
Reliant Resources, Inc. (Reliant)
Reporters Committee for Freedom of the Press and The Society of Environmental Journalists (Reporters Committee)
Southern California Edison Company (SCE)
Society of Professional Journalists
Southern Company Services, Inc., acting for itself and as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Power Company (Southern)
Public Utilities Commission of Ohio, the Michigan Public Service Commission and the staff of the Oklahoma Corporation Commission (States)
Transmission Access Policy Study Group
Washington Legal Foundation and Public Interest Clinic, George Mason University School of Law (Washington Legal Foundation)
Williston Basin Interstate Pipeline Company (Williston Basin)
Whitfield Russell Associates

Appendix B

Applicability of Freedom of Information Act Exemptions to Critical Energy Infrastructure Information

The Commission's actions in the NOPR and the final rule are based on its position that CEII includes only information that is exempt from disclosure under FOIA. The exemptions most likely to apply to CEII are Exemptions 2, 4, and 7. A discussion of the potential applicability of each follows.

a. Exemption 2

Exemption 2 exempts from disclosure ''records related solely to the internal personnel rules and practices of an agency.'' [1] According to guidance from the Department of Justice (DOJ), ''[a]ny agency assessment of, or statement regarding, the vulnerability of such a critical asset should be protected pursuant to Exemption 2.'' [2] DOJ has counseled agencies that ''a wide range of information can be withheld under Exemption 2's 'circumvention' aspect.'' [3] DOJ also has instructed agencies to take full advantage of the breadth of Exemption 2's protection for critical infrastructure information.[4]

The Commission has concluded that a portion of the CEII is exempt from disclosure under Exemption 2 of FOIA. Illustratively, the Commission is expanding its efforts to help facility owners and operators assess security risks and protect facilities from attack.[5] Information developed or created by the Commission as part of these efforts is likely to fall within the ambit of Exemption 2. Documents describing inspections of regulated facilities likewise will fall within Exemption 2 if they assess or describe vulnerabilities of the project.

b. Exemption 4

Exemption 4 protects from public disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' [6] The Commission has determined that much of the CEII falls within the scope of Exemption 4, on the basis that release of the information could cause competitive harm to submitters, impair the Commission's ability to obtain similar information in the future, or impair the effectiveness of the Commission's programs.

There are two primary issues regarding the application of Exemption 4 to CEII. First, whether the fact that this sort of information had been publicly available in the past undermines an argument that it is now confidential, and second, whether the Trade Secrets Act [7] prohibits the Commission from sharing this information on a ''need-to-know'' basis.

The Commission concludes that the fact that this information has been previously public does not defeat Exemption 4. Americans live in a different world today than they did prior to September 11, 2001. Americans have had to face the harsh realities of terrorism on their soil. This has forced the nation to reassess its vulnerability to terrorist threats. Government agencies as well as private companies have had to reconsider the extent to which they make information freely available to others.

Specifically, under *National Parks & Conservation Assoc.* v. *Morton,* 49 F.2d 765 (DC Cir. 1974) (*National Parks*) and *Critical Mass Energy Project* v. *NRC,* 975 F.2d 871 (DC Cir. 1992) (*Critical Mass*), the initial inquiry in Exemption 4 cases is whether the information was submitted to the government voluntarily or whether it was compelled to be submitted. For voluntary submissions, the information is entitled to protection if it ''would customarily not be released to the public by the person from whom it was

[1] 5 U.S.C. 552(b)(2).

[2] DOJ 2001 FOIA Post 19, posted October 15, 2001. DOJ is the Federal agency responsible for the administration of the FOIA.

[3] *Id.*

[4] *Id.*

[5] The Commission has jurisdiction over the safety of hydroelectric projects under sections 4(e), 10(a), and 10(c) of the Federal Power Act, 16 U.S.C. 797(e), 803(a), (c).

[6] 5 U.S.C. 552(b)(4).

[7] 18 U.S.C. 1905.

obtained.''[8] This test focuses on the submitter's current treatment of the information, not past treatment. Therefore, if, in the post-September 11 world, the company would not release the information to the public, the Commission should not release the information.

For compelled submissions, there is a three-pronged test—the competitive harm prong, the impairment prong, and the program effectiveness prong. If any of the three tests is met, the information is exempt from mandatory disclosure under FOIA even though it may have been previously public.[9] Under the competitive harm prong, there must be evidence of actual competition, and a likelihood of substantial competitive injury.[10] This inquiry tends to be fact specific, so it is not possible to identify with certainty which categories of CEII would meet the test. However, as utilities transition from monopolies to competitive markets, it may be easier for them to demonstrate actual competition. The inquiry is whether the submitter is facing competition at the time the Commission received the request for the information, not whether there was competition when the information was first submitted to the Commission. If the competitive situation has changed, the likelihood of competitive harm would be analyzed using the current situation, not past conditions. Where competition is found to exist, the next issue is whether release of the information is likely to result in substantial competitive injury to the submitter. Again, the likelihood of competitive injury would be examined at the time the Commission received the request for the information. Whether the information could have harmed the submitter two years earlier is irrelevant; what is relevant is whether release of the information at the time of the request would cause competitive harm to the submitter.[11]

The test most frequently applied under the competitive harm prong is whether use of the information *by competitors* is likely to harm the submitter.[12] This may be fairly challenging to demonstrate in the case of CEII because the primary concern is that the information could be used to plan an attack on the infrastructure, not that it could be used to steal customers or undercut prices. On the other hand, a submitter may be able to show competitive harm where use of the information by someone other than a competitor could cause financial harm to the submitter.[13] As relevant here, a terrorist attack on the energy infrastructure could cause financial harm to the owners and operators of the facilities because of lost opportunity costs as well as repair costs.

For compelled submissions, the impairment prong is satisfied where disclosure may affect the reliability or quality of the information received.[14] The more subjective the filing requirement, the more likely that disclosure of the information could impair the Commission's ability to get thorough and accurate information in the future.[15] As noted by EEI in its comments on the NOI, regulated entities may have discretion regarding how to construct their filings.[16] If companies are worried that information they submit will be subject to public disclosure, they may choose not to submit the same level of detail that they might otherwise submit. In such circumstances, and assuming the submissions would otherwise comply with the Commission's regulations, the information may be exempt from disclosure under the impairment prong of Exemption 4.

Critical Mass recognized that in addition to the competitive harm and impairment prongs, there may be other instances where non-disclosure is warranted in order to protect other governmental interests, such as program effectiveness.[17] Recently, in *Public Citizen Health Research Group* v. *NIH,*[18] the district court relied on *Critical Mass* in determining that ''impairment of the effectiveness of a government program is a proper factor for consideration in conducting an analysis under'' Exemption 4. The court held that the National Institutes of Health's royalty information was protected under Exemption 4 because release of the information would make companies reluctant to enter into agreements with NIH, thus impairing the effectiveness of NIH's licensing program.[19] The court reached a similar conclusion in *Judicial Watch, Inc.* v. *Export-Import Bank,* where release of certain financial information from foreign export credit agencies was held to be exempt from disclosure because release would make the credit agencies look for financing outside of the United States, undermining the agency's statutory purpose of fostering domestic economic growth by supporting export transactions.[20]

Applying these recent decisions here, indiscriminate release of CEII could impair the effectiveness of the Commission's programs, which are meant to satisfy its mandate to regulate and oversee energy industries in the economic and environmental interest of the American public.[21] Inappropriate release of CEII could make the infrastructure more vulnerable to attack, threatening those industries and resulting in potentially devastating economic and environmental consequences. Release of CEII also could make regulated entities less forthcoming in the information they provide to the Commission, especially where they have discretion as to what they submit.[22] Restricted flow of information between the Commission and the companies could impair the Commission's programs that rely on such information. This is of particular concern in today's world, where the Commission is seeking additional information from licensees to assure that the infrastructure is sited and built safely and remains protected. Finally, release of CEII could harm the relationship between Commission staff and the regulated companies, impairing trust, and causing the parties to deal with each other in a more adversarial manner than necessary. For all of these reasons, much, if not all of the CEII would be exempt from disclosure under the third prong of Exemption 4 as it relates to compelled submissions.

A second issue is whether the Trade Secrets Act prohibits the Commission from sharing Exemption 4 material on an as-needed basis. The Trade Secrets Act states in relevant part that:

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which concerns or relates to trade secrets, processes, operations, style of work, or apparatus, or to the identify, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person, firm, partnership, corporation, or association; * * * to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both;

[8] *Critical Mass,* 975 F.2d at 878.

[9] While most of the submissions to a regulatory agency like FERC may appear to be compelled, this may not necessarily be the case. DOJ has recognized that the ''existence of agency authority to require submission of information does not automatically mean such a submission is 'required'; the agency authority must actually be exercised in order for a particular submission to be deemed 'required.' '' DOJ Freedom of Information Act Guide & Privacy Act Overview, May 2002 ed., at 202. Courts have found submissions to be voluntary where the agency had issued a subpoena but not sought to enforce it, *see McDonnell Douglas Corp.* v. *EEOC,* 922 F. Supp. 235 (E.D. Mo. 1996), and where the agency did not have authority to enforce the information collection because the information request violated the Paperwork Reduction Act, 44 U.S.C. 3501, *see Center for Auto Safety* v. *NHTSA,* 244 F.3d 144 (D.C. Cir. 2001). At bottom, the question of whether the information has been submitted voluntarily or was compelled must be analyzed on a case-by-case basis.

[10] *See CNA Fin. Corp.* v. *Donovan,* 830 F.2d 1132 (D.C. Cir. 1987) (*CNA*).

[11] The Commission's analysis of a submitter's competitive situation under FOIA is not the same as, and indeed is less rigid than, the analysis it must perform to establish lack of market power for charging market based rates. For FOIA purposes, the competition requirement is satisfied if the submitter faces some level of actual competition. *See Niagara Mohawk Power Corp.* v. *DOE,* 169 F.3d 16, 19 (D.D.C. 1999) (*Niagara*).

[12] *See, e.g., CNA,* 830 F.2d at 1152 & n.158; *Public Citizen Health Research Group* v. *FDA,* 704 F.2d 1280, 1291 (D.C. Cir. 1983).

[13] *See Nadler* v. *FDIC,* 899 F. Supp. 158, 163 (S.D.N.Y. 1995) (*Nadler*), *aff'd,* 92 F.3d 93 (2d Cir. 1996).

[14] *Id.*

[15] *See Niagara Mohawk,* 169 F.3d at 18 (holding that impairment is unlikely to be found where ''data sought appears to take the form of hard, cold numbers on energy use and production, the fudging of which may strain all but the deliberately mendacious.'').

[16] EEI NOI comments at p. 42.

[17] *See Critical Mass,* 975 F.2d 879 (''It should be evident from this review that the two interests identified in that *National Parks* test are not exclusive.'').

[18] 209 F. Supp. 2d 37 at 52 (D.D.C. Mar. 12, 2002) (alternative holding).

[19] *Id.* at 54.

[20] 108 F. Supp. 2d 19, 30 (D.D.C. 2000).

[21] *See http://www.ferc.gov/About/mission/mission_intro.htm* (2002).

[22] *See Nadler,* 899 F. Supp. 158, 162.

and shall be removed from office or employment.[23]

See Chrysler Corp. v. *Brown,* 441 U.S. 281, 301(1979) (*Chrysler*). The Trade Secrets Act applies to formal agency actions as well as actions by the agency's individual employees. Courts have found that the coverage of the Trade Secrets Act and Exemption 4 are co-extensive,[24] meaning that the Trade Secrets Act generally prohibits release of information covered by Exemption 4.[25] However, the Trade Secrets Act permits disclosure of trade secret information where ''authorized by law.'' [26] Accordingly, under the Trade Secrets Act, protected information may be released where there is statutory or regulatory authority for the agency to release it. In cases where the authorization for release is found in an agency regulation, the inquiry is whether the regulation permitting the release is authorized by law.[27]

The Commission has statutory authority to release trade secret information. While both the Federal Power and Natural Gas Acts place restrictions on an individual employee's release of information gathered in the course of examining records of a company, they permit the Commission itself to authorize such a release. The Federal Power Act provides:

The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of licensees and public utilities, and it shall be the duty of such licensees and public utilities to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records and memorandum when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.[28]

In addition, sections 4 and 312 of the Federal Power Act authorize the Commission ''[t]o make public from time to time the information secured hereunder and to provide for the publication of its reports and investigations in such form and manner as may be best adapted for public information and use.'' [29] Section 14 of the Natural Gas Act provides similar authorization. It states:

The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish in the manner authorized in section 312 of the Federal Power Act * * * information concerning any such matter.[30]

Because these provisions give the Commission broad discretion to release information, such release would be authorized by law under the Federal Power and Natural Gas Acts and, therefore, permitted under the Trade Secrets Act, creating an exception to the normal situation where the Trade Secrets Act prohibits release of information covered by Exemption 4. This, in turn, would permit the Commission to withhold the information from public FOIA disclosure under Exemption 4, and still disclose the information to selected individuals with appropriate restrictions on use and dissemination of that information without violating the Trade Secrets Act.

c. Exemption 7

Exemption 7 exempts from disclosure certain information compiled for law enforcement purposes.[31] For purposes of CEII, the most relevant Exemption 7 provision is 7(F), which allows information to be withheld in order to protect a person's life or physical safety. In order to invoke Exemption 7, the agency must be able to demonstrate that the document at issue involves enforcement of a statute or regulation that the agency is authorized to enforce. The Commission has very broad authority to enforce the provisions of the Federal Power Act and the Natural Gas Act. For instance, under the Federal Power Act, the Commission (1) Monitors and investigates compliance with licenses, exemptions and preliminary permits it issues; [32] (2) determines just and reasonable rates; [33] and (3) ensures compliance with the Act and regulations issued thereunder.[34] Similarly, with respect to the Natural Gas Act, the Commission has broad authority to (1) Determine whether rates and charges are just and reasonable; [35] and (2) enforce violations of the statute or regulations issued thereunder.[36] Thus, given its broad enforcement authority, much of the information the Commission collects qualifies as information collected for a law enforcement purpose. For such law enforcement information to enjoy protection under Exemption 7(F), however, the release of the information must reasonably be expected to endanger a person's life or safety.

As noted in paragraph 11 of the final rule, there have been official warnings that the energy infrastructure could be the target of terrorist attacks. Given that an attack on the energy infrastructure is a legitimate threat, the Commission concludes that release of information that could facilitate or increase the likelihood of the success of such an attack could be expected to endanger life and safety of people. The failure of a dam could cause flooding that would endanger lives, as could the explosion of a natural gas pipeline. Interruptions to gas and electric power supplies likewise could endanger lives of those reliant on power, especially in times of extreme hot or cold weather. For these reasons, information identified as CEII may qualify for protection under Exemption 7(F).

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[23] 18 U.S.C. 1905.

[24] *See, e.g., Bartholdi Cable Co.* v. *FCC,* 114 F.3d 274 (D.C. Cir. 1997); *CNA,* 830 F.2d at 1152.

[25] *CNA,* 830 F.2d at 1151.

[26] *Chrysler,* 441 U.S. at 301.

[27] *Id.*

[28] 16 U.S.C. 825(b); *see also* 15 U.S.C. 717g(b) (Natural Gas Act) and 18 CFR 3c.2(a).

[29] 16 U.S.C. 797(d), 825k.

[30] 15 U.S.C. 717m.

[31] 5 U.S.C. 552(b)(7).

[32] 16 U.S.C. 823b.

[33] 16 U.S.C. 824e.

[34] 16 U.S.C. 825m, 825o–1.

[35] 15 U.S.C. 717c.

[36] 15 U.S.C. 717s.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 03N–0068]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its bottled water quality standard regulations by establishing an allowable level for the contaminant uranium. As a consequence, bottled water manufacturers are required to monitor their finished bottled water products for uranium at least once each year under the current good manufacturing practice (CGMP) regulations for bottled water. Bottled water manufacturers are also required to monitor their source water for uranium as often as necessary, but at least once every 4 years unless they meet the criteria for the source water monitoring exemptions under the CGMP regulations. FDA will retain the existing allowable levels for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity. This direct final rule will ensure that the minimum quality of bottled water, as affected by uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity, remains comparable with the quality of public drinking water that meets the Environmental Protection Agency's (EPA's) standards. FDA is issuing a direct final rule for this action because the agency expects that there will be no significant adverse comment on this rule. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed, rule under the agency's usual procedure for notice-and-comment rulemaking, to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comments and withdraws this direct final rule. The

companion proposed rule and direct final rule are substantively identical.

DATES: This rule is effective December 8, 2003. Submit written or electronic comments by May 2, 2003. If FDA receives no significant adverse comments during the specified comment period, the agency will publish a document in the **Federal Register** no later than June 11, 2003, confirming the effective date of the direct final rule. If the agency receives any significant adverse comment during the comment period, FDA intends to withdraw this direct final rule by publication in the **Federal Register** no later than June 11, 2003. The Director of the Office of the **Federal Register** approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in § 165.110(b)(5)(ii) as of December 8, 2003.

ADDRESSES: Submit written comments on the direct final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Paul South, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1640.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 7, 2000 (65 FR 76708), EPA published the Radionuclides Rule to address potential public health effects from the presence of radionuclides in drinking water. This rulemaking finalized a proposed rule that EPA published in the **Federal Register** of July 18, 1991 (56 FR 33050).

Radionuclides are radioactive elements that occur naturally in the Earth's crust or are formed as a result of cosmic ray interactions. Human activities can also add radionuclides to the environment. Radionuclides emit ionizing radiation when they radioactively decay. The potential for harmful health effects from radionuclide exposure results from the ability of ionizing radiation to chemically change molecules that make up biological tissue through a process called ionization. Studies have shown long-term exposure to radionuclides including uranium in drinking water may result in increased risk of cancer and that exposure to uranium can have adverse health effects on kidney function (65 FR 76708 at 76712–76713).

National primary drinking water regulations (NPDWRs) are issued by EPA to protect the public health from the adverse effects of contaminants in drinking water. NPDWRs specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants. In addition, at the same time that it issues NPDWRs, EPA publishes maximum contaminant level goals (MCLGs), which are not regulatory requirements but rather are nonenforceable health goals that are based solely on considerations of protecting the public from adverse health effects of drinking water contamination.

In the Radionuclides Rule, EPA issued an NPDWR containing an MCL for uranium. EPA retained the existing MCLs for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity and indicated the analytical methods it approved for testing for uranium and three other contaminants. Finally, EPA published an MCLG of zero for all radionuclides. EPA's NPDWR has an effective date of December 8, 2003.

Under section 410(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349(b)(1)), not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300g-l), FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled water. The effective date for any such standard of quality regulation is to be the same as the effective date of the NPDWR. In addition, section 410(b)(2) of the act provides that a quality standard regulation issued by FDA shall include monitoring requirements that the agency determines to be appropriate for bottled water. Further, section 410(b)(3) of the act requires a quality standard for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public health than EPA's treatment technique requirements for the same contaminant.

II. Direct Final Rulemaking

FDA has determined that the subjects of this rulemaking are suitable for a direct final rule. The actions taken should be noncontroversial and the agency does not anticipate receiving any significant adverse comment.

FDA is adopting EPA's MCL for uranium as an allowable level in the quality standard regulation for bottled water. FDA is also retaining the existing allowable levels for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity in the quality standard regulation for bottled water. The existing allowable levels for these radionuclides in bottled water are identical to the existing MCLs for the same radionuclides in drinking water that EPA retained in their Radionuclides Rule. FDA also is specifying analytical methods for determining whether the bottled water is in compliance with the quality standards.

As a consequence of FDA's amending the quality standard for uranium in part 165 (21 CFR part 165), bottled water manufacturers are required to monitor their finished bottled water products for uranium at least once each year (part 129 (21 CFR part 129)). In addition, bottled water manufacturers are required to monitor their source water for uranium at least once every 4 years, unless they meet the criteria for the source water monitoring exemptions under the CGMP regulations (part 129).

If FDA does not receive significant adverse comment on or before May 2, 2003, the agency will publish a notice in the **Federal Register** no later than June 11, 2003, confirming the effective date of the direct final rule. The agency intends to make the direct final rule effective December 8, 2003.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. A comment recommending a change to the rule that is in addition to the rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of the rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment. If timely significant adverse comments are received, the agency will publish a notice of significant adverse comment in the

Federal Register withdrawing this direct final rule no later than June 11, 2003.

The companion proposed rule, which is in essence identical to the direct final rule, provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of significant adverse comment. The comment period for the direct final rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be treated as comments on the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule, and the agency will consider the comments in developing a final rule. FDA will not provide additional opportunity for comment on the companion proposed rule. A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466).

III. EPA Standards

The SDWA, as amended in 1996, requires EPA to publish an NPDWR that specifies either an MCL or a treatment technique requirement for contaminants that may ''have an adverse effect on the health of persons,'' are ''known to occur or [have] a substantial likelihood [of occurring] in public water systems with a frequency and at levels of public health concern,'' and for which ''regulation * * * presents a meaningful opportunity for health risk reduction for persons served by public water systems'' (SDWA section 1412(b)(1)(A)). The SDWA (section 300g-l(a)(3)) also requires that EPA issue MCLGs at the same time it issues NPDWRs. MCLGs are nonenforceable health goals that are based solely on considerations of protecting the public from the adverse health effects of contaminants, and not on other considerations, such as potential costs of regulating contaminants and potential technical difficulties of achieving the health goals (59 FR 38668 at 38671). EPA sets MCLs, the enforceable contaminant levels, as close as feasible to the nonenforceable MCLGs.

In its proposed rule on radionuclides (56 FR 33050), EPA proposed comprehensive changes to radionuclides standards in drinking water. However, after conducting a review of costs, benefits, and treatment technologies, in the Radionuclides Rule, EPA established an MCL of 30 micrograms per liter (μg/L) for uranium and retained the existing MCLs of 5 picocuries per liter (pCi/L) for combined radium-226/-228, 15 pCi/L for gross alpha (excluding radon and uranium), and 4 millirem (mrem)/year for beta particle and photon radioactivity (65 FR 76708 at 76722).

Because uranium is a kidney toxin as well as a carcinogen, EPA chose an MCL for uranium, expressed in μg/L, that is protective of both kidney toxicity and carcinogenicity (65 FR 76708 at 76716). Analytical methods approved by EPA for uranium monitoring include activity and mass concentration analyses. If uranium is determined by activity-type methods, a 0.67 pCi/μg conversion factor is used to convert activity to mass concentration (65 FR 76708 at 76725).

IV. FDA Standards

A. The Agency's Approach to the Bottled Water Quality Standards Established Under Section 410 of the Act

Under section 401 of the act (21 U.S.C. 341), the agency may issue a regulation establishing a standard of quality for a food under its common or usual name, when in the judgment of the Secretary of Health and Human Services such action will promote honesty and fair dealing in the interest of consumers. On November 26, 1973 (38 FR 32558), FDA established a quality standard for bottled water that is set forth in § 165.110.

Producers of bottled water are responsible for assuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard (§ 165.110(b)). Bottled water that is of a quality below the prescribed standard is required by § 165.110(c) to be labeled with a statement of substandard quality. Moreover, any bottled water containing a substance at a level that causes the food to be adulterated under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)) is subject to regulatory action, even if the bottled water bears a label statement of substandard quality.

FDA has traditionally fulfilled its obligation under section 410 of the act to respond to EPA's issuance of NPDWRs by amending the quality standard regulations for bottled water introduced or delivered for introduction into interstate commerce to maintain compatibility with EPA's drinking water regulations. In general, FDA believes that, with few exceptions, EPA standards for contaminants in drinking water are appropriate as allowable levels for contaminants in the quality standard for bottled water when bottled water may be expected to contain the same contaminants.

FDA generally has not duplicated the efforts of EPA in judging the adequacy of MCLs or treatment techniques in NPDWRs for contaminants when determining their applicability to bottled water in order to protect the public health. FDA believes that, in general, it would be redundant for FDA to reevaluate the drinking water standards prescribed by EPA. Further, because bottled water is increasingly used in some households as a replacement for tap water, consumption patterns considered by EPA for tap water can be used as an estimate for the maximum expected consumption of bottled water by some individuals. Therefore, FDA's view is that generally in cases where bottled water is subject to the same contaminants as tap water, FDA should establish a standard of quality levels in bottled water at the same levels that EPA establishes as MCLs for such contaminants in tap water.

B. Quality Standard for Radionuclides

The quality standard for bottled water, as set forth in § 165.110(b)(5)(i), prescribes that bottled water shall not contain: (A) combined radium-226/-228 activity in excess of 5 picocuries per liter of water, (B) gross alpha particle activity (including radium-226, but excluding radon and uranium) in excess of 15 picocuries per liter of water, and (C) beta particle and photon radioactivity from manmade radionuclides in excess of that which would produce an annual dose equivalent to the total body or any internal organ of 4 millirems per year calculated on the basis of an intake of 2 liters of the water per day. If two or more beta or photon-emitting radionuclides are present, the sum of their annual dose equivalent to the total body or to any internal organ shall not exceed 4 millirems per year. The quality standard for bottled water, however, does not currently prescribe an allowable level for uranium.

With the exception of uranium, FDA's existing allowable levels for radionuclides (i.e., combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity) in the bottled water quality standard are the same as EPA's existing MCLs for the same radionuclides in drinking water that EPA retained in the Radionuclides Rule. Therefore, FDA will not change the existing allowable levels for these radionuclides in bottled water.

FDA has evaluated the MCL for uranium established by EPA for drinking water. FDA concludes that EPA's MCL for uranium, as a standard of quality level for bottled water, is adequate for the protection of public health. Certain waters used for bottled water may be expected to contain uranium; thus, FDA believes that adopting EPA's MCL for uranium will ensure that the quality of bottled water is equivalent to the quality of public drinking water that meets EPA standards.

Therefore, FDA is establishing in a new paragraph (b)(5)(i)(D) in § 165.110, an allowable level for uranium of 30 micrograms per liter of water.

C. Analytical Methods for Radionuclides

In the Radionuclide Rule, EPA listed the analytical methods that it had approved for use by public water systems to determine compliance with the radionuclide MCLs (i.e. for uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity) (65 FR 76708 at 76724). FDA is revising § 165.110(b)(5)(ii) by incorporating by reference EPA approved analytical methods (65 FR 76708 at 76725) for determining compliance with the quality standard for uranium activity in bottled water. FDA is also revising § 165.110(b)(5)(ii) by incorporating by reference EPA approved analytical methods for determining compliance with the quality standard for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity in bottled water (65 FR 76708 at 76725). FDA believes that these methods are sufficient to use for determining the level of uranium in bottled water.

D. Monitoring Provisions of CGMP Regulations for Bottled Water

FDA has established CGMP regulations for bottled water in part 129. Under § 129.35(a)(3)(i), source water must be analyzed by the plant as often as necessary, but at least once every 4 years for radiological contaminants. Therefore, once the rule becomes effective, bottlers will be required to test their source water as often as necessary but at least once every 4 years for uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity, unless the bottlers meet the provisions in § 129.35(a)(4) for source water monitoring exemptions. Further, to ensure that a plant's production complies with applicable standards, § 129.80(g)(2) requires radiological analysis by the plant, at least annually, of a representative sample from a batch or segment of a continuous production run for each type of bottled water produced during a day's production. Therefore, once this rule becomes effective, bottlers will be required to test their finished bottled water products at least once a year for uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity. In addition, bottled water must comply with the allowable levels for radionuclides in the quality standard for bottled water (§ 165.110(b)(5)(i)) unless the label bears a statement of substandard quality under § 165.110(c). As stated in § 165.110(d), bottled water is deemed adulterated if it contains a substance at a level considered injurious to health under section 402(a)(1) of the act (21 U.S.C. 342).

V. Environmental Impact

The agency has determined under 21 CFR 25.32(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

A. Regulatory Impact Analysis

FDA has examined the economic implications of this direct final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this direct final rule is not a significant regulatory action as defined by Executive Order 12866.

1. The Need for Regulation

In the Radionuclides Rule, EPA published an NPDWR establishing an MCL for uranium. Under section 410 of the act, when EPA issues a regulation establishing an MCL for a contaminant in public drinking water, FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health. FDA's standard of quality regulations must also include appropriate monitoring requirements. Of the radionuclide standards addressed in EPA's final rule, only the uranium requirement does not have a current standard of quality regulation for bottled water. If FDA does not issue a standard of quality regulation by 180 days before the effective date of EPA's NPDWRs or make a finding that such a regulation is not necessary to protect the public health, the NPDWRs become applicable to bottled water.

2. Regulatory Options

FDA considers three options for this analysis:

Option 1. FDA does not establish a uranium quality standard regulation or make a finding that it is not necessary to protect the public health because uranium is not found in water used for bottled drinking water. Bottled water producers would be subject to the requirements set forth in the NPDWR for uranium.

Option 2. FDA establishes a uranium quality standard regulation. Bottled water producers would be subject to allowable levels in § 165.110 and CGMP monitoring requirements in §§ 129.35 and 129.80.

Option 3. Bottled water producers are not subject to either an FDA quality standard regulation or an EPA NPDWR for uranium.

Note on Option 3: Since water used for bottled water comes from sources that likely contain some level of naturally occurring uranium, section 410(b)(1) of the act does not allow this option. The act specifies two alternatives: ''promulgate a standard of quality regulation under this subsection,'' or find that ''such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems * * * but not in water used for bottled drinking water.'' However, the Office of Management and Budget cost-benefit analysis guidelines recommend discussing statutory requirements that affect the selection of regulatory approaches. These guidelines also recommend analyzing the opportunity cost of legal constraints that prevent the selection of the regulatory action that best satisfies the philosophy and principles of Executive Order 12866. Our analysis finds that option 3 does not have the highest net benefits.

Therefore, even if option 3 were permissible, the statute does not preclude the option with the highest net benefits.

Assumptions and Estimations Applicable to all Options

For the purposes of this analysis, FDA makes the following assumptions:

• Option 3, which has zero costs and benefits, will be considered the baseline for this analysis.

• The regulatory options we consider will have no organoleptic effect on the final bottled water product, and thus no impact on sales due to product quality. The cost of the regulation will be limited to the direct cost of testing, recordkeeping, and possible treatment technology investment or other compliance activity.

• Bottled water producers market their products based on meeting government safety testing requirements. However, any change in sales resulting from successful marketing either transfers revenue from one producer to another with no net loss to society, or causes increased sales of bottled water, which would mitigate the cost of this regulatory effort.

• Both the EPA NPDWR and the FDA standard of quality regulations will compel facilities to comply with the new uranium standard. Therefore, FDA assumes that options 1 or 2 will not differ in terms of the number of illnesses avoided or the burden placed on facilities compelled to adopt treatment technology. However, EPA and FDA do have differing monitoring requirements.

• *The number of facilities*: Approximately 1,550 plants produced bottled water in 1998 (63 FR 25764, May 11, 1998). According to another database search conducted in 2002, the industry contains only 914 plants that would be subject to these rules. The 2002 count may not include bottled water services to business, but the decrease in facilities may also be a result of industry consolidation (Ref. 1). Because of this uncertainty, we use both totals to define our uncertainty interval.

• *Facilities out of compliance*: As in the EPA NPDWR analysis, we estimate the baseline incidence of facilities out of compliance by using the EPA's National Inorganics and Radionuclides Survey (NIRS). EPA took the results of the concentration of radionuclides found in the NIRS and extrapolated to the expected percent of municipal water facilities that would be out of compliance—by type and population served—for various uranium levels. Since most bottled water facilities that do not use a public water source use ground water, and are relatively small when compared to municipal water plants, we assume that the percent of bottled water plants out of compliance with the uranium standard is approximately the same percent as the number of ground water municipal plants that serve less than 500 people. EPA used two methods to extrapolate the NIRS results to all facilities. Using both approaches, small ground water facilities have by far the largest estimated out of compliance percentages, so this is a conservative assumption. Table 1 of this document presents the four possible numbers of facilities out of compliance, using our two bottled water facility counts and EPA's two percentage estimates for groundwater facilities.[1] The lowest and the highest number of facilities identified here (8–22 facilities) will be used as the out of compliance uncertainty interval for cost calculations.

TABLE 1.—NUMBER OF FACILITIES POTENTIALLY OUT OF COMPLIANCE WITH THE URANIUM STANDARD

Total Number of Facilities	EPA Method 1 (1.4% out of compliance)	EPA Method 2 (0.9% out of compliance)
1550	22	14
914	13	8

Cost Calculations under Options 1 and 2

This cost analysis is separated into two sections: Possible compliance activity that firms may have to undertake to meet the uranium standard, and monitoring requirement for all facilities. Between 914 and 1,550 facilities may have to adopt a test for the uranium standard, and between 8 and 22 facilities may also have to take measures to come into compliance with the uranium standard. Uranium testing is a standard procedure that is available in many labs around the country. Firms can choose among many types of treatment options to come into compliance, including water softening/iron removal, point-of-use reverse osmosis, point-of-use anion exchange/activate alumina, blending, or finding an alternative source.

Compliance costs. FDA assumes that all facilities will come into compliance under options 1 and 2, so the relative ranking of options 1 and 2 is not affected by compliance cost calculations. In their 2000 NPDWR analysis, EPA estimated compliance investment needed per volume of water treated (here presented as per 83,000 gallons, which is the annual per household water use estimate used by EPA) for each of their extrapolation methods mentioned above, for each facility size category, and for several different uranium standards. However, they did not directly estimate the compliance cost of the 30 μg/L standard considered here. We use an average of the compliance costs per gallon between the 40 and 20 μg/L standard levels for which costs were estimated directly tested by EPA. We also assume that each facility out of compliance is of average size. According to EPA's per capita total water use estimates applied to bottled water, an average bottled water facility processes as much water as a municipal system serving between 42 and 72 households, so we use the compliance cost estimated for groundwater facilities serving between 100 and 500 people, which is the closest category EPA presents.

The extrapolation methods used to construct the uncertainty intervals explained above affect both the percent of facilities out of compliance and the total amount of uranium that would need to be removed to come into compliance. Therefore, the per volume costs will be different under EPA's different estimation methods even for identically sized facilities. As mentioned previously, firms can choose among many types of treatment options. Our central value of uncertain compliance cost estimates is based on EPA's study of technology adoption for previous standards and their decision tree analysis, and our uncertainty interval is defined by the least (alternative sourcing) and most (point-of-use methods) expensive options being adopted by every one of the 8–22 facilities assumed to be affected.

Table 2 of this document summarizes these calculations. Considerable economies of scale exist in water treatment, but EPA only estimates the effect of economies of scale between their grouped size categories. Therefore, within the EPA size category we are assuming applies to bottled water, total treatment cost depends only on the amount of water treated, even though it is probable that larger facilities within this class have a lower per volume cost of treating their water. Also, for these options we base estimates of the amount of bottled water treated per facility not on our uncertain number of facilities but

[1] This is actually a percentage out of compliance for all facilities, but the percentage is dominated by small groundwater facilities. Above an MCL of 40 μg/L, no facilities other than groundwater facilities serving less than 500 people were predicted to be out of compliance. Since EPA did not directly estimate compliance percentages for the EPA MCL of 30 μg/L, we must assume that the number of facilities that are not small groundwater and are out of compliance would be negligible.

on a fixed total estimate of bottled water production in the United States. Therefore, except for rounding, our compliance cost estimate is not dependent on the number of facilities. We do expect that fewer facilities treating a larger amount of water would lead to lower per volume costs, but our most accurate estimate cannot take this into account, and this uncertainty does not affect the ranking of alternatives. We assume costs are incurred every year indefinitely into the future. The annual volume of bottled water consumed in the United States increased by an average of 7 percent over the past 11 years (Ref. 3), but again since the cost of treating water is subject to considerable economies of scale (Ref. 2) we assume that per year compliance costs will be roughly constant in the future. The discount rate used is 7 percent. We use the average of all four estimates of the middle value to construct the measure of central tendency, and the average of the two rounded lowest values and the two rounded highest values to construct the uncertainty interval. According to this analysis, total present value compliance costs will average approximately $1,085,000, with a range of $61,000-$2,660,000 for both options 1 and 2.

TABLE 2.—COMPLIANCE COST FOR EPA METHODS 1 AND 2

EPA Calculation Method	No. of Facilities	Cost /83,000 Gallons ($)	Cost Per Facility ($)	Total Annual ($)	Present Value ($)
1	22	100 (10–190)	4,200 (300–7,900)	92,000 (7,000–174,000)	1,406,000 (107,000–2,660,000)
1	13	100 (10–190)	7,200 (500–13,400)	94,000 (7,000–174,000)	1,437,000 (107,000–2,660,000)
2	14	80 (10–190)	3,600 (300–7,900)	50,000 (4,000–111,000)	764,000 (61,000–1,697,000)
2	8	80 (10–190)	6,000 (500–13,400)	48,000 (4,000–107,000)	734,000 (61,000–1,636,000)

Monitoring Costs. FDA has collected several estimates for uranium testing cost, ranging from $25-$150 per sample.[2] We will use the average of these testing costs of $105 as a most likely value and the entire range to define uncertainty. EPA and FDA required testing frequencies under options 1 and 2 differ substantially, as explained below.

Option 1 (EPA) Testing Frequency. Under the EPA testing regime, the 914 or 1,550 facilities would have to adopt a test for the uranium standard. According to the Radionuclides Rule (65 FR 76708 at 76711), all facilities would have to first perform four consecutive quarterly samples. We assume that bottled water facilities would test these samples in the first year after adoption. Based on the average results of these samples, facilities would have to sample once every 3 years (average greater than 50 percent of MCL), once every 6 years (average less than 50 percent of MCL), or once every 9 years (not detected). We assume one-third of facilities would fall in each of these categories, and that future tests would be uniformly distributed across years; for example, one-third of the facilities that only have to test once every 3 years will conduct the test in any one year.

Option 2 (FDA) Testing Frequency. Under § 129.35(a)(3), bottled water producers are required to test their source water for radiological contaminants at least once every 4 years unless exempted from such testing under § 129.35(a)(4). For example, one possible exemption is that the 25 percent of bottled water facilities that use a public water source already subject to EPA regulations may substitute public water system testing results for source water testing. We assume that no facilities that use a public water source will need to test their source water for uranium, and that all bottled water producers using nonpublic water will need to test their source water. All bottled water producers are required to test their final bottled water product for radiological contaminants at least once per year under § 129.80(g)(2).

Table 3 of this document presents the calculations for each option. The low bound is calculated by the low facility count multiplied by the low testing cost estimate, the high bound is calculated by the high facility count multiplied by the high testing cost estimate, and the middle value is the average of the low and high facility counts multiplied by the average of the testing cost estimates. Multiplying all low and high estimates together probably renders the low and high bounds extremely unlikely, but since we do not have a probability distribution associated with these values we have no other method of defining uncertainty. The present value is calculated as if all testing were to be continued indefinitely, with a discount rate of 7 percent.

TABLE 3.—MONITORING COST ESTIMATES

Options	Year 1 tests	Year 1 Cost ($)	Subsequent year tests	Subsequent year cost ($)	Present Value ($)
Option 1 (EPA)	4	517,000 (91,000–930,000)	.61	79,000 (14,000–142,000)	1,645,000 (291,000–2,956,000)
Option 2 (FDA)	1.19	154,000 (27,000–277,000)	1.19	154,000 (27,000–277,000)	2,353,000 (416,000–4,229,000)

[2] A private lab called General Engineering Laboratories (GEL) in Charleston, SC, provides uranium testing of private wells at a cost of $25 per sample: http://www.scdhec.net/eqc/water/html/urtest2.html, accessed August 15, 2002. The New Hampshire Department of Environmental Services charges $140 per uranium test: http://www.des.state.nh.us/factsheets/ws/ws-3-11.htm, accessed August 15, 2002. The Maine Health and Environmental Testing Laboratory charges $150 per uranium test: http://www.state.me.us/dhs/etl/pubgd99w.html, accessed August, 15, 2002.

3. Benefits of the Regulatory Options

FDA assumes that both option 1 and option 2 would compel all bottled water facilities to come into compliance with the 30 μg/L uranium standard. Uranium carries two distinct risks: An increased risk of cancer and kidney toxicity. In addition, treatment technologies put in place to remove uranium will also reduce the concentration of other bottled water contaminants. However, EPA was unable to quantify the effect of uranium on kidney toxicity and the effect of uranium treatment technology on cocontaminants due to lack of information, and FDA has not found any information made available that would allow the quantification of these effects since EPA's 2000 analysis.

Cases of Cancer Avoided

Exposure. According to the *Bottled Water Reporter*, Americans consumed a per capita average of approximately 73.8 liters of bottled water in 2001 (Ref. 3). This is approximately 18 percent of the per capita consumption of water from all sources estimated by the EPA (Ref 2). Bottled water consumption has been increasing at a rate of approximately 7 percent per year in the United States over the past 11 years, and this trend may continue (Ref 3).

Risk and Valuation of Risk. In September 1999, EPA updated a series of coefficients they developed to express the incremental lifetime risk of cancer morbidity or mortality per unit of intake. They then combined this per unit risk to the average and 90th percentile annual and lifetime intake of water from all sources (including bottled water, but they adjusted for bottled water that did not originate in the municipal water supplies they regulated) to calculate: (1) The total morbidity and mortality cancer risk due to drinking water containing uranium, and (2) the reduction in risk due to their proposed NPDWR for uranium. We adjust these values based on our calculation of the average annual intake of bottled water described above. The mortality risk coefficient per ug of uranium ingested is 3.97E–11, and the morbidity coefficient is 6.13E–11 (Ref. 4). In other words, for each g of uranium ingested the lifetime risk of getting cancer increases by approximately 6 in 100 billion, while the lifetime risk of dying from cancer increases by approximately 4 in 100 billion.

This risk estimate is applied to the decrease in Uranium ingested due to options 1 and 2. Between 0.9 percent and 1.4 percent of bottled water is expected to initially have uranium concentrations over 30 μg/L. Based on 2001 total bottled water consumption, this translates into between 49 million and 76 million gallons of bottled water possibly above the standard. In the Radionuclides rule, EPA expected that the reduction in uranium concentration in the out of compliance municipal water facilities would yield an annual decrease in the number of new fatal and nonfatal statistical[3] cancer cases of 0.82 from an affected number of gallons of approximately 73 million.

For the calculations below, we assume that every bottled water consumer has an equal chance of drinking water from a facility that would be out of compliance with the standard. This makes the calculation much simpler, and since the mortality and morbidity risk coefficients are linear and are not based on past exposure, the total reduction in risk is identical. If out-of-compliance bottled water facilities have uranium concentrations roughly equal to the EPA estimates, then applying this assumed reduction and the total annual per capita consumption attributable to the affected bottled water facilities yields a total number of fatal and nonfatal cancer cases avoided of between 0.55 and 0.85 per year for both options 1 and 2. We use a 6 percent growth rate to take into account an increase in exposure and population, in relation to the 7 percent discount rate used for the cost calculations. We also assume that the cancer mortality will occur 20 years in the future. The central estimate is somewhat sensitive to these assumptions, so we test different assumptions in the net benefits section below. Using standard valuation techniques for cancer morbidity and mortality yields an expected present value benefit of between $8,700,000 and $13,500,000. The calculations summary is in Table 4 of this document.

TABLE 4.—BENEFITS CALCULATIONS

Options	Cases of Cancer Avoided: EPA Method 1	Cases of Cancer Avoided: EPA Method 2	Present Value ($) of Annual Cancer Cases (low-high)	Total Present Value ($) (low-high)
1 and 2	.85	.55	629,000 (494,000–764,000)	11,112,000 (8,731,000–13,493,000)

A final source of uncertainty we need to account for is the upper and lower bound estimated by EPA for their cancer risk coefficients. In the 2000 analysis, EPA assumes an uncertainty cancer risk interval extending one order of magnitude above and below their risk coefficients. Applying this uncertainty interval to the benefits we have already calculated yields a final benefits interval of between $870,000 and $135,000,000. Although EPA does not include a probabilistic confidence interval associated with this additional source of uncertainty, they do state that the central tendency values they use for their main calculations are more likely (Ref. 2).

Sensitivity to Assumptions and Uncertainty: Benefits

These benefits calculations are subject to considerable uncertainty. The uncertainty interval used in the analysis is due to the uncertainty in the incidence and concentration of naturally occurring uranium and uncertainty in the uranium risk coefficients. However, the main uncertain benefits that we do not quantify are; (1) The reduction in kidney disease due to reducing uranium concentration in bottled water, and (2) the reduction in cocontaminants due to the adoption of treatment technologies for uranium. Therefore, the quantified cancer benefits probably underestimate the true positive impact of the uranium standard.

4. Net Benefits

Table 5 below presents the total costs and benefits for all three options:

[3]A statistical cancer case refers to expectations. For example, if this risk of contracting cancer sometime during one's life increases for each person by 1 in a million, and the affected population consisted of 1 million people, it is expected that the number of eventual cancer cases observed would increase by 1. However, 1 is only the measure of central tendency in a distribution of effects.

TABLE 5.—COSTS AND BENEFITS

Options	Total Costs ($) (low-high)	Total Benefits ($) (low-high)
1 (EPA Monitoring Requirement)	2,930,000 (352,000–5,616,000)	11,112,000 (8,731,000–13,493,000)
2 (FDA Monitoring Requirement)	3,438,000 (477,000–6,889,000)	11,112,000 (8,731,000–13,493,000)
3 (No Action Taken)	0	0

In the most likely central values in the distribution of cost and benefits, EPA option 1 has positive net measured benefits and FDA option 2 has positive net measured benefits. The ranking of option 1 and 2 depends completely on the frequency of required testing: FDA would require an average of 1.19 tests per year per facility, while EPA, after a series of four tests, would only require an average of .61 test per year per facility. We tested the effects of 5 percent–7 percent discount rates and 15–30 year delays in cancer onset in our benefits calculations, and both options still yield positive net benefits. The choice of the discount rate or time period before onset does not affect the relative ranking of options 1 and 2.

The range of uncertainty between costs and benefits overlaps, but many of the determinants of the range of uncertainty affect both costs and benefits equally, so low costs are associated with low benefits and high costs are associated with high benefits. The exception to this is the uncertainty in the cancer risk coefficient; since this interval is not probabilistic, FDA cannot estimate a probability that this rule will have negative net or positive net benefits for any of these options. However, FDA does consider our central estimates the most likely outcomes. Also note the potentially large benefits from a reduction in kidney toxicity and cocontaminants that we were not able to quantify, which could also affect the size and range of the net benefits.

Finally, our cost-best analysis reaches a different result than EPA's 2000 radionuclide analysis, which concluded that testing for uranium in water destined for human consumption has negative net quantifiable benefits (65 FR 76708). The reason for the difference between our results and EPA's results is that most of the costs of the EPA rule are applied to water that will not be consumed. People do not drink the vast majority of water treated by municipal facilities. Most of that water is used for cleaning, waste disposal, and outdoor uses. In contrast, almost all bottled water is used for human consumption. In fact, a typical bottled water facility processes as much water for drinking as a much larger municipal water facility. Consequently, fewer bottled water facilities would have to incur compliance costs to afford the same level of protection for water consumed as assumed in the EPA analysis.

B. Small Entity Analysis

Under section 603(a) of the Regulatory Flexibility Act, for any proposed rule for which the agency is required by section 553 of the Administrative Procedure Act or any other law to publish a general notice of proposed rulemaking, the agency is required to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency has published, in the companion proposed rule published elsewhere in this **Federal Register**, an initial regulatory flexibility analysis. Because the companion proposed rule is a proposed rule for which a general notice of proposed rulemaking is required, and therefore, is subject to the Regulatory Flexibility Act, the agency will consider any comments it receives on the initial regulatory flexibility analysis in the companion proposed rule when deciding whether to withdraw this direct final rule.

FDA has examined the economic implications of this direct final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that this rule would have a significant economic impact on a substantial number of small entities.

FDA feels that the flexibility allowed in source testing requirements under option 2 in the impact analysis is the maximum amount of flexibility possible in this regulation. FDA is not establishing exemptions for final product testing since there is a need to test for naturally occurring uranium, which could be present in all source water.

According to the latest database search across the bottled water industry mentioned above, approximately 72 percent of firms qualify as small by the Small Business Administration (SBA) standard of having less than 500 full-time-equivalent employees. We assume that all SBA small firms operate a single facility for the purposes of this analysis. Since all facilities must adopt uranium testing, between 658 and 1,116 small firm facilities will incur a testing burden. Assuming the same distribution of size among out of compliance plants means that between 6 and 16 small facilities will incur the more costly burden of devoting resources to bring their water into compliance with the uranium standard issued in this rule. Table of this document presents the average and maximum annual costs attributable to this rule for each small firm.

TABLE 6.—ANNUAL AVERAGE AND MAXIMUM COSTS PER FIRM

Category	Average ($)	Maximum ($)
Monitoring	125	179
Compliance	5,246	13,383
Total	5,400	13,600

Most small firms will only incur a $125 (1.19 tests per year at an average cost of $105 per test) uranium testing cost, although a few may incur up to $179 (1.19 tests per year at an average cost of $150 per test) in annual testing costs, which is 0.03 percent of the $580,000 annual revenue of the median small bottled water firm. If a small firm operates more than one facility, testing costs would be multiplied by the number of facilities they operate. However, between 6 and 16 small firms will incur an average of $5,400 in total costs, and may incur as much as $13,600 in total costs if for some reason they need to adopt the most expensive treatment option, although FDA considers this unlikely. The average treatment cost estimates represent .9 percent of median annual small firm sales, but could be as much as 2.3 percent of annual sales. However, 75 percent of the total reduction in cancer incidence of this rule is due to these small firms lowering the amount of uranium in their water, so it is essential that they adopt some sort of treatment technology.

C. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4), requiring cost-benefit and other analyses, in section 1531 (a) defines a significant rule as ''a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any 1 year.'' FDA has determined that this direct final rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

VII. Paperwork Reduction Act

FDA tentatively concludes that this direct final rule contains no collections

of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule has a preemptive effect on State law. Section 4(a) of the Executive Order requires agencies to ''construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 403A of the act (21 U.S.C. 343-1) is an express preemption provision. Section 403A(a)(1) provides that ''no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce-(1) any requirement for a food which is the subject of a standard of identity established under section 401 that is not identical to such standard of identity or that is not identical to the requirement of section 403(g)* * *'' FDA has interpreted this provision to apply to standards of quality (21 CFR 100.1(c)(4)). Although this rule has preemptive effect in that it would preclude States from issuing requirements for uranium levels in bottled water that are not identical to the allouable level for uranium as set forth in this rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(c) of the Executive Order further requires that ''any regulatory preemption of State law shall be restricted to the minimum level necessary'' to achieve the regulatory objective. Under section 410 of the act, not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300g-1), FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled water. Further, section 410(b)(3) of the act requires a quality standard for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public health than EPA's treatment techniques required for the same contaminant. On December 7, 2000, EPA issued an NPDWR containing an MCL for uranium (65 FR 76708). FDA has determined that the MCL for uranium that EPA established for public drinking water is appropriate as a standard of quality for bottled water, and is issuing this regulation consistent with section 410 of the act.

Further, section 4(e) of the Executive Order provides that ''when an agency proposed to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' Given the statutory framework of section 410 of the act for bottled water, EPA's issuance of an MCL for uranium in public drinking water provided notice of possible FDA action for a standard of quality for uranium in bottled water. FDA did not receive any correspondence from State and local officials regarding a uranium standard for bottled water subsequent to EPA's NPDWR on the MCL for uranium. Moreover, FDA is not aware of any States that have requirements for uranium in bottled water that would be affected by FDA's decision to establish a bottled water quality standard for uranium that is consistent with EPA's standard for public drinking water. In addition, we are providing an opportunity for State and local officials to comment on FDA's standard of quality for uranium in bottled water in the context of this rulemaking. For the reasons set forth previously in this document , the agency believes that it has complied with all of the applicable requirements under the Executive order.

In conclusion, FDA has determined that the preemptive effects of the final rule are consistent with Executive order 13132.

IX. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or elctronic comments regarding this document. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

X. Effective Date

The agency intends to make the direct final rule effective December 8, 2003. The agency will publish a confirmation notice for the direct final rule in the **Federal Register** no later than 180 days before the effective date. The agency is providing 180 days before the effective date to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule.

XI. References

1. Hamon, J., ''Bottled Water Industry, 2001'' Special Industries Spotlight, January 2001. Available at www.merger.com.

2. Industrial Economics, Inc., *Economic Analysis of the Radionuclides National Primary Drinking Water Regulations*. Available from the Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency. November 2000.

3. Rodwan, J. G., ''The 2001 Stat: Bottled Water Sales Reach New Heights,'' *Bottled Water Reporter*, p. 14–20, April/May 2002.

4. Eckerman, K., R. Leggett, C. Nelson, J. Pushkin, and A. Richardson, *Cancer Risk Coefficients for Environmental Exposure to Radionuclides*, Federal Guidance Report No. 13, 1999. (EPA 402–R–99–001). Note that FDA used the risk coefficients as adjusted and reported in Ref. 2 of this document in order to be consistent with the EPA radionuclide impact analysis.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 165 is amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–l, 348, 349, 371, 379e.

2. Section 165.110 is amended by adding paragraph (b)(5)(i)(D) and by revising paragraph (b)(5)(ii) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(5) * * *

(i)* * *

(D) The bottled water shall not contain uranium in excess of 30 micrograms per liter of water.

(ii) Analyses conducted to determine compliance with the requirements of paragraph (b)(5)(i) of this section shall

be made in accordance with the methods described in the applicable sections of ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., may be obtained from the American Public Health Association, 1015 15th St. NW., Washington, DC 20005. Copies of the methods incorporated by reference in this paragraph (b)(5)(ii) may also be examined at the Office of the **Federal Register**, 800 North Capital St. NW., suite 700, Washington, DC, or at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD.

(A) Combined radium-226/-228 shall be measured using the following methods:

(*1*) Method 7500–Ra B—''Precipitation Method,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(*2*) Method 7500–Ra D—''Sequential Precipitation Method,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(B) Gross alpha particle radioactivity shall be measured using the following method: Method 7110 C—''Coprecipitation Method for Gross Alpha Radioactivity in Drinking Water,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(C) Beta particle and photon radioactivity shall be measured using the following methods:

(*1*) Method 7500–Sr B—''Precipitation Method,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(*2*) Method 7500–^{3}H B—''Liquid Scintillation Spectrometric Method,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(*3*) Method 7120 B—''Gamma Spectroscopic Method,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(D) Uranium shall be measured using the following methods:

(*1*) Method 7500–U B—''Radiochemical Method'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(*2*) Method 7500–U C—''Isotopic Method'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

* * * * *

Dated: February 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4971 Filed 2–27–03; 11:42 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

33 CFR Part 52

[OST Docket No. 2002–13439; Notice 2002–1]

RIN–2105–AD19

Coast Guard Board for Correction of Military Records; Procedural Regulation

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is revising and reissuing the procedural regulations of the Coast Guard Board for Correction of Military Records (Board) in order to clarify application procedures; to explain applicants' legal rights and burden of proof; to provide more time and flexibility for applicants to improve their applications; and to facilitate timely decision making by the Board.

EFFECTIVE DATE: April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Ulmer, Chair, Board for Correction of Military Records of the Coast Guard, C–60, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW.; Washington, DC 20590. Telephone: (202) 366–9335.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may download a copy of this final rule at the following Internet addresses: *http://dms.dot.gov; http://www.access.gpo.gov; http://www.archives.gov/federal_register.* An electronic copy may also be obtained by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661.

Background

The Secretary of Transportation, acting through the Board for Correction of Military Records of the Coast Guard, is authorized by section 1552 of title 10 of the United States Code to correct the military records of active duty, reserve, retired, and discharged Coast Guard military personnel who apply for a correction of an error or injustice in their records.

The Board's current rules at 33 CFR Part 52 have become disorganized over time by amendments and have several shortcomings that may negatively affect the Board's applicants and the timeliness of the Board's decisions. This revision of 33 CFR Part 52 is intended

to better organize the rules, notify applicants of their rights and Board procedures, and remove other shortcomings as described below.

The current rules fail to inform the public of the following important matters: the proper format for briefs in support of an application; the need for a family member or legal representative to submit proof of his or her proper interest before applying on behalf of a deceased or incompetent veteran; the requirement that applicants inform the Board of any change in their mailing address prior to final action by the Board; the fact that applicants whose cases are processed under the Whistleblower Protection Act and who are granted a hearing may be entitled to representation by a Coast Guard law specialist in accordance with 10 U.S.C. 1034(f)(3)(A); the presumption of regularity accorded military records and the burden of proof borne by applicants; the possible actions the Secretary or his or her delegate may take when reviewing a recommended decision of the Board; the possible reduction of monetary awards resulting from record corrections because of setoffs required by law or regulation; and the availability of copies of the Board's final decisions, redacted to protect the privacy of applicants, for review in the Board's reading room and on an Internet site.

Furthermore, the current rule allows an applicant only 15 days to respond to the written views of the Coast Guard on his or her application. § 52.82(d). In light of the underway schedules of some of the Board's active duty applicants assigned to sea duty, 15 days is insufficient time for some applicants to respond. Moreover, no provision addresses applicants' requests for extensions to consult counsel or gather more evidence. The current rule requires members who submit evidence after submitting their applications to waive their right to a final decision within ten months and makes no provision for a new deadline. § 52.61(c). Moreover, no provision addresses the consequences of an applicant's decision to change his or her request for relief.

The current rule states that Board action is required before a member can withdraw an application. § 52.26. It also allows the Chair to deny an application, without prejudice and without action by the Board, if he or she believes that the evidence is insufficient or that the application was untimely and lacks merit. § 52.32.

The current rule does not address or facilitate the Board's access to privileged, classified, and sensitive information, such as reports of investigations, which is occasionally necessary for the Board to determine whether an error or injustice has been committed. The current rule also permits applicants to inspect the Board's record of proceedings without expressly providing for the protection of privileged, classified, and sensitive information. § 52.66.

The current rule states that the Board shall consider any written recommendation submitted by the Chief Counsel of the Coast Guard before issuing a decision. § 52.82(e). However, it provides no deadline for the Chief Counsel's submission even though the Board must take final action on each application within ten months. 14 U.S.C. 425. Delayed submissions by the Chief Counsel's office can leave the Board with little or no time to receive the applicant's response, issue a decision, and have it reviewed by the delegate of the Secretary before the statutory ten-month deadline has expired. The current rule also does not take into account written views submitted by a delegate of the Commandant of the Coast Guard other than the Chief Counsel. In addition, the current rule fails to require the Coast Guard to describe what ''significant issue of Coast Guard policy'' is at stake when he or she invokes review of a Board decision by the delegate of the Secretary. § 52.64(a)(2).

The current rule permits the Board to specify any correction of a record in its order and to order the Coast Guard to take ''any other action deemed necessary to carry out the Board's recommendation,'' but it does not expressly permit the Board to order the Coast Guard to convene medical boards to determine an applicant's disability rating so that his or her separation can be corrected. § 52.61(e). The current rule also requires the delegate of the Secretary to review cases in which the Board corrects a record to show that a member is entitled to a medal or award contrary to the Coast Guard's recommendation. In addition, the current rule does not address what the Coast Guard should do if it finds that an order of the Board is incomplete because of an oversight. All of these matters are addressed in the final rule.

Notice and Comment

The Department published a Notice of Proposed Rulemaking on December 11, 2002, at 67 FR 76142. No comments were received in response to that notice. Therefore, this final rule adopts the proposed rule without change.

Section-by-Section Analysis of the Final Rule

Subpart A—Purpose and Authority

Section 52.1 Purpose

This section remains unchanged.

Section 52.2 Authority

This section is amended to reflect the codification of the Board's ten-month deadline for issuing decisions under 14 U.S.C. 425 and to add a citation (10 U.S.C. 1552(a)(4)) for the finality and conclusiveness of the Board's orders.

Subpart B—Establishment, Function, and Jurisdiction of Board

Section 52.11 Establishment and Composition

Throughout this section and all of Part 52, the term Chair is substituted for the term Chairman to establish gender neutrality. This section is also amended to remove a citation to 49 U.S.C. 108(a).

Section 52.12 Function

This section is amended to reflect the fact that the Board considers submissions from the Coast Guard and other Government offices along with applications and military records in reaching its decisions.

Section 52.13 Jurisdiction

No changes have been made to this section.

Subpart C—General Provisions Regarding Applications

Section 52.21 General Requirements

No changes have been made to paragraph (a). Paragraph (b) is amended to inform family members and legal representatives that they must submit proof of their proper interest when applying to the Board for the correction of the military record of a deceased or incompetent veteran. Paragraph (c) is amended to reflect the fact that applications are not docketed by the Board until they are complete and to reflect the need for substantial evidence or information and all military and medical records before an application is considered complete. Paragraph (d) is added to advise applicants of the necessity of keeping the Board informed of any changes in mailing address so that they will receive the Board's correspondence. Paragraph (e) is added to ensure that briefs submitted in support of applications are readable, replicable, and not unduly lengthy.

Section 52.22 Time Limit for Filing Application

This section is reworded to clarify why an applicant must provide reasons

for submitting an application after the three-year statute of limitations has passed.

Section 52.23 Counsel

Paragraph (a) is added to inform applicants that they may be represented by counsel at their own expense but that applicants whose cases are processed under the Whistleblower Protection Act may be entitled to representation by a law specialist at a hearing convened in accordance with Subpart F. The previous text of this section appears in paragraph (b) and is amended by updating two citations and by making the Chair, rather than the Board, responsible for deciding the competence of an applicant's chosen representative.

Section 52.24 Evidence and Burden of Proof

Paragraph (a) is revised to encourage the timely submission of evidence with the initial application and to direct attention toward the new rule concerning late submissions of evidence in § 52.26. Paragraph (b) is added to inform applicants of the presumption of regularity accorded military records and of the burden of proof they must meet to be granted relief, which is the preponderance of the evidence.

Section 52.25 Access to Official Records

This section is amended to consolidate the sentences.

Section 52.26 Right to Timely Decision; Effect of Requests for Extensions, Changes in Requests for Relief, and Late Submissions of Evidence

This new section, which incorporates the provisions in old §§ 52.68 and 52.61(c), informs applicants of their right to a final decision on their applications within ten months of the completion of their applications. It also permits applicants to request extensions, submit evidence after their applications have been docketed, and alter their requests for relief without waiving their right to a timely decision. It provides that, if an applicant requests an extension or unreasonably delays responding to a request from the Board, the Board's ten-month deadline is extended by the duration of the extension or of the unreasonable delay. It further provides that, if in the determination of the Chair, an applicant has submitted significant new evidence or has significantly altered his or her request for relief after his or her application has been docketed, the application is considered newly completed and the applicant has the right to a final decision within ten months of the new date of completion.

Section 52.27 Withdrawal of Application

This section (old § 52.26) is revised to allow the Chair to permit an applicant to withdraw his or her application without Board action.

Section 52.28 Stay of Proceedings

No changes have been made to this section (old § 52.33), apart from its renumbering. It has been renumbered because it belongs better under this Subpart C—General Provisions Regarding Applications than where it was under Subpart D—Consideration of Application.

Subpart D—Consideration of Application and Administrative Closure

Section 52.31 Consideration of Application

This section is amended to show that the Chair's initial review of an application to determine whether it is complete occurs before the application is docketed.

Section 52.32 Administrative Closure

This section is renamed and expanded to clarify the circumstances under which the Chair may close a case without prejudice and without Board action. Paragraph (a) permits the Chair to close a case when he or she determines that the application was erroneously documented because it was never completed, the Board lacks authority to grant the requested relief, the applicant failed to exhaust an administrative remedy before applying to the Board, or the Coast Guard has already made the requested corrections. Paragraph (b) addresses how applicants might reapply after their cases have been administratively closed. Paragraph (c) requires the Chair to inform applicants of their right to reapply whenever he or she administratively closes a case.

Old § 52.33 Stay of Proceedings

This old section has been renumbered as §52.28.

Subpart E—Submissions by the Coast Guard and Other Offices

This new subpart E embodies old Subpart—Miscellaneous Provisions. It has been renamed and repositioned to better reflect its contents and the order of the Board's procedures. Old subpart E is included in subpart F.

Section 52.41 Assistance

No changes have been made to this section (old § 52.81), apart from its renumbering.

Section 52.42 Views of the Coast Guard

Paragraph (a) (old § 52.82(a)) is amended to reflect the amendments to sections 52.21 and 52.32. Paragraphs (a) and (b) (old § 52.82(c)) are amended to reflect the fact that the views of the Coast Guard may be submitted in an advisory opinion by any delegate of the Commandant. Paragraph (c) (old § 52.82(e)) is amended to require the Board to consider the advisory opinion of the Coast Guard only if it is submitted within 135 days of the date the application is complete but to permit the Board to consider advisory opinions submitted after the 135-day deadline has passed. The rule facilitates timely decisions when submissions of advisory opinions by the Coast Guard are delayed to the point where little or no time remains for the Board to receive the applicant's response to the advisory opinion, issue a decision, and have it reviewed by the delegate of the Secretary before the statutory ten-month deadline has expired. Paragraph (d) (old § 52.82(d)) increases the time provided for the applicant's response to the advisory opinion from 15 to 30 days and allows the Chair to grant extensions of the time to respond. Paragraph (e), which is new, requires advisory opinions and applicants' briefs in response to advisory opinions to be readable, replicable, and not unduly lengthy.

Section 52.43 Requests for Further Information; Submissions of Classified, Privileged, and Sensitive Information

This section (old § 52.82(b)) has been expanded to address the Board's ability to seek information from applicants and from other Government offices, as well as from the Coast Guard. It addresses how the Board can receive and review classified, privileged, and sensitive information from the Coast Guard or another Government office while providing the applicant with a copy of any part of that information that would be released to him or her if requested by the applicant from the custodian of the information under 49 CFR parts 7 or 10.

Subpart F—Hearings

This subpart incorporates both old Subpart E—Hearings and old Subpart F—Procedure at Hearings because both concern hearings.

Section 52.51 General Provision

No changes other than renumbering and substituting the term Chair for the term Chairman have been made to this section (old § 52.41).

Section 52.52 Notice of Hearing

No changes other than renumbering, substituting the term Chair for the term Chairman, and adding a comma for stylistic consistency have been made to this section (old § 52.42).

Section 52.53 Witnesses

This section (old § 52.43) has been renumbered and amended by substituting the term Chair for the term Chairman, adding a comma for stylistic consistency, and clarifying the language to indicate that the applicant is only responsible for ensuring the appearance of his or her own witnesses at a hearing.

Section 52.54 Expenses

This section (old § 52.44) has been renumbered and amended to inform applicants that they may be entitled to representation by a law specialist if they are granted a hearing and their cases are processed under the Whistleblower Protection Act.

Section 52.55 Nonappearance

No change has been made to this section (old § 52.45), apart from its renumbering.

Section 52.56 Conduct of Hearing

No amendments other than renumbering, substituting the term Chair for the term Chairman, and adding a comma for stylistic consistency have been made to this section (old § 52.51).

Section 52.57 Record of Hearing

No change has been made to this section (old § 52.52), apart from its renumbering.

Subpart G—Judgment and Disposition

Section 52.61 Deliberations and Decision

No amendments other than substituting the term Chair for the term Chairman have been made to paragraphs (a) and (b). Old paragraph (c) is amended and moved to paragraphs 52.24(a) and 52.26(c). New paragraph (c) (old paragraph (d)) is amended only by substituting the term Chair for the term Chairman and by capitalizing the letter b in Board for stylistic consistency. Paragraph (d) (old paragraph (e)) is revised to show that the Board's authority to order the Coast Guard to take ''any other action deemed necessary to carry out the Board's recommendation,'' as previously provided, includes the authority to order the Coast Guard to convene medical boards to help determine an applicant's proper disability rating for a correction of his or her separation. No changes have been made to paragraph (e) (old paragraph (f)).

Section 52.62 Minority Report

No changes have been made to this section.

Section 52.63 Record of Proceedings

Paragraph (a) contains the existing, unamended text of this section. Paragraph (b) has been added to provide for the return of classified, privileged, or sensitive information reviewed by the Board to the custodial Government office and the inclusion of the redacted copy of the information that was provided to the applicant in the Board's permanent record of proceedings after final action is taken.

Section 52.64 Final Action

Paragraph (a)(2) is amended to require the delegate of the Commandant of the Coast Guard to identify and describe in his or her advisory opinion the significant issue of Coast Guard policy challenged in an application that requires its review by the delegate of the Secretary under paragraph (b) if the Board grants relief contrary to the Coast Guard's advisory opinion or if the Board grants substantially different relief than that recommended by the Coast Guard. Paragraph (a)(2) is also amended to make the Board's decision on an application to receive a medal or award final unless the Coast Guard describes a significant issue of Coast Guard policy that is challenged in the application. Paragraph (b) is amended to reflect the range of actions the delegate of the Secretary may take in reviewing a decision of the Board.

Section 52.65 Orders

No changes have been made to this section.

Section 52.66 Notification

This section is amended to make only the permanent record of proceedings, as compiled in accordance with § 52.63(b), available for the applicant's inspection.

Section 52.67 Reconsideration

In paragraphs (a), (b), and (e), the term Chair is substituted for the term Chairman. Paragraph (a)(1) is amended for clarification. Paragraph (c) is amended to better explain who can serve on a Board to reconsider a case. Paragraph (d) is amended to make applications for reconsideration subject to the provisions in § 52.26 for permitting applicants to request extensions, submit evidence late, and alter their requests for relief.

Old section 52.68 Time Limit for Final Action

This old section has been incorporated into §52.26.

Subpart H—Payment of Claims and Implementation of Orders

Section 52.71 Authority To Pay

No changes have been made to this section.

Section 52.72 Implementation of Orders

This section is renamed for clarity and the words ''shall transmit'' are substituted for the word ''transmits.'' Paragraph (b) is amended to specify that applicants must furnish to the Board or to the Coast Guard information needed to determine the proper parties to a claim. Paragraph (c) is amended to notify applicants that monetary awards resulting from record corrections may be reduced by setoffs required by law or regulation.

Section 52.73 Interpretation

This section is amended to provide that the Coast Guard should return a decision to the Board for clarification or technical amendment if it believes that the Board's order is incomplete because of an oversight.

Section 52.74 Report of Settlement

No changes have been made to this section.

Subpart I—Public Access to Decisions

The old Subpart I—Miscellaneous Provisions is repositioned and renamed as Subpart E—Submissions by the Coast Guard and Other Offices.

Section 52.81 Reading Room and Index

This new section informs the public of the availability of copies of its final decisions, redacted to protect the privacy of applicants, for public review in the Board's reading room and on the Internet.

Regulatory Analyses and Notices

Executive Order 12866

This rule does not constitute a significant rule under Executive Order 12866 or the Department's Regulatory Policies and Procedures. The costs of these procedural changes are negligible, their effect on industry is negligible, and they are not of general policy interest.

Regulatory Flexibility Act and Federalism

Under 5 U.S.C. 604, we certify that this rule will not have a significant economic impact on a substantial number of small entities because it will affect only the procedures followed by the Board, the Coast Guard, and applicants in the submission and processing of applications for correction of individuals' personal military records. There are no Federalism factors

to warrant the preparation of a Federalism assessment.

Paperwork Reduction Act

This final rule does not have any information collection requirements subject to review under the Paperwork Reduction Act.

Lists of Subjects in 33 CFR Part 52

Administrative practice and procedures, Archives and records, Military personnel.

Issued this 14th day of February 2003 at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department revises 33 CFR Part 52 to read as follows:

PART 52—BOARD FOR CORRECTION OF MILITARY RECORDS OF THE COAST GUARD

Subpart A—Purpose and Authority

Sec.
52.1 Purpose.
52.2 Authority.

Subpart B—Establishment, Function, and Jurisdiction of Board

52.11 Establishment and composition.
52.12 Function.
52.13 Jurisdiction.

Subpart C—General Provisions Regarding Applications

52.21 General requirements.
52.22 Time limit for filing application.
52.23 Counsel.
52.24 Evidence and burden of proof.
52.25 Access to official records.
52.26 Right to timely decision; effect of requests for extensions, changes in requests for relief, and late submissions of evidence.
52.27 Withdrawal of application.
52.28 Stay of proceedings.

Subpart D—Consideration of Application and Administrative Closure

52.31 Consideration of application.
52.32 Administrative closure.

Subpart E—Submissions by the Coast Guard and Other Offices

52.41 Assistance.
52.42 Views of the Coast Guard.
52.43 Requests for further information; submissions of classified, privileged, and sensitive information.

Subpart F—Hearings

52.51 General provision.
52.52 Notice of hearing.
52.53 Witnesses.
52.54 Expenses.
52.55 Nonappearance.
52.56 Conduct of hearing.
52.57 Record of hearing.

Subpart G—Judgment and Disposition

52.61 Deliberations and decision.
52.62 Minority report.
52.63 Record of proceedings.
52.64 Final action.
52.65 Orders.
52.66 Notification.
52.67 Reconsideration.

Subpart H—Payment of Claims and Implementation of Orders

52.71 Authority to pay.
52.72 Implementation of orders.
52.73 Interpretation.
52.74 Report of settlement.

Subpart I—Public Access to Decisions

52.81 Reading room and index.

Authority: 10 U.S.C. 1552; 14 U.S.C. 425.

Subpart A—Purpose and Authority

§ 52.1 Purpose.

This part establishes the procedure for application for correction of military records of the Coast Guard, for consideration of applications by the Department of Transportation Board for Correction of Military Records of the Coast Guard (hereinafter ''the Board''), and for settling claims or determining monetary benefits.

§ 52.2 Authority.

(a) The Secretary of Transportation, acting through boards of civilians, is authorized to correct any military record of the Coast Guard when the Secretary considers it necessary to correct an error or remove an injustice. 10 U.S.C. 1552. The Secretary shall ensure that final action on a complete application for correction is taken within 10 months of its receipt.

14 U.S.C. 425.

(b) Corrections made under this authority are final and conclusive on all officers of the Government except when procured by fraud. 10 U.S.C. 1552(a)(4).

Subpart B—Establishment, Function, and Jurisdiction of Board

§ 52.11 Establishment and composition.

(a) Pursuant to 10 U.S.C. 1552, the Board for Correction of Military Records of the Coast Guard is established in the Office of the Secretary of Transportation.

(b) The Secretary appoints a panel of civilian officers or employees of the Department of Transportation to serve as members of the Board, and designates one such member to serve as Chair of the Board. The Chair designates members from this panel to serve as the Board for each case requiring consideration by a Board. The Board consists of three members, and two members present constitute a quorum of the Board.

(c) The Deputy Chair of the Board exercises the functions prescribed by these regulations and such other duties as may be assigned by the Chair.

§ 52.12 Function.

The function of the Board is to consider all applications properly before it, together with all pertinent military records and any submission received from the Coast Guard or other Government office under subpart E, to determine:

(a) Whether an error has been made in the applicant's Coast Guard military record, whether the applicant has suffered an error or injustice as the result of an omission or commission in his or her record, or whether the applicant has suffered some manifest injustice in the treatment accorded him or her; and

(b) Whether the Board finds it necessary to change a military record to correct an error or remove an injustice.

§ 52.13 Jurisdiction.

(a) The Board has jurisdiction to review and determine all matters properly brought before it, consistent with existing law and such directives as may be issued by the Secretary.

(b) No application shall be considered by the Board until the applicant has exhausted all effective administrative remedies afforded under existing law or regulations, and such legal remedies as the Board may determine are practical, appropriate, and available to the applicant.

Subpart C—General Provisions Regarding Applications

§ 52.21 General requirements.

(a) An application for correction of a Coast Guard record shall be submitted on DD Form 149 (Application for Correction of Military or Naval Record) or an exact copy thereof, and shall be addressed to: Chair, Board for Correction of Military Records of the Coast Guard (C–60), United States Department of Transportation, Washington, DC 20590. Forms and explanatory material may be obtained from the Chair of the Board.

(b) The application shall be signed by the person alleging error or injustice in his or her military record, except that an application may be signed by a family member or legal representative with respect to the record of a deceased, incapacitated, or missing person. The family member or legal representative must submit proof of his or her proper interest with the application.

(c) No application shall be docketed or processed until it is complete. An

application for relief is complete when all of the following have been received by the Board:

(1) A signed DD Form 149, providing all necessary responses, including a specific allegation of error or injustice, accompanied by substantial evidence or information in support of such allegation;

(2) The military records of the applicant; and

(3) Any applicable military and Department of Veterans Affairs medical records.

(d) It is the applicant's responsibility to include his or her correct mailing address on the DD Form 149 and to inform the Chair in writing of any subsequent change of address until the Board or the Secretary takes final action on the application.

(e) Briefs in support of applications must be assembled in a manner that permits easy reproduction and may not exceed twenty-five double-spaced typewritten pages in a type size with no more than twelve characters per inch. This limitation does not apply to supporting documentary evidence. In complex cases, the Chair may waive this limitation.

§ 52.22 Time limit for filing application.

An application for correction of a record must be filed within three years after the applicant discovered or reasonably should have discovered the alleged error or injustice. If an application is untimely, the applicant shall set forth reasons in the application why it is in the interest of justice for the Board to consider the application. An untimely application shall be denied unless the Board finds that sufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file timely.

§ 52.23 Counsel.

(a) Applicants may be represented by counsel at their own expense. Applicants whose cases are processed under the Whistleblower Protection Act and who are granted a hearing by the Board may be entitled to representation by a Coast Guard law specialist. 10 U.S.C. 1034(f)(3)(A).

(b) As used in this part, the term ''counsel'' includes attorneys who are members in good standing of any bar; accredited representatives of veterans' organizations recognized by the Secretary of Veterans Affairs pursuant to 38 U.S.C. 5902; and other persons who, in the opinion of the Chair, are competent to represent the applicant for correction. Whenever the term ''applicant'' is used in these rules, except in § 52.21(c), the term shall mean an applicant or his or her counsel.

§ 52.24 Evidence and burden of proof.

(a) It is the responsibility of the applicant to procure and submit with his or her application such evidence, including official records, as the applicant desires to present in support of his or her case. All such evidence should be submitted with the applicant's DD Form 149 in accordance with § 52.21(c)(1). Evidence submitted by an applicant after an application has been filed and docketed shall be considered late and its acceptance is subject to the provisions in § 52.26(a)(4) and (c).

(b) The Board begins its consideration of each case presuming administrative regularity on the part of Coast Guard and other Government officials. The applicant has the burden of proving the existence of an error or injustice by the preponderance of the evidence.

§ 52.25 Access to official records.

The applicant shall have such access to official records or to any information pertaining to the applicant which is in the custody of the Coast Guard as is provided in 49 CFR parts 7 and 10.

§ 52.26 Right to timely decision; effect of requests for extensions, changes in requests for relief, and late submissions of evidence.

(a) Each applicant has a right to have final action taken on his or her application within 10 months after all the elements of a complete application, as defined in § 52.21(c), have been received by the Board, unless the applicant:

(1) Submits a written request, which is granted by the Chair, for an extension of a specific duration to seek counsel or additional evidence;

(2) Submits a written request, which is granted by the Chair, for an extension of the time provided for responding to the views of the Coast Guard in accordance with § 52.42(d);

(3) Submits a signed statement that is determined by the Chair to significantly amend the applicant's request for relief after the application has been docketed;

(4) Submits significant new evidence, as determined by the Chair, after the application has been docketed; or

(5) Is found by the Chair to have unreasonably delayed responding to a request for further information or evidence.

(b) If the applicant requests an extension in accordance with paragraphs (a)(1) or (a)(2) of this section or unreasonably delays responding to a request for further information or evidence in accordance with paragraph (a)(5) of this section, he or she shall have a right to have final action taken on the application for correction within 10 months of the application's completion plus all periods of extension granted to the applicant by the Chair and all periods of unreasonable delay.

(c) If the applicant significantly amends his or her request for relief or submits significant new evidence after the application has been docketed, in accordance with paragraphs (a)(3) or (a)(4) of this section, the application shall be considered newly complete as of the date the amended request for relief or new evidence is received, in which case the applicant shall have a right to have final action taken on the application within 10 months of the date the Board receives the amended request for relief or significant new evidence.

§ 52.27 Withdrawal of application.

The Chair may, at his or her discretion, permit the applicant to withdraw his or her application at any time before final action is taken under § 52.64. Any further consideration by the Board of the issues raised in the withdrawn application shall occur only upon the filing of a new application.

§ 52.28 Stay of proceedings.

An application to the Board for correction of a military record does not operate as a stay of any proceeding or administrative action taken with respect to or affecting the applicant.

Subpart D—Consideration of Application and Administrative Closure

§ 52.31 Consideration of application.

Each application shall be reviewed by the Chair to determine whether it meets the requirements of § 52.21 before it is docketed. The Chair shall decide in appropriate cases whether to grant a hearing or to recommend disposition on the merits without a hearing.

§ 52.32 Administrative closure.

(a) The Chair may administratively close a case after it has been docketed and at any time prior to its consideration by the Board if the Chair determines that:

(1) The application was erroneously docketed because the application did not meet the criteria under § 52.21;

(2) Effective relief cannot be granted by the Board;

(3) The Board does not have jurisdiction to determine the issues presented or the applicant has not exhausted an available administrative remedy, as required under § 52.13(b); or

(4) The Coast Guard has granted effective relief satisfactory to the applicant.

(b) Administrative closure does not constitute a denial of relief. Applicants who believe their cases should not have been administratively closed by the Chair may resubmit their applications with a request for further consideration and a statement explaining why the applicant believes his or her case should be docketed and considered by the Board. A request for further consideration shall be regarded as a new application for the purposes of §§ 52.21 and 52.26.

(c) If the Chair administratively closes a case, the applicant shall be advised of the reason and of the right to resubmit his or her application.

Subpart E—Submissions by the Coast Guard and Other Offices

§ 52.41 Assistance.

The Board may request such advice, opinion, assistance, or use of the facilities of any other bureau, board, or office of the Department of Transportation as the Board deems necessary.

§ 52.42 Views of the Coast Guard.

(a) The Board shall transmit to the Commandant of the Coast Guard or his or her delegate a copy of each application for relief submitted and docketed under subpart C of this part, together with any briefs, memoranda, and documentary evidence submitted or obtained in the case.

(b) The Commandant of the Coast Guard or his or her delegate may forward to the Board a written advisory opinion presenting the views of the Coast Guard on any case before the Board.

(c) An advisory opinion furnished by the Coast Guard under this section shall not be binding upon the Board, but shall be considered by the Board, along with all other information and material submitted in the particular case, if it is received by the Board within 135 days of the date the application is complete. The Chair may, in his or her discretion, grant the Coast Guard an extension of the time provided for submitting the advisory opinion.

(d) The Board shall promptly send a copy of each submission made by the Coast Guard under this section to the applicant involved, subject to the limitations in §§ 52.42(c) and 52.43(c). Each applicant has 30 days, from the date the Board sends the submission, to submit to the Board a written rebuttal or response to the Coast Guard's advisory opinion or a written request for an extension of the time to respond, subject to the provisions in § 52.26.

(e) Advisory opinions submitted by the Coast Guard and briefs submitted by applicants in response to the advisory opinions of the Coast Guard must be assembled in a manner that permits easy reproduction and may not exceed fifteen double-spaced typewritten pages in a type size with no more than twelve characters per inch. This limitation does not apply to supporting documentary evidence. In complex cases, the Chair may waive this limitation.

§ 52.43 Requests for further information; submissions of classified, privileged, and sensitive information.

(a) The Chair or the Board may ask the applicant to submit additional information not included in the application or response to the advisory opinion.

(b) The Chair or the Board may ask the Coast Guard or other Government office to submit any information, including reports of investigations, that the Chair or the Board deems relevant to an applicant's case.

(c) Whenever the Coast Guard or other Government office submits classified, privileged, or sensitive information to the Board in accordance with paragraph (b) of this section or § 52.42(b), it shall identify such information and also provide the Board with a copy of that part of the information that would be released to the applicant by the Coast Guard or other Government office if he or she requested it under 49 CFR parts 7 and 10. The Board shall forward only this redacted copy to the applicant.

Subpart F—Hearings

§ 52.51 General provision.

In each case in which the Chair determines that a hearing is warranted, the applicant will be entitled to be heard orally in person, by counsel, or in person with counsel.

§ 52.52 Notice of hearing.

(a) If the Chair determines that a hearing is warranted, the Chair shall notify the applicant that a hearing has been granted.

(b) The date of hearing shall be not less than 21 days from the date of this notification. Written notice stating the date, time, and place of the hearing shall be given to the applicant and the Coast Guard.

§ 52.53 Witnesses.

(a) In any case in which the Chair has granted a hearing, the applicant shall have the right to present witnesses.

(b) It is the responsibility of the applicant to notify his or her witnesses and to ensure their appearance at the date, time, and place set for the hearing.

§ 52.54 Expenses.

No expenses of any nature whatsoever incurred by an applicant, his or her counsel, witnesses, or others acting on behalf of the applicant shall be paid by the Government, except that an applicant may be entitled to representation by a Coast Guard law specialist if the case has been processed under the Whistleblower Protection Act. 10 U.S.C. 1034(f)(3)(A).

§ 52.55 Nonappearance.

An applicant who fails without good cause to appear in person or by counsel at the appointed date, time, and place for hearing, is deemed to have waived the right to a hearing. The application is then considered by the Board on the basis of all the material of record.

§ 52.56 Conduct of hearing.

(a) The Chair or the Chair's designee shall conduct a hearing so as to ensure a full and fair presentation of the evidence.

(b) The hearing is not limited by legal rules of evidence, but reasonable standards of competency, relevancy, and materiality are observed for the receipt and consideration of evidence.

(c) All testimony shall be given under oath or affirmation.

§ 52.57 Record of hearing.

A hearing pursuant to this subpart in open session shall be recorded verbatim and, at the discretion of the Board or direction of the Secretary, shall be transcribed.

Subpart G—Judgment and Disposition

§ 52.61 Deliberations and decision.

(a) The Board is convened at the call of the Chair and its meetings are recessed or adjourned by order of the Chair. Only members of the Board and its staff may be present during the deliberations of the Board. The Board's deliberations are conducted in executive session and are not reported.

(b) When the Board finds that the facts have not been fully and fairly disclosed by the records, testimony, and any other evidence before the Board, the Board may request the applicant and/or the Coast Guard to obtain and submit such further evidence as it considers essential to a complete and impartial understanding of the facts and issues.

(c) Following the receipt of all evidence, the Chair shall cause to be prepared and shall submit to the Board for its consideration a draft decision containing proposed findings and conclusions and a proposed order. A

majority vote of the members of the Board present at a meeting on any matter relating to a draft decision before the Board shall constitute the action of the Board. If a draft decision is approved by the Board, it shall become a decision of the Board.

(d) The decision of the Board shall specify any change, correction, or modification of records to be made by the Coast Guard, and any other action deemed necessary to provide full and effective relief, which may include directing the Coast Guard to convene medical boards.

(e) If the Board deems it necessary to submit a comment or recommendation to the Secretary as to a matter arising from, but not directly related to, the issues in a case, it does so by separate communication.

§ 52.62 Minority report.

In case of disagreement among Board members, a minority report may be submitted dissenting from or concurring with the decision of the Board.

§ 52.63 Record of proceedings.

(a) The Board shall prepare a complete record of each proceeding. The record shall include the application for relief; the written views of the Coast Guard, if any; any transcript of testimony; affidavits and documents considered by the Board; briefs and written arguments filed in the case; the findings, decisions, and recommendations of the Board; minority reports, if any; and all other materials necessary to reflect a true and complete history of the proceedings.

(b) After final action has been taken on an application in accordance with § 52.64, any classified, privileged, or sensitive information in the record of proceedings that has been provided by the Coast Guard or another Government office in accordance with §§ 52.42 or 52.43 shall be returned by the Board to the office from which it was received. Only a copy of the information provided by the Coast Guard or other Government office for release to the applicant in accordance with § 52.43(c) shall be retained in the permanent record of proceedings after final action is taken.

§ 52.64 Final action.

(a) The Board, provided that it acts unanimously, may take final action on behalf of the Secretary, pursuant to 10 U.S.C. 1552, as follows:

(1) The Board may deny an application for the correction of military records.

(2) Unless the Coast Guard, in submitting its views pursuant to § 52.42(b), identifies and describes a significant issue of Coast Guard policy challenged in the application, the Board may approve an application for the correction of military records in any of the following categories:

(i) An application to correct an enlistment or reenlistment contract or agreement to extend an enlistment for the purpose of effecting or increasing entitlement to a Selective Reenlistment Bonus;

(ii) An application to modify an election to participate in the Survivor Benefit Plan;

(iii) An application to change a reenlistment eligibility code;

(iv) An application to correct the character of, or reason for, a discharge or separation; or

(v) An application to receive a medal or award.

(3) The Board may approve any application for correction of military records not included in one of the categories in paragraph (a)(2) of this section, if the Coast Guard recommends the same or substantially same relief as that requested by the applicant.

(b) Except in cases where the Board takes final action under paragraph (a) of this section, the Board shall forward the record of its proceedings to the Secretary, who may approve, disapprove, or concur in the decision of the Board or the minority report, if any, either in whole or in part, and amend the order of the Board accordingly, or return the case to the Board for additional consideration. After taking final action, the Secretary shall send any such statement and the record of proceedings to the Board for disposition.

§ 52.65 Orders.

(a) The Board shall issue such orders or directives as may be necessary to carry out a final action.

(b) The Board may ask the Coast Guard to submit a written report to the Board specifying the action taken and the date thereof with respect to any final action.

(c) Unless doing so is likely to nullify the relief granted, copies of the final decision shall be placed in the military record of the applicant.

§ 52.66 Notification.

After final action is taken under § 52.64, the Board shall send a copy of the final decision to the applicant. The applicant may inspect the permanent record of proceedings at Board offices.

§ 52.67 Reconsideration.

(a) Reconsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section.

(1) An applicant presents evidence or information that was not previously considered by the Board and that could result in a determination other than that originally made. Such new evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or

(2) An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

(b) The Chair shall docket a request for reconsideration of a final decision if it meets the requirements of paragraph (a)(1) or (a)(2) of this section. If neither of these requirements is met, the Chair shall not docket such request.

(c) The Board shall consider each application for reconsideration that has been docketed. None of the Board members who served on the Board that considered an applicant's original application for correction shall serve on the Board that decides the applicant's application upon reconsideration.

(d) Action by the Board on a docketed application for reconsideration is subject to §§ 52.26 and 52.64(b).

(e) An applicant's request for reconsideration must be filed within two years after the issuance of a final decision, except as otherwise required by law. If the Chair dockets an applicant's request for reconsideration, the two-year requirement may be waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.

Subpart H—Payment of Claims and Implementation of Orders

§ 52.71 Authority to pay.

(a) The Coast Guard is authorized to pay the claims of any person as the result of any action heretofore or hereafter taken under 10 U.S.C. 1552.

(b) The Coast Guard is not authorized to pay any claim heretofore compensated by Congress through enactment of private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

§ 52.72 Implementation of orders.

(a) In each case the Board shall transmit a copy of its decision or the

Secretary's decision to the proper Coast Guard authority for determination of monetary benefits due, if any, as a result of the action of the Board and for corrections of the military record ordered by the Board.

(b) Upon request, the claimant is required to furnish to the Board or to the Coast Guard any information necessary to determine the proper parties to the claim for payment under applicable provisions of law.

(c) Appropriate records shall be examined in light of the Board's decision to determine all amounts which may be due. Amounts found due are subject to setoff in the amount of any existing indebtedness to the Government arising from Coast Guard service and to other setoffs required by law or regulation.

(d) At the time of payment, the claimant shall be advised as to the nature and amount of the various benefits represented by the total settlement, and of the fact that acceptance of the settlement constitutes a complete release by the claimant of any claim against the United States on account of the correction of record ordered by the Board.

§ 52.73 Interpretation.

If the intent or import of the final decision is not clear to the Coast Guard, if the Coast Guard believes that executing all or part of the order in the final decision is beyond the Coast Guard's authority, or if the Coast Guard believes that the order is incomplete because of an oversight, the final decision shall be returned to the Board for clarification or technical amendment.

§ 52.74 Report of settlement.

When payment is made pursuant to the order of the Board, the Board may request the Coast Guard to notify it of the name of any person to whom payment was made and of the amount of the payment.

Subpart I—Public Access to Decisions

§ 52.81 Reading room and index.

After deleting only so much personal information as is necessary to prevent an unwarranted invasion of privacy of the applicant or other persons mentioned in the final decision of the Board, a redacted copy of each final decision shall be indexed by subject and made available for review and copying at a public reading room. Final decisions created on or after November 1, 1996, shall be made available by electronic means. 5 U.S.C. 552.

[FR Doc. 03–4767 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–143]

RIN 2115–AE47

Drawbridge Operation Regulations: Jamaica Bay and Connecting Waterways, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the operation of the New York City highway bridge, mile 0.8, across Mill Basin on Belt Parkway at New York City, New York. This temporary final rule will allow the bridge to remain closed to vessel traffic from 7 a.m. on February 24, 2003 through 5 p.m. on April 14, 2003. This action is necessary to facilitate the installation of median safety barriers at the bridge.

DATES: This rule is effective from February 24, 2003 through April 14, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–143) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, MA 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this final rule effective in less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest because the work to be performed under this temporary final rule is necessary safety modifications that are scheduled to be performed when the bridge receives the fewest number of requests to open.

On December 27, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Jamaica Bay and Connecting Waterways, New York, in the **Federal Register** (67 FR 79012). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The New York City highway bridge has a vertical clearance of 34 feet at mean high water, and 39 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.795(b).

The bridge owner, New York City Department of Transportation, requested a temporary bridge closure to install median safety barriers between the vehicular travel lanes at the bridge.

The bridge presently has no median safety barriers between the vehicular travel lanes that pass over the moveable lift spans at the bridge. There have been many serious head on automobile accidents at this bridge as a result of the absence of median safety barriers.

The average traffic count is 140,000 vehicles a day. There have been seven (7) head-on travel lane crossover accidents over the past several years, four (4) resulting in fatalities. These accidents resulted from the absence of a median safety barrier separating the opposite vehicular travel lanes.

The installation of the median safety barriers is considered necessary safety repairs that should be performed without delay.

In order to facilitate this structural work the bridge must remain in the closed position for the passage of vessel traffic from 7 a.m. on February 24, 2003 through 5 p.m. on April 14, 2003.

The time frame requested to perform this necessary safety work, February 24, 2003 through April 14, 2003, is the best time to perform this work because the bridge has historically had very few requests to open during that time period. In 2001 only one commercial vessel transit required a bridge opening and in 2002 only three commercial vessel transits required bridge openings between February 24 and April 14.

During the last ten days of the above closure the bridge will be balanced and tested. A limited number of bridge openings would be available for the passage of vessel traffic during the time period the bridge will be balanced and tested.

The Coast Guard believes this temporary final rule is reasonable because this work is essential for public

safety and will be performed when the bridge has the fewest number of requests to open.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that the waterway users who normally navigate Mill Basin are predominantly recreational vessels. There are four commercial facilities, two recreational vessel marinas, and two recreational/commercial vessel repair yards upstream from the bridge.

The time period the bridge will be closed is historically the time period during which the fewest requests are made to open the bridge. Between February 24 and April 14, 2001, only one commercial vessel transit required the bridge to open. Only three commercial vessel transits required bridge openings during the same period in 2002.

Vessels that can pass under the bridge without a bridge opening may do so at all times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the waterway users who normally navigate Mill Basin are predominantly recreational vessels. There are four commercial facilities, two recreational vessel marinas, and two recreational/commercial vessel repair yards upstream from the bridge.

The time period the bridge will be closed is historically the time period during which the fewest requests are made to open the bridge. Between February 24 and April 14, 2001, only one commercial vessel transit required the bridge to open. Only three commercial vessel transits required bridge openings during the same period in 2002.

Vessels that can pass under the bridge without a bridge opening may do so at all times.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because

promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From February 24, 2003 through April 14, 2003, in § 117.795, paragraph (b) is temporarily suspended, and a new temporary paragraph (d) is added, to read as follows:

§ 117.795 Jamaica Bay and Connecting Waterways.

* * * * *

(d) The draw of the New York City highway bridge, mile 0.8, across Mill Basin on Belt Parkway, need not open for the passage of vessel traffic from 7 a.m. on February 24, 2003 through 5 p.m. on April 14, 2003.

Dated: February 10, 2003.

John L. Grenier,

Captain, Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–4761 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 140–2; FRL–7457–8]

Conditional Approval of Implementation Plan; Indiana; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comments, the EPA is withdrawing the direct final rule which conditionally approved the revisions to Indiana's State Implementation Plan for the Prevention of Significant Deterioration provisions for attainment areas. In the direct final rule published on January 15, 2003 (68 FR 1970), EPA stated that if EPA receives adverse comments by February 14, 2003, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments, and will address these comments in a subsequent final action based upon the proposed action also published on January 15, 2003 (68 FR 1970). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: This direct final rule is withdrawn as of March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Capasso, Environmental Scientist, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–1426.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxide, Volatile organic compounds.

Dated: February 19, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

Accordingly, the addition of 40 CFR 52.770 (c)(147) is withdrawn as of March 3, 2003.

[FR Doc. 03–5023 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 140–3; FRL–7457–3]

Conditional Approval of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Indiana Department of Environmental Management (IDEM) has submitted to EPA requested revisions to its Prevention of Significant Deterioration (PSD) State Implementation Plan (SIP). Due to the receipt of adverse comments, EPA is withdrawing its January 15, 2003 direct final action, which conditionally approved the state's submission. In this action, EPA responds to the public comments received, and takes final action to conditionally approve Indiana's PSD provisions.

DATES: This rule is effective on April 2, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Please contact Julie Capasso at (312) 886–1426 before visiting the Region 5 office. Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Julie Capasso, Environmental Scientist, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–1426.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

A. What is the background of this action?
B. What comments did EPA receive and what are EPA's responses?
C. What action is EPA taking today?
D. Statutory and Executive Order Reviews

A. What Is the Background of This Action?

EPA is approving revisions to Indiana's SIP for PSD. IDEM submitted these revisions to EPA on February 1, 2002, following an informal review by EPA in which a number of issues were identified and resolved by the two agencies. On January 15, 2003, EPA published a direct final rule conditionally approving these revisions (68 FR 1970). On the same date, EPA also proposed to approve the revisions (68 FR 1998). In a separate action, we withdrew the direct final rule because we received adverse comments. The proposed approval remained in effect. Today we are responding to those comments and taking final action to conditionally approve Indiana's SIP revision request.

In our January 15, 2003 direct final rulemaking, we discussed the history of Indiana's PSD program, the contents of the State's submission and our analysis. Please consult that document for further information on those matters.

On December 31, 2002, EPA published revisions to its New Source

Review (NSR) regulations, including PSD (67 FR 80186). These revisions, which do not take effect until March 3, 2003, will change existing NSR requirements in a number of ways. States which have approved programs under 40 CFR part 51 (as Indiana now has as a result of today's action), will have up to three years in which to adopt and submit revisions implementing the new requirements.

B. What Comments Did EPA Receive and What Are EPA's Responses?

EPA received the comments described below from a number of parties, including corporations, trade associations and private citizens.

Comment: The proposed SIP does not comport with current EPA requirements because it does not incorporate the alternative fuel/raw material exemption of 40 CFR 51.166(b)(2)(iii)(e). The commentor contends that this omission is significant because it means that Indiana's rule fails to provide an exemption for ''certain anticipated operational fluctuations, thereby potentially triggering [NSR] in Indiana for otherwise federally exempt minor modifications.''

Response: As noted in EPA's January 15, 2003 direct final rulemaking notice, this provision may inadvertently allow changes prohibited in a previously-issued minor construction permit to qualify for the alternative fuel/raw material exemption. Indiana's regulatory language does not prevent minor sources from applying this provision when appropriate to avoid PSD applicability. As EPA also previously noted, Indiana has agreed to address this inadvertent omission within one year of the effective date of approval (68 FR 1971). EPA does not believe that this minor, inadvertent omission warrants the disapproval of the rules.

Comment: Indiana's rule fails to address ''pollution control projects.''

Response: Currently, federal PSD regulations provide an exemption only for pollution control projects installed at electric utility steam generating units. As a result, Indiana did not submit to EPA for approval of its provision extending the exemption to non-utility sources; and EPA, therefore, could not take any action on the State's provision.

Comment: The Indiana regulations include a definition of ''pollution control project.'' In addition, Indiana regulations omit the word ''utility'' from the term ''electric utility steam generating unit'' in the pollution control project exclusion portion of the definition of ''major modification'' in 326 IAC 2–2–1(x)(2)(H).

Response: As stated above, IDEM did not submit its pollution control project provision to EPA. Therefore, this definition is merely extraneous. In addition, any comments relative to this provision are not relevant.

Comment: IDEM's Office of Environmental Adjudication (OEA) does not provide the same amount of time to file an appeal of a PSD determination as does EPA's Environmental Appeals Board under 40 CFR 124.19. In addition, if an appellant sought to stop construction of a facility, the OEA would require the posting of an appeal bond, something not required under the federal procedures in 40 CFR part 124.

Response: After communications with IDEM's Office of Legal Counsel, it is EPA's understanding that, although there is no provision for an extension of the 15-day filing period, a party may amend and supplement its timely petition for review after filing. EPA also understands that, under Indiana law, a party appealing a PSD permit to the OEA may request a stay of that permit, and that no appeal bond is required.

Comment: 326 IAC 2–1.1–6(a)(5) is written as if a public hearing is optional. The Indiana regulations do not meet or exceed the requirements of 40 CFR 51.166(q)(2)(iii) and do not provide informed public participation in accordance with congressional intent. There appears to be no provision under the Indiana PSD rules for the extension of comment time (see 40 CFR 124.13).

Response: With respect to public participation, Indiana's rules conform with applicable EPA regulations at 40 CFR 51.166. In addition, under Indiana Code 4–21.5, IDEM must individually notify potentially affected parties (which include all commentors) of its final decision. Historically, IDEM's practice has been to go beyond the minimum legal requirements by providing internet postings of applications received, permits subject to public notice and permits issued. IDEM also directly notifies potentially affected parties, which would include previous commentors and contiguous landowners. Also, IDEM has historically granted additional public comment time when it deems it necessary. 40 CFR 124.13 does not mandate that the permitting authority automatically grant additional public comment time upon any request. As a result of the above, EPA does not believe that any procedural differences which may exist between the state and federal programs warrant disapproval.

Comment: There is nothing in 40 CFR part 52, as it is now or as amended by this final approval, stating that Indiana is or would be an approved State to issue PSD permits. EPA has not amended 40 CFR 52.793, which incorporated the federal PSD rules into Indiana's SIP.

Response: Our final action amends the SIP at 40 CFR 52.770(c)(147) to incorporate the Indiana PSD rules into the SIP.

This amendment approves the Indiana PSD program as part of the SIP, thus giving Indiana the authority to issue PSD permits under its own regulations. Our approval of the SIP, therefore, supercedes 40 CFR 52.793.

Comment: Indiana omitted the word ''national'' from the term ''ambient air quality standards'' in 326 IAC 2–2–5(a)(1), so as to be able to invoke 326 IAC 1–3 rather than 40 CFR part 50, the national ambient air quality standards.

Response: Indiana has incorporated the national ambient air quality standards from 40 CFR part 50 into 326 IAC 1–3. The omission of the word ''national'' has no bearing on the approvability of 326 2–2–5(a)(1).

Comment: Indiana regulations have no text resembling 40 CFR 50.10 and 40 CFR part 51, Appendix I, the revised 8-hour ozone standard.

Response: States are not currently required to address the revised ozone standard in their PSD SIPs.

Comment: A number of commentors asserted that EPA should not approve Indiana's current PSD program, but instead rely on the PSD/NSR rules published in the **Federal Register** on December 31, 2002. They further claimed that failure to do so would: (1) Put both the State and Indiana sources at a disadvantage; (2) subject Indiana sources to conflicting PSD obligations; (3) preclude Indiana sources from ''tak[ing] advantage of the improvements'' under the December 31, 2002 rules, including provisions for ''plant-wide applicability limits'' and ''clean units;'' and (4) delay implementation of new rules by three years. One commentor also noted that this makes EPA's conditional approval of Indiana's PSD program problematic because the Indiana regulations must be compared to the 2002 revisions to the Federal NSR rules when the conditional approval issue is corrected and submitted to EPA for approval.

Response: On September 11, 1980, EPA delegated to IDEM the authority to implement and enforce the Federal PSD program. Since that time, Indiana has devoted considerable time and energy to develop its own regulations, for approval by EPA and incorporation into Indiana's SIP. For the reasons provided in EPA's January 15, 2003 direct final rulemaking and in today's action, EPA believes that Indiana's revisions are

approvable under the currently effective regulations at 40 CFR 51.166; and that EPA, in fact, has no choice but to approve them.

The state rules EPA is approving today are now effective as a matter of Federal and state law, providing clarity and certainty to subject Indiana sources. Once the 2002 revisions to the Federal NSR rules become effective, Indiana will then have the opportunity—if it so desires—of revising its rules and submitting them for Federal approval into the SIP. More specifically, Indiana will have up to January 2, 2006 in which to review and analyze the new Federal rules, and then determine whether to adopt and submit the same rules, or ''customize'' its program with ''different but equivalent regulations'' (67 FR 80241).

With regard to the impact of NSR revisions on the ''conditional'' nature of this approval, EPA notes that there is actually only one provision at issue: Indiana's omission of rule language that would specifically exclude changes prohibited in a previously-issued minor construction permits from the alternative fuel/raw material exemption under the definition of ''major modification.'' In response to the commentor's question as to how EPA could fully approve Indiana's program once revised Federal NSR rules are in effect, EPA notes that the revised Federal NSR rules to which the commentor refers actually adopt the same approach with regard to the applicable definition, *i.e.*, that provision would not be revised. Furthermore, and given the uncertainty as to what the applicable Federal requirements may be in one year, disapproval of Indiana's submission because of such a minor omission is not warranted.

Comment: Once comments have been addressed, EPA should provide an additional opportunity for public input.

Response: The Administrative Procedure Act guarantees opportunities for public review and comment in the SIP approval process, and we make every effort to provide opportunity for meaningful and extensive public participation. For this action, we provided a public comment period from January 15, 2003, to February 14, 2003. Once the public has commented, we must respond to issues raised, reach a final decision, and take action. Since we are responding to all comments we received regarding the SIP approval of the Indiana PSD program and we have determined that the commentors have not raised any issues warranting disapproval, we must take final action.

Comment: Indiana has issued a permit which does not conform with the applicable requirements.

Response: This comment is not relevant to today's action.

We also received comments regarding the experience and background of the OEA judges which are not relevant to the approvability of the Indiana PSD regulations. Therefore, we are not responding to those comments in this action. In addition, a commentor requested, as a response to comments, information on previous instances of PSD injunctive relief and information on work hours invested by EPA regarding the Indiana PSD regulations. These requests are not relevant to the approvability of the Indiana PSD regulations and we are not responding to these requests in this action. Requests for information from EPA should be made using the appropriate Freedom of Information Act procedures.

C. What Action Is EPA Taking Today?

EPA is conditionally approving the following rules as part of Indiana's SIP: 326 IAC 2–2–1, Definitions; 326 IAC 2–2–2, Applicability; 326 IAC 2–2–3, Control technology; 326 IAC 2–2–4, Air quality analysis; 326 IAC 2–2–5, Air quality impact; 326 IAC 2–2–6, Increment consumption requirements; 326 IAC 2–2–7, Additional analysis; 326 IAC 2–2–8, Source obligation; 326 IAC 2–2–9, Innovative control technology; 326 IAC 2–2–10, Source information; 326 IAC 2–2–11, Stack height provisions; 326 IAC 2–2–12, Permit recission; 326 IAC 2–2–13, Area designation and redesignation; 326 IAC 2–2–14, Sources impacting Federal Class I areas: additional requirements; 326 IAC 2–2–15, Public participation; 326 IAC 2–2–16, Ambient air ceilings; 326 IAC 2–1.1–6, Public notice, and 326 IAC 2–1.1–8, Time periods for determination on permit applications.

As noted in EPA's January 15, 2003 direct final rulemaking, EPA believes that it is appropriate to grant conditional approval. However, should Indiana fail to correct the identified deficiency within one year of this action, EPA will initiate withdrawal of this approval. In addition, while EPA is approving Indiana's PSD SIP, EPA recognizes that it has a responsibility to insure that all states properly implement their preconstruction permitting programs. EPA's approval of the State's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Indiana are consistent with the requirements of the CAA, EPA regulations, and the SIP. EPA's authority to oversee PSD program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not ''conform to the requirements of'' the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that a State ''is not acting in compliance with'' any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of Title V of the CAA and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by states. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to Title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is ''not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan.''

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or both, EPA cannot intervene unless the state decision fails to comply with applicable requirements. Thus, EPA may not intrude upon the significant discretion granted to states under new source review programs, and will not ''second guess'' state decisions. Rather, in determining whether a Title V permit incorporating PSD provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining best available control technology, assessing air quality impacts, meeting Class I area requirements, and other PSD requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable

grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD permit were properly incorporated into the operating permit.

D. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rulefor the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 24, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

2. Section 52.770 is amended by adding (c)(147) to read as follows

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(147) On February 1, 2002, Indiana submitted its Prevention of Significant Deterioration rules as a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Title 326 of the Indiana Administrative Code, Rules 2–2–1, 2–2–2, 2–2–3, 2–2–4, 2–2–5, 2–2–6, 2–2–7, 2–2–8, 2–2–9, 2–2–10, 2–2–11, 2–2–12, 2–2–13, 2–2–14, 2–2–15, 2–2–16. Filed with the Secretary of State on March 23, 2001, effective April 22, 2001. (B) Title 326 of the Indiana Administrative Code, Rules 2–1.1–6 and 2–1.1–8. Filed with the Secretary of State on November 25, 1998, effective December 25, 1998. Errata filed with the Secretary of State on May 12, 1999, effective June 11, 1999.

[FR Doc. 03–5024 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AD33

National Flood Insurance Program (NFIP); Standard Flood Insurance Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are increasing the limit of liability under Coverage D—Increased Cost of Compliance (ICC) of the Standard Flood Insurance Policy from $20,000 to $30,000. New information has led us to decrease our estimate of annual ICC claims, and based on this decrease, we believe the limit of liability can be increased with no change in premium.

EFFECTIVE DATE: May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Hayes, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, 202–646–3419, (facsimile) 202–646–7970, or (email) *Thomas.Hayes@fema.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1999, we published at 64 FR 70191 a final rule that increased the limit of liability under Coverage D—Increased Cost of Compliance of the Standard Flood Insurance Policy from $15,000 to $20,000. This is how we summarized our reasons for the increase in 1999 at 64 FR 70191:

''In making initial estimates of ICC claims, we had access to our loss experience from 1978 through 1994. The latest experience period for estimating ICC claims runs through 1998. Based on our additional experience with flood losses—losses large enough to trigger community declarations of substantial damage—we have decreased the number of expected annual ICC claims to a range of 2700–2900. On this basis, we are confident that the limit of liability for ICC coverage can be increased from $15,000 to $20,000 (a 33% increase) with no change in premiums.''

With this rule, we are proposing to further increase the limit of liability to $30,000.

First, the pricing for this coverage has to be actuarially sound with premiums varying, to the extent possible, by risk. Second, section 555 of the National Flood Insurance Reform Act of 1994, which mandates ICC coverage, sets a cap of $75 that we may charge for this coverage. Third, our previous estimate was that the number of policyholders receiving benefits under ICC coverage would be 2700–2900 each year. Fourth, we considered the uncertainties associated with the introduction of the product and which extend through the first few years of the coverage.

In making our revised estimate of ICC claims on which we based the increase in the coverage limit to the current level of $20,000, we relied on our loss experience available at the time—both for ICC during the limited time that it had been offered, and on our total program experience from 1978 through 1998. Based on our additional loss experience, which includes data through calendar year end 2001, and concentrating on losses large enough to trigger community declarations of substantial damage, we have further decreased our estimate of the expected annual number of ICC claims to a range of 2200–2500. On this basis, we are confident that the limit of liability can be increased from $20,000 to $30,000 (a 50% increase) with no change in premium. The number of ICC claims actually filed since the introduction of this coverage is small compared to the number that we expected based on our flood claims filed under building coverage. We intend to continue analyzing this discrepancy, make further adjustments in premium charges, coverage amounts, or both as warranted, and to continue our education efforts with policyholders and local officials to make sure that they adequately understand this coverage.

Administrative Procedure Act Determination

We are publishing this final rule without opportunity for prior public comment under the Administrative Procedure Act, 5 U.S.C. 553. This final rule is a rule of agency procedure or practice that is excepted from the prior public comment requirements of section 553(b). The rule makes nonsubstantive, nonsignificant changes to 44 CFR part 61 by conferring a benefit to flood insurance policyholders, increasing coverage for increased cost of compliance without an increase in premium.

National Environmental Policy Act (NEPA)

The requirements of 44 CFR part 10, Environmental Consideration, categorically exclude this final rule. We have not prepared an environmental impact assessment.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this final rule under E.O. 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. We have reviewed this proposed rule under E.O.13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. We do not foresee the rule affecting the distribution of power and responsibilities among the various levels of government or limiting the policymaking discretion of the States.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–1221. The rule is not a ''major rule'' within the meaning of that Act. It is an administrative action in support of normal day-to-day activities that increases a benefit to policyholders without increasing premiums. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfounded Federal mandate within the meaning of the Unfunded Mandate Reform Act of 1995, Public Law 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, we amend 44 CFR part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. In Appendix A(1) to part 61, revise the first sentence III. D. 2. to read as follows: Appendix A(1) to part 61, Federal Emergency Management Agency, Federal Insurance Administration, standard flood insurance policy, dwelling form.

III. * * *

D. * * *

2. *Limit of Liability.*

We will pay you up to $30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). * * *

* * * * *

3. In Appendix A(2) to part 61, revise the first sentence of III. D. 2. to read as follows: Appendix A(2) to part 61, Federal Emergency Management Agency, Federal Insurance Administration, standard flood insurance policy, general property form.

III. * * *

D. * * *

2. *Limit of Liability.*

We will pay you up to $30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). * * *

* * * * *

4. In Appendix A (3) to part 61, revise the first sentence of III. D. 2. to read as follows: Appendix A(3) to part 61, Federal Emergency Management Agency, Federal Insurance Administration, standard flood insurance policy, residential condominium building association policy.

III. * * *

D. * * *

2. *Limit of Liability.*

We will pay you up to $30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). * * *

* * * * *

Dated: February 26, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–4902 Filed 2–28–03; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7803]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Risk Communication Division, Federal Insurance and Mitigation Administration, 500 C Street, SW., Room 435, Washington, DC 20472, (202) 646–3443.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance, which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body

adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region IV				
North Carolina: Cramerton, Town of, Gaston County.	370321	May 21, 1992, Reg., March 3, 2003, Susp	3/3/03	3/3/03
Dallas, Town of, Gaston County	370322	October 7, 1992, Emerg.; May 1, 1994, Reg., March 3, 2003, Susp.	3/3/03	3/3/03
Gaston County, Unincorporated Areas	370099	April 16, 1976, Emerg.; May 1, 1980, Reg., March 3, 2003, Susp.	3/3/03	3/3/03
McAdenville, Town of, Gaston County	370101	September 7, 1979, Emerg.; June 1, 1987, Reg., March 3, 2003, Susp.	3/3/03	3/3/03
Ranlo, Town of, Gaston County	370324	December 19, 1989, Emerg., March 3, 2003, Reg., March 3, 2003, Susp.	3/3/03	3/3/03
Region V				
Wisconsin: Lincoln County, Unincorporated Areas	550585	March 8, 1976, Emerg.; February 19, 1986, Reg., March 3, 2003, Susp.	3/3/03	3/3/03
Region II				
New Jersey: Bernardsville, Borough of, Somerset County.	340429	December 17, 1971, Emerg.; March 1, 1978, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
New York: Rotterdam, Town of, Schenectady County.	360740	May 22, 1974, Emerg.; June 15, 1984, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Region V				
Illinois: Frankfort, Village of, Will County	170701	April 11, 1974, Emerg.; November 1, 1979, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Joliet, City of, Will County	170702	April 13, 1973, Emerg.; February 4, 1981, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Mokena, Village of, Will County	170705	June 12, 1974, Emerg.; August 1, 1979, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Monroe County, Unincorporated Areas	170509	April 20, 1973, Emerg.; May 15, 1986, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Shorewood, Village of, Will County	170712	May 15, 1974, Emerg.; November 1, 1979, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Will County, Unincorporated Areas	170695	April 22, 1974, Emerg.; April 15, 1982, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Wisconsin: Menasha, City of, Winnebago County	550510	April 25, 1973, Emerg.; April 3, 1978, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Neenah, City of, Winnebago County	550509	April 23, 1974, Emerg.; January 2, 1981, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Omro, City of, Winnebago County	550533	October 22, 1975, Emerg.; August 1, 1980, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Oshkosh, City of, Winnebago County	550511	November 12, 1971, Emerg.; May 16, 1977, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Winnebago County, Unincorporated Areas	550537	April 15, 1974, Emerg.; February 4, 1981, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Winneconne, Village of, Winnebago County	550512	August 15, 1975, Emerg.; August 1, 1980, Reg., March 17, 2003, Susp.	3/17/03	3/17/03

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: February 25, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–4859 Filed 2–28–03; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AD32

Disaster Assistance; Crisis Counseling Regular Program; Amendment to Regulation

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule.

SUMMARY: We, FEMA, are publishing an interim final rule to make a substantive change that would in limited circumstances allow the Assistant Associate Director to extend the deadline for the Crisis Counseling Regular Program. This rule takes effect immediately, but before publishing a final rule on this subject we ask for and invite comments from all interested and affected parties.

DATES: Effective date: March 3, 2003. Applicability date: This rule applies to Major Disasters Declared on or after September 11, 2001.

We invite comments on this interim final rule, which we should receive on or before May 2, 2003.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472, or (fax) (202) 646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Berl Jones, Community and Family Services Branch, Recovery Division, Federal Emergency Management Agency, room 609, 500 C Street, SW., Washington, DC 20472, or (fax) (202) 646–3978, or (email) *Berl.Jones@fema.gov.*

SUPPLEMENTARY INFORMATION: We are amending our regulations to allow FEMA greater flexibility to extend the program period for the Crisis Counseling Regular Program. Currently, the program period for the Crisis Counseling Regular Programs is 9 months, and may be extended by the Assistant Associate Director for an additional 90 days. Under the new rule, the program period generally may be extended beyond the initial 9 months, and the additional 90 days, in limited circumstances for major disasters with catastrophic impact, such as terrorist attacks or other disasters of a catastrophic nature.

Normally, we apply changes to our regulations under the Stafford Act only to disasters declared on or after the effective date of the rule. However, the effect on the public in the New York City and Washington, DC metropolitan areas after September 11, 2001, have caused us to reevaluate the time limitations we placed on the Crisis Counseling Regular Program. Previously, such assistance was limited, by regulation, to 9 months, with the possibility of a 90 day extension. We have determined the extension of the Crisis Counseling Regular Program beyond the usual 9 months plus the additional 90 days is necessary to address the needs of the public after the catastrophic events of September 11, 2001. We have determined that this regulation should apply to the Major Disasters declared in New York and Virginia as a result of the events of September 11, 2001.

National Environmental Policy Act

This interim final rule falls within the exclusion category at 44 CFR 10.8(d)(2)(ii), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. Qualifying for this exclusion and because no other extraordinary circumstances have been identified, this interim final rule will not require the preparation of either an environmental assessment or environmental impact statement as defined by the National Environmental Policy Act.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow, we have concluded that this rule is neither an economically significant nor a significant regulatory action under the Executive Order. The rule will accomplish one primary purpose: To allow in limited circumstances the Assistant Associate Director to extend the program period for the Crisis Counseling Regular Program. The Office of Management and Budget has not reviewed this rule under the principles of Executive Order 12866.

Paperwork Reduction Act

This interim final rule does not contain a collection of information and it therefore is not subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could ''have a significant economic impact on a substantial number of small entities.'' The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not ''have a significant economic impact on a substantial number of small entities.''

For the reasons that follow, I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This rule allows in limited circumstances the Assistant Associate Director to extend the program period for the Crisis Counseling Regular Program. The rule does not change in anyway the eligibility of small entities for disaster assistance.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies

must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion, since the rule merely extends the program period for the Crisis Counseling Regular Program.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

Administrative Procedure Act Statement

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to public interest. The public benefit of this rule is the ability to extend the program period for the Crisis Counseling Regular Program.

Therefore, we believe it is contrary to the public interest to delay the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), we find that there is good cause for the interim final rule to take effect immediately upon publication in the **Federal Register**.

In addition, we believe that, under the circumstances, delaying the effective date of this rule until after a comment period would not further the public interest. For these reasons, we believe we have good cause to publish an interim final rule.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Community facilities, Disaster Assistance, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Accordingly, Amend 44 CFR part 206 as follows:

PART 206—[AMENDED]

1. The authority citation of part 206 continues to read:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 F.R. 41943; 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 F.R. 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 F.R. 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 F.R. 12571, 3 CFR, 1989 Comp., p. 214.

2. Revise § 206.171 (g) (4) (i) to read as follows:

§ 206.171 Crisis counseling assistance and training.

* * * * *

(g) * * *

(4) * * *

(i) Shall not exceed 9 months from the date of the DHHS notice of grant award, except that upon the request of the State to the Regional Director and the Secretary, the Assistant Associate Director may authorize up to 90 days of additional program period because of documented extraordinary circumstances. In limited circumstances, such as disasters of a catastrophic nature, the Assistant Associate Director may extend the program period for more than 90 days where he or she deems it to be in the public interest.

* * * * *

Dated: February 26, 2003.

Joe M. Allbaugh,

Director.

[FR Doc. 03–4901 Filed 2–28–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[WT Docket No. 01–339; RM–10070; FCC 03–26]

Garmin International, Inc.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission (FCC) amends its rules to permit Family Radio Service (FRS) units to transmit global positioning system (GPS) location information using emission type F2D in a digital burst of not more than one second, and to permit brief text messaging between FRS units. With the exception of automatically responding to interrogation requests spaced less than 30 seconds apart, an FRS unit shall limit transmission of digital data containing location information, requesting location information from any other FRS unit, or containing any brief text message to another FRS unit, to no more than once within any thirty-second period. The amendment will better serve the public interest by allowing FRS units equipped to transmit location information utilizing GPS technology and permit communication between FRS units through the use of brief text messaging. Equipped with GPS, an enhanced unit can be used to locate a lost family or group member in the woods, or at an amusement park. FRS units capable of transmitting brief text messages will likely reduce channel congestion and increase the usefulness of the service.

DATES: Effective April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Jeannie Benfaida, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233, or via E-mail at *jbenfaid@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's *Report and Order,* FCC 03–26, adopted on February 3, 2003, and released on February 10, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. On December 20, 2001, we proposed to amend §§ 95.193(a), 95.193(b), and 95.631(d) of our Rules to revise the scope of permissible communications and emission types for FRS units. We initiated this proceeding in response to a petition filed by Garmin International, Inc. (Garmin), requesting that FRS units be allowed to transmit GPS location information using emission type F2D in a digital data burst of not more than one second. For the reasons explained further, we are revising our FRS rules to modify the authorized emission types and permissible communications to allow a new and incidental use of the FRS. We

believe that permitting the transmission of location information and text messages over FRS channels will benefit the public.

Procedural Matters

1. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

2. In this *Report and Order,* we authorize an individual to use a FRS unit to satisfy his or her need for non-voice communications for the purpose of providing information about the location of the FRS unit to other FRS units or transmitting text messages. The revised rules apply exclusively to individuals who use FRS units. The modifications are in the public interest because they would allow the public to take advantage of technological developments in equipment and service that have occurred since the authorization of the FRS, availability of equipment at reasonable prices, and the removal of Selective Availability from the GPS signal.

3. In addition, the rules modified in this *Report and Order* affect manufacturers of FRS units. Based on requests from manufacturers for certification of FRS units, we believe that there are between five and ten manufacturers of FRS units, and that none of these manufacturers are small entities. The rule change applies to individuals who use FRS units and does not result in a mandatory change in manufactured FRS units. Rather, the rule changes are permissive and would allow a manufacturer, if it so chooses, to include additional features in the FRS units it manufactures. Therefore, we certify that the modification in this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The FCC will send a copy of the *Report and Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the *Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

4. *Paperwork Reduction Analysis.* This *Report and Order* does not contain any new or modified information collection. Therefore it is not subject to the requirements for a paperwork reduction analysis, and the FCC has not performed one.

Ordering Clauses

5. Pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), that sections 95.193(a), 95.193(b), and 95.631(d) of the FCC's rules, 47 CFR 95.193(a), 95.193(b), and 95.631(d), are amended as set forth, effective April 2, 2003.

6. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

7. This proceeding is terminated.

List of Subjects in 47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble the FCC amends 47 CFR part 95 as follows:

PART 95—PERSONAL RADIO SERVICE

1. The authority citation for part 95 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

2. Section 95.193 is amended by revising paragraphs (a) and (b) to read as follows:

§ 95.193 (FRS Rule 3) Types of communications.

(a) You may use an FRS unit to conduct two-way voice communications with another person. You may use an FRS unit to transmit one-way voice or non-voice communications only to establish communications with another person, send an emergency message, provide traveler assistance, provide location information, transmit a brief text message, make a voice page, or to conduct a brief test.

(b) *Non-voice communications.* (1) The FRS unit may transmit tones to make contact or to continue communications with a particular FRS unit. If the tone is audible (more than 300 Hertz), it must be transmitted continuously no longer than 15 seconds at one time. If the tone is subaudible (300 Hertz or less), it may be transmitted continuously only while you are talking.

(2) The FRS unit may transmit digital data containing location information, or requesting location information from one or more other FRS units, or containing a brief text message to another specific FRS unit. Digital data transmissions must be initiated by a manual action or command of a user, except that an FRS unit receiving an interrogation request may automatically respond with its location. Digital data transmissions shall not exceed one second, and shall be limited to no more than one digital transmission within a thirty-second period, except that an FRS unit may automatically respond to more than one interrogation request received within a thirty-second period.

* * * * *

3. Section 95.194 is amended by adding paragraph (d) to read as follows:

§ 95.194 (FRS Rule 4) FRS Units.

* * * * *

(d) FRS units are prohibited from transmitting data in store-and-forward packet operation mode.

4. Section 95.401 is amended by revising the paragraph (b) as follows:

§ 95.401 (CB Rule 1) What are the Citizen Band Radio Services?

* * * * *

(b) The Family Radio Service (FRS)—a private, two-way, very short-distance voice and data communications service for facilitating family and group activities. The rules for this service are contained in subpart B of this part.

* * * * *

5. Section 95.631 is amended by revising paragraph (d) to read as follows:

§ 95.631 Emission types.

* * * * *

(d) An FRS unit may transmit only emission type F3E or F2D. A non-voice emission is limited to selective calling or tone-operated squelch tones to establish or continue voice communications, digital data

transmission of location information or text messaging.

* * * * *

4. Section 95.633 is amended by revising paragraph (c) to read as follows:

§ 95.633 Emission bandwidth.

* * * * *

(c) The authorized bandwidth for emission type F3E or F2D transmitted by a FRS unit is 12.5 kHz.

* * * * *

[FR Doc. 03–4869 Filed 2–28–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1540

Prohibited Items; Correction

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Interpretive rule; correction.

SUMMARY: This document makes a correction to the interpretive rule published in the **Federal Register** on February 14, 2003 (68 FR 7444), which provides guidance to the public on the types of property TSA considers to be weapons, explosives, and incendiaries that are prohibited in airport sterile areas and in the cabins of aircraft under the TSA regulations and the types of items that are permitted in sterile areas, the cabins of passenger aircraft, and in passengers' checked baggage. The TSA erroneously included the words ''non-refillable'' in the discussion of lighters under ''Permitted Items; Medical and Personal Items.'' This document removes this wording and clarifies the type of gas lighter permitted. In addition, TSA erroneously included in the interpretation a paragraph listing ''Other items'' allowed to be transported in checked baggage. Because these items are not allowed in checked baggage, this document removes that paragraph.

EFFECTIVE DATE: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: For technical questions contact Vicky Skelly, Aviation Security Specialist, Air Carrier Division, Office of Aviation Security Policy, TSA–9, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (571) 227–2641, e-mail *Vicky.skelly@tsa.dot.gov.* Legal questions may be directed to Ellen Siegler, Attorney, TSA–2, Chief Counsel; telephone (571) 227–2723, e-mail *ellen.siegler@tsa.dot.gov.*

SUPPLEMENTARY INFORMATION: On February 14, 2003 (68 FR 7444), TSA published an interpretive rule providing guidance on the types of property that TSA considers to be weapons, explosives, and incendiaries prohibited in airport sterile areas and in the cabins of aircraft under the TSA regulations. The interpretive rule also explained that certain items that are prohibited in sterile areas and cabins may be transported in checked baggage.

In the last sentence of the ending paragraph of the preamble discussion on permitted items (page 7446, first column, last sentence), as well as in the interpretation, on page 7446, in the third column, paragraph II.A.(9) erroneously included the words ''non-refillable'' to describe liquefied gas lighters. As both non-refillable (disposable) and refillable lighters (such as Colibri, Dunhill, and Ronson) are filled with liquefied butane gas and are equivalent from a security perspective, there is no reason to allow passengers to carry only non-refillable lighters of this type. Therefore, the words ''non-refillable'' have been removed and a clarifying reference to refillable, ''Colibri-type'' lighters has been inserted.

In the interpretation, on page 7447, in the first column, paragraph III.(6) erroneously listed the following as ''Other items'' that may be carried in checked baggage pursuant to strict conditions imposed by 49 CFR part 175: compressed air guns, fire extinguishers, flare pistols, and gun lighters. None of these items may be carried as checked baggage and should not have been included in this listing. Accordingly, this provision has been deleted from the interpretive rule.

Correction

In interpretive rule FR Doc. 03–3755, published on February 14, 2003 (68 FR 7444), make the following corrections:

1. On page 7446, in the first column, line 21, last sentence of preamble discussion paragraph on ''Permitted Items,'' is corrected to read as follows:

''Consistent with Department of Transportation regulations for hazardous materials, passengers also are permitted to carry no more than four books of matches (other than strike-anywhere matches) and no more than two lighters for individual use, if the lighters are fueled with liquefied gas (BIC-or Colibri-type) or absorbed liquid (Zippo-type).''

2. On page 7446, in the third column, paragraph II.A.(9) is corrected to read as follows:

''Lighters (maximum of two), fueled with liquefied gas (BIC-or Colibri-type) or absorbed liquid (Zippo-type).''

3. On page 7447, in the first column, remove the full paragraph III.(6), which begins ''*Other items.* Compressed air guns, * * *''.

Issued in Washington, DC, on February 26, 2003.

Mardi Ruth Thompson,

Deputy Chief Counsel for Regulations.

[FR Doc. 03–4920 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

50 CFR Parts 300 and 679

[Docket No. 020920220–3038–02; I.D. 090302E]

RIN 0648–AL97

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend portions of the regulations governing the halibut fishery under the Western Alaska Community Development Quota (CDQ) Program. These changes will increase the Regulatory Area (Area) 4E trip limit from 6,000 lb (2.72 metric tons (mt)) to 10,000 lb (4.54 mt) and modify the Area 4 Catch Sharing Plan (CSP) to allow CDQ Program participants to harvest allocations of Area 4D halibut CDQ in Area 4E. This action is intended to enhance harvesting opportunities for halibut CDQ fishermen and to further the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to the CDQ program and the Pacific halibut fishery, consistent with the regulations and resource management objectives of the International Pacific Halibut Commission (IPHC).

DATES: Effective April 2, 2003.

ADDRESSES: Copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or by calling 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228, e-mail *obren.davis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Commerce (Secretary) is responsible for implementing the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, as provided by the Northern Pacific Halibut Act of 1982 (Halibut Act), at 16 U.S.C. 773. Section 773c(c) of the Halibut Act authorizes the Regional Fishery Management Council having authority for the geographical area concerned to develop regulations governing the allocation and catch of Pacific halibut (Hippoglossus stenolepis) in U.S. Convention waters. Such regulations must be approved by the Secretary before being implemented and may be in addition to, but not in conflict with, regulations developed by the IPHC.

The commercial halibut fishery in and off Alaska is managed under the Individual Fishing Quota (IFQ) program and the CDQ program. Under the regulations established for these programs, the annual halibut catch limits for Areas 4B, 4C, and 4D are divided between the IFQ and CDQ programs. Twenty percent of the Area 4B annual catch limit is allocated to the CDQ program and the rest is allocated to the IFQ program. For Area 4C, the allocation to the CDQ program is 50 percent, and for Area 4D it is 30 percent. One hundred percent of the Area 4E annual catch limit is allocated to the CDQ program. The halibut CDQ catch limits, or reserves, are divided among eligible CDQ communities in accordance with Community Development Plans (CDP) submitted by CDQ managing organizations (CDQ groups) and approved by NMFS. This current action affects only halibut CDQ harvested in Areas 4D and 4E.

Since 1995, four different CDQ groups have received annual allocations of Area 4D halibut and two CDQ groups have received annual allocations of Area 4E halibut. Between 1995 and 2001, the annual halibut CDQ reserve ranged from 231,000 to 609,000 lb (104.78 to 276.24 mt) in Area 4D and from 120,000 to 390,000 lb (54.43 to 176.9 mt) in Area 4E. Amounts specified for halibut catch limits, reserves, and allocations are all in net (headed and gutted) weight. Halibut CDQ in Areas 4D and 4E must be allocated to the CDQ groups that represent eligible communities located in, or proximate to, Areas 4D and 4E, respectively.

Catch Sharing Plan (CSP) for Area 4

The CSP for Area 4 originally was developed by the Council to apportion the IPHC's halibut catch limit for Area 4 among Areas 4A, 4B, 4C, 4D, and 4E as necessary to carry out the socioeconomic objectives of the IFQ and CDQ programs. The Area 4 CSP was published in the **Federal Register** on March 20, 1996 (61 FR 11337), and implemented that same year.

NMFS subsequently modified the Area 4 CSP to remove Areas 4A and 4B from the CSP in 1998 (63 FR 13000, March 17, 1998). This change was to allow the catch limits for these two areas and a combined Area 4C–4E to be set according to the IPHC's revised biomass-based methodology, under which the IPHC considers that Areas 4A, 4B, and 4C–E each have a separate halibut stock. Beginning in 1998, the IPHC has annually implemented the measures specified in the Area 4 CSP to apportion the combined Area 4C–E catch limit among Areas 4C, 4D, and 4E. The annual management measures for halibut fisheries in 2002 were published on March 20, 2002 (67 FR 12885).

Four out of six CDQ groups have received halibut CDQ allocations in Area 4D since 1995, including Bristol Bay Economic Development Corporation (BBEDC), Coastal Villages Region Fund (CVRF), Norton Sound Economic Development Corporation (NSEDC), and Yukon Delta Fisheries Development Association (YDFDA). Past and current allocations recommended by the State of Alaska and approved by the Secretary have allocated both Area 4D and Area 4E halibut CDQ to just two groups, BBEDC and CVRF, based on their historical participation in the Area 4 halibut fishery and the contents of their CDP applications. NSEDC and YDFDA have received only Area 4D halibut CDQ. Residents of communities represented by these latter two groups (with the exception of two of NSEDC's communities) must travel extended distances offshore to harvest Area 4D halibut CDQ or the quota must be harvested by large, non-local vessels.

In 1999, CDQ groups that received Area 4D quota expressed a desire to increase the amount of halibut CDQ that could be harvested in their locally based inshore halibut fishery by being allowed to harvest Area 4D halibut CDQ in Area 4E. All four of these groups represent communities along the western Alaska coast, ranging from Bristol Bay (south) to the Bering Strait (north). Almost all of the 56 communities represented by these groups are adjacent to Area 4E; only two are in Area 4D. In January 1999, these groups approached the IPHC at its annual meeting and requested a determination as to whether it would be acceptable to harvest halibut CDQ allocated to Area 4D in Area 4E. The IPHC had no objection to the request because it considers the halibut in Areas 4C, 4D,and 4E to be a single stock. This issue was also raised at the February 1999 Council meeting. The Council requested that NMFS prepare an analysis of the proposal to allow Area 4D halibut CDQ to be harvested in Area 4E. The Council also recommended modifying the Area 4E halibut catch limit (see Area 4E Trip Limit, below).

NMFS prepared an EA, RIR, and Initial Regulatory Flexibility Analysis (IRFA) that examined the proposal to allow Area 4D halibut CDQ to be harvested in Area 4E. In December 2001, the Council recommended allowing halibut CDQ that was allocated in Area 4D to be harvested in Area 4E. In January 2002, the IPHC noted that allowing Area 4D halibut CDQ to be harvested in Area 4E would constitute a change to the Area 4 CSP that would need to be addressed by NMFS in rulemaking.

This final rule will modify the Area 4 CSP to incorporate the Council's specific recommendation that Area 4D halibut CDQ may be harvested either in Area 4D or in Area 4E. However, the existing Area 4 CSP framework that apportions the combined Area 4C–E annual catch limit among Areas 4C, 4D, and 4E will remain unchanged. The authority to allocate the annual Area 4 catch limit according to the Area 4 CSP is specified at 50 CFR 300.63(b) and will continue to be implemented by the IPHC in its annual management measures pursuant to 50 CFR 300.62. The following paragraph will be added to the Area 4 CSP:

> A CDQ group with an allocation of Area 4D halibut CDQ may harvest all or part of that allocation in Area 4E. This provision is based on the Council's recommendation in December 2001 to allow CDQ fishermen in Area 4E additional halibut CDQ harvesting opportunities. The framework that allocates the IPHC catch limits among Areas 4C, 4D, and 4E remains unchanged.

The Council recommended allowing the harvest of Area 4D halibut in Area 4E and allowing amounts of Area 4D halibut CDQ that had been transferred to Area 4E to be transferred back to Area 4D. NMFS will implement the Council's intent without requiring the CDQ groups to submit documents requesting transfers of halibut CDQ between Areas 4D and 4E. The Council intended that the maximum amount of halibut CDQ that could be caught in Area 4D would

be the amount of halibut CDQ allocated to each CDQ group for Area 4D. The Council also intended that the maximum amount of halibut CDQ that could be caught in Area 4E would be the sum of the amount of halibut CDQ allocated for Areas 4D and 4E combined.

NMFS will monitor each CDQ group's halibut CDQ catch in Areas 4D and 4E. If the catch in Area 4E exceeds the group's initial allocation for Area 4E, then NMFS will subtract this additional catch from the group's Area 4D allocation and it will no longer be available for harvest in Area 4D. Halibut CDQ catch from Area 4D also will be subtracted from each group's Area 4D allocation. This procedure will allow each CDQ group to decide where to catch its Area 4D halibut CDQ allocation without requiring burdensome transfers.

Each CDQ group will be required to monitor the harvest of Area 4D and 4E halibut CDQ to ensure that: (1) its total catch in Area 4D does not exceed its Area 4D allocation, minus any portion of its Area 4D quota harvested in Area 4E, and (2) its total catch in Area 4E does not exceed the sum of its Area 4D and Area 4E allocations, minus any portion of its Area 4D allocation harvested in Area 4D.

Area 4E Trip Limit

In 1988, the Council developed, and the Secretary approved, fishing trip limits for Area 4C of 10,000 lb (4.54 mt) and Area 4E of 6,000 lb (2.72 mt) (53 FR 20327, June 3, 1988). In 1994, the Council recommended, and the Secretary approved, a fishing trip limit for Area 4B of 10,000 lb (4.54 mt) (59 FR 22522, May 2, 1994). These provisions were intended to enhance fishing opportunities for operators of vessels that landed their total annual catch within either Areas 4B, 4C, or 4E. Specifically, the Area 4E trip limit was devised to protect fishermen who landed their total annual catch of halibut at ports in Area 4E from competition with fishermen using vessels large enough to land their Area 4E halibut catch at ports in other regulatory areas. The Area 4E trip limit was incorporated into the Pacific halibut fishery regulations in 1988, and into 50 CFR part 676 (now promulgated as 50 CFR part 679) in 1993, as one of the rules implementing the halibut and sablefish IFQ and CDQ programs (58 FR 59375, November 9, 1993).

In December 1994, the Council recommended eliminating the trip limits in Areas 4B, 4C, and 4E, as these limits were deemed unnecessary due to the forthcoming implementation of the IFQ and CDQ programs. Subsequently, these restrictions were removed from the Pacific halibut regulations at 50 CFR part 301 (now 50 CFR part 300) (60 FR 14651, March 20, 1995). The Area 4E trip limit restriction, however, was inadvertently kept in 50 CFR part 679. In October 1998, NMFS informed the Council that this oversight would be corrected by removing the Area 4E trip limit from 50 CFR part 679. The Council declined to approve this correction, and voted instead to retain the 6,000–lb (2.72–mt) trip limit through September 1 of each year. The Council's rationale for retaining an Area 4E trip limit was to prevent consolidation of the halibut fishery in this area, to the possible detriment of local fishermen.

In December 2001, the Council confirmed its intent to retain the trip limit in Area 4E, but recommended that it be increased to 10,000 lb (4.54 mt) and that it be in effect annually only through September 1. The Council reasoned that retention of the trip limit would promote the near-shore small-scale halibut CDQ fishery in western Alaska, which is typically conducted by small vessels under 32 feet (9.73 m) length overall. Moderately increasing the trip limit, however, could allow harvesters greater operational flexibility during the spring and summer months, particularly for local vessels capable of packing more than 6,000 lb (2.72 mt) of halibut during a fishing trip. Eliminating the trip limit during the fall months will offer CDQ groups the ability to harvest halibut CDQ using vessels large enough to safely operate in adverse weather and sea conditions. Typically, the trip limit is an economic constraint to using larger vessels in the Area 4E halibut CDQ fishery.

This final rule revises the Area 4E trip limit to increase it from 6,000 to 10,000 lb (2.72 to 4.54 mt) and specifies that the Area 4E trip limit will be effective only through September 1 of each year.

NMFS published a proposed rule in the **Federal Register** on October 15, 2002 (67 FR 63600), which described the proposed regulatory amendment and invited comments from the public. No public comments were received on the proposed rule.

Compliance Guide for Small Entities

The Small Business Regulatory Enforcement Fairness Act of 1996 requires that, for each final rule requiring preparation of a FRFA, a plain language explanation of how to comply with the regulation be prepared. NMFS has prepared the following compliance guide that explains how small entities must comply with the regulations implemented in this final rule.

What is the trip limit for vessels fishing for halibut CDQ in Area 4E? A fishing trip limit of 10,000 lb (4.54 mt) applies to halibut CDQ harvesting in Area 4E.

Is the Area 4E trip limit effective for the entire halibut CDQ fishing season? The trip limit is in effect each year from the beginning of the halibut CDQ season through September 1. From September 2 until the end of the halibut CDQ season, vessels fishing for halibut CDQ in Area 4E are not subject to a trip limit.

May halibut CDQ allocated to Area 4D be caught in Area 4E? A CDQ group may choose to harvest all or a portion of its annual Area 4D halibut CDQ allocation in Area 4E.

What are the recordkeeping or reporting requirements associated with the revised trip limit and allowance to harvest Area 4D halibut CDQ in Area 4E? This action does not change the recordkeeping and reporting requirements associated with the halibut CDQ fishery in Area 4. NMFS will modify its halibut CDQ catch accounting software to incorporate the change to the Area 4E trip limit and the option to harvest Area 4D halibut CDQ in Area 4E.

Classification

The Council recommended this action to the Secretary for adoption pursuant to its authority under the Halibut Act. NMFS prepared an EA/RIR/IRFA for the proposed revisions to the Area 4 CSP and the Area 4E trip limit regulatory amendment that describes the management background, the purpose and need for action, the management alternatives, and the socioeconomic impacts of the alternatives.

NMFS also prepared a FRFA describing the impact of this action on small entities. A summary of the FRFA follows.

The objective of this action is to enhance the economic opportunities associated with the Area 4 halibut CDQ fishery by implementing the following regulatory changes: (1) Modifying the Area 4E trip to increase the trip limit to 10,000 lb (4.54 mt) and (2) amending the Area 4 CSP to allow Area 4D halibut CDQ to be harvested in Area 4E. No public comments were received on the IRFA prepared prior to, and summarized within, the proposed rule published for this regulatory amendment. NMFS considers most of the fishing operations affected by this action to be small entities, based on criteria established by the RFA. The universe of small entities is comprised of four CDQ groups, 58 CDQ-eligible communities, 224 catcher vessels, and 31 halibut registered buyers for a total

of 317 small entities. There are no recordkeeping or reporting requirements associated with these actions. A range of alternatives was considered for each action. For the action associated with modifying the Area 4 CSP, allowing Area 4D halibut CDQ to be harvested in Area 4E was the preferred alternative selected by the Council. For the Area 4E trip limit action, the preferred alternative was increasing the trip limit to 10,000 lb (4.54 mt) and suspending the trip limit annually after September 1.

The proposed rule, published in the **Federal Register** on October 15, 2002 (67 FR 63600), contained a more lengthy discussion of the alternatives that were considered for this action and are not repeated here. The preferred alternatives for Actions 1 and 2 constitute the least burdensome alternatives to regulated small entities, among the suite of options available, while simultaneously achieving the objectives of this regulatory amendment. In other words, no other alternatives were identified which would reduce the potential adverse impacts on small entities, while achieving the Council's objectives for the Area 4 Halibut CDQ Program. The Area 4 CSP modification and the revision to 50 CFR part 679 would have no negative impacts in and of themselves, but are intended to increase the harvesting flexibility for participants in the halibut CDQ fishery in Areas 4D and 4E. These changes will allow CDQ groups with halibut CDQ allocations in these areas to tailor their halibut CDQ fishing operations to enhance economic opportunities for the western Alaska communities that they represent.

This final rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act. This final rule does not duplicate, overlap, or conflict with other Federal regulations.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 25, 2003.

Rebecca Lent,

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

For the 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 is amended to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub. L. 106–31, Sec. 3027; and Pub. L. 106–554, Sec. 209.

2. In § 679.31, paragraph (b)(3)(iv) is revised to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(b) * * *

(3) * * *

(iv) *Area 4E.* In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory area 4E. A fishing trip limit of 10,000 lb (4.54 mt) applies to halibut CDQ harvested in IPHC regulatory area 4E through September 1.

* * * * *

[FR Doc. 03–4894 Filed 2–28–03; 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. 021403E]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 2003 Commercial Quotas

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

ACTION: Commercial quota restoration.

SUMMARY: NMFS publishes revised 2003 commercial quotas for summer flounder, scup, and black sea bass. This action is necessary to comply with the regulatory provision that requires the Administrator, Northeast Region, NMFS (Regional Administrator) to correct erroneous landings data that factored into an overage deduction. The intent of this action is to provide fishermen the opportunity to harvest the available quota for these fisheries.

DATES: Effective February 25, 2003, through December 31, 2003.

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

NMFS published final specifications and preliminary quota adjustments for the 2003 summer flounder, scup, and black sea bass fisheries on January 2, 2003 (68 FR 60). The final rule included preliminary 2002 landings and 2003 quota adjustments. Sections 648.100(d), 648.120(d), and 648.140(d) provide that, if the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, the Regional Administrator will restore the overage that was deducted in error to the appropriate quota allocation and publish notification in the **Federal Register** announcing the restoration.

During a retrospective review of the 2002 research set-aside (RSA) program and data accounting procedures, NMFS discovered a discrepancy in how RSA landings were attributed and subsequently used for quota monitoring; i.e., the RSA landings were counted as commercial landings in the summer flounder, scup, and black sea bass fisheries. Because RSA landings are authorized under a separate quota for each of these three fisheries, they are intended to be accounted for separately from other landings. As a result, actual commercial landings for certain 2002 quota periods were lower than previously reported, and quota overages calculated for 2002 incorrectly included RSA landings, which resulted in lower adjusted 2003 quotas than are necessary.

During a separate retrospective review of the landings data used to determine overharvest or underharvest of summer flounder in 2002, NMFS determined that, for some states, a portion of the landings considered to be late reports for 2001 landings were misattributed and counted as 2002 landings. In addition, some trip-level data that had already been included in monthly landings data reports were reported by the State of Connecticut. The result of these three findings made during the data review process is that the landings recorded for certain states or quota periods exceeded the actual landings. Therefore, NMFS hereby restores these inappropriately deducted landings to the appropriate state and period quotas for the 2003 fisheries.

Summer Flounder Quota Corrections

A total of 317 lb (144 kg) of summer flounder RSA landings were counted

erroneously as commercial landings, as follows: Connecticut—19 lb (9 kg); Rhode Island—98 lb (44 kg); and New York—200 lb (91 kg). This amount is a negligible fraction of reported 2002 landings and did not result in closure of any state's fishery. However, for these states, corrections have been made to the 2002 landings and the 2003 quotas are revised as appropriate.

In addition, the following states recorded 2002 landings of summer flounder less than those reported in the January 2, 2003, final rule, by the following amounts: New Hampshire—22 lb (10 kg); Rhode Island—337,187 lb (152,947 kg); Connecticut—42,056 lb (19,076 kg); New York—10,918 lb (4,952 kg); New Jersey—198,749 lb (90,152 kg); Maryland—15,385 lb (6,979 kg); Virginia—820,494 lb (372,174 kg); and North Carolina—846,527 (383,982 kg). Revisions to these landings have been made and revisions of 2002 overages (through October 31, 2002) are necessary for Rhode Island, Connecticut, and Virginia. The result is that the initial quotas (less the amount set aside for 2003 research) are restored for Connecticut, Rhode Island, and Virginia, as there was no 2002 overage in those states.

The commercial summer flounder 2003 adjusted quotas, less the amount set aside for 2003 research (as published in the January 2, 2003, final rule), the amounts being restored to the 2003 adjusted quotas, and the revised 2003 quotas (less the amount set aside for 2003 research), by state, are presented in Table 1.

TABLE 1. REVISED 2003 STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER QUOTA ALLOCATIONS

State	2003 Adjusted Quota, less the 2003 Research Set-Aside (as published January 2, 2003)		Amount Restored to the 2003 Adjusted Quota1		Revised 2003 Quota, less the 2003 Research Set-Aside	
	lb[2]	kg[2,3]	lb	kg[3]	lb[2]	kg[2,3]
ME	(6,890)	(3,125)	0	0	(6,890)	(3,125)
NH	64	29	0	0	64	29
MA	907,274	411,537	0	0	907,274	411,537
RI	1,979,786	898,025	204,121	92,589	2,183,907	990,614
CT	301,123	136,588	13,183	5,980	314,306	142,568
NY	1,064,869	483,021	0	0	1,064,869	483,021
NJ	2,329,010	1,056,432	0	0	2,329,010	1,056,432
DE	(45,609)	(20,688)	0	0	(45,609)	(20,688)
MD	283,951	128,799	0	0	283,951	128,799
VA	2,892,405	1,311,986	76,024	34,484	2,968,429	1,346,471
NC	3,821,924	1,733,613	0	0	3,821,924	1,733,613
Total[4]	13,580,406	6,160,032	293,328	133,053	13,873,734	6,293,084

[1] Amount restored was calculated to correct for 2002 RSA landings counted as commercial landings, misattributed portion of late 2001 landings, and specifically for Connecticut, trip level data already summarized in monthly landings data reports.
[2] Parentheses indicate a negative number. A state with a negative quota has an allocation of zero (0). Maine and Delaware continue repayment of overharvest from 2001.
[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:, i.e., states other than Maine and Delaware.

Scup Quota Corrections

No RSA landings of scup were made during the Winter I period of 2002. A total of 87,188 lb (39,548 kg) of scup landed under the RSA program during the Summer period of 2002 were counted erroneously as commercial landings. The 2002 Summer period overage reported in the January 2, 2003, final rule was 402,754 lb (182,688 kg), and the 2003 Summer period quota was adjusted to 4,434,691 lb (2,011,563 kg) as a result of that overage. Properly accounting for the RSA landings, the overage should be corrected to 315,566 lb (143,140 kg), resulting in a revised 2003 summer period quota of 4,521,879 lb (2,051,111 kg; a 1.9–percent increase). Per the quota counting procedures, any adjustment to the 2002 Winter II period quota will be made, if necessary, following review of the landings from November 1 through December 31, 2002, to be conducted as soon as possible after June 30, 2003.

The commercial scup 2003 adjusted quotas, less the amount set aside for 2003 research (as published in the January 2, 2003, final rule), the amounts being restored to the 2003 adjusted quotas, and the revised 2003 quotas (less the amount set aside for 2003 research), by period, are presented in Table 2.

TABLE 2. REVISED 2003 COMMERCIAL SCUP QUOTA ALLOCATIONS BY PERIOD

Quota Period	2003 Adjusted Quota, less the 2003 Research Set-Aside (as published January 2, 2003)		Amount Restored to the 2003 Adjusted Quota1		Revised 2003 Quota, less the 2003 Research Set-Aside	
	lb	kg[2]	lb	kg[2]	lb	kg[2]
Winter I	5,602,495	2,541,275	0	0	5,602,495	2,541,275
Summer	4,434,691	2,011,563	87,188	39,548	4,521,879	2,051,111
Winter II	1,979,689	897,981	n/a[3]	n/a[3]	1,979,689	897,981
Total	12,016,875	5,450,819	87,188	39,548	12,104,063	5,490,367

[1] Amount restored was calculated to correct for 2002 RSA landings counted as commercial landings.
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] Not applicable.

Black Sea Bass Quota Corrections

No RSA landings of black sea bass were made during Quarter 1 of 2002. RSA landings during Quarters 2 and 3 were 4,802 lb (2,178 kg) and 26,360 lb (11,957 kg), respectively, and were counted erroneously as commercial black sea bass landings. Consistent with the quota counting procedures, in the January 2, 2003, final rule, the 2002 Quarter 2 overage reported was 214,338 lb (97,223 kg), the 2003 Quarter 2 quota was adjusted to 750,902 lb (340,607 kg), the 2002 Quarter 3 overage reported was 5,459 lb (2,476 kg), and the 2003 Quarter 2 quota was adjusted to 401,288 lb (182,023 kg). Properly accounting for the RSA landings, the 2002 Quarter 2 overage should be corrected to 209,536 lb (95,045 kg), resulting in a revised Quarter 2 quota of 755,704 lb (342,785 kg; a 0.6–percent increase). Accounting for the RSA landings results in there being no overage of the 2002 Quarter 3 quota, so the 2003 Quarter 3 quota is restored to 406,747 lb (184,499 kg; a 1.4–percent increase). Only Quarters 1 though 3 are included in the calculations of adjusted quotas for the following year.

Under the current quarterly black sea bass quota program, any adjustment to the Quarter 4 quota would be made, if necessary, following review of the 2002 Quarter 4 landings, to be conducted as soon as possible after June 30, 2003. However, Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP, which was approved by NMFS on January 29, 2003, establishes an annual (calendar year) coastwide quota for the commercial black sea bass fishery, and NMFS anticipates that the final rule implementing the Amendment will be effective prior to the end of Quarter 1 for 2003. The annual quota would fully account for the total 2002 quota, all reported 2002 commercial landings, and all reported 2002 RSA landings. Commercial landings made in 2003 to date will be measured against the annual quota, rather than the quarterly quotas, and adjustments would be made, as necessary, at year-end to the annual quota.

The commercial black sea bass 2003 adjusted quotas, less the amount set aside for 2003 research (as published in the January 2, 2003, final rule), the amounts being restored to the 2003 adjusted quotas, and the revised 2003 quotas (less the amount set aside for 2003 research), by quarter, are presented in Table 3.

TABLE 3. REVISED 2003 COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS BY QUARTER

Quarter	2003 Adjusted Quota, less the 2003 Research Set-Aside (as published January 2, 2003)		Amount Restored to the 2003 Adjusted Quota1		Revised 2003 Quota, less the 2003 Research Set-Aside	
	lb	kg[2]	lb	kg[2]	lb	kg[2]
1	1,197,664	543,257	0	0	1,197,664	543,257
2	750,902	340,607	4,802	2,178	755,704	342,785
3	401,288	182,023	5,459	2,476	406,747	184,499
4	652,180	295,827	n/a[3]	n/a[3]	652,180	295,827
Total	3,002,034	1,361,714	.....	.....	3,012,295	1,366,368

[1] Amount restored was calculated to correct for 2002 RSA landings counted as commercial landings.
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] Not applicable.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: February 24, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4816 Filed 2–25–03; 3:58 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–3037–02; I.D. 110602C]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 2003 Harvest Specifications for Groundfish

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

ACTION: Final 2003 specifications for groundfish and associated management measures; apportionment of reserves; request for comments; closures.

SUMMARY: NMFS announces final 2003 harvest specifications, prohibited species catch (PSC) allowances, and associated management measures for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2003 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI.

DATES: The final 2003 harvest specifications and associated apportionment of reserves are effective at 1200 hrs, Alaska local time (A.l.t.), February 25, 2003 through 2400 hrs, A.l.t., December 31, 2003. Comments on the apportionment of reserves must be received by March 18, 2003.

ADDRESSES: Comments on the apportionment of reserves may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be

made to NMFS in the Federal Building, Room 453, 709 West 9th Street, Juneau, AK 99801.

Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action and the Final 2002 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2002, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228 or e-mail *mary.furuness@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background for the 2003 Final Harvest Specifications

Federal regulations at 50 CFR part 679 that implement the FMP govern the groundfish fisheries in the BSAI. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (§ 679.20(a)(1)(i)). Also specified are apportionments of TACs, and Community Development Quota (CDQ) reserve amounts, prohibited species quota (PSQ) reserves, and PSC allowances. Regulations at § 679.20(c)(3) further require NMFS to consider public comment on the proposed annual TACs and apportionments thereof and the proposed PSC allowances, and to publish final specifications in the **Federal Register**. The final specifications set forth in Tables 1 through 17 of this action satisfy these requirements. For 2003, the sum of TACs is 2 million mt.

The proposed BSAI groundfish specifications and PSC allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on December 12, 2002 (67 FR 76362). Comments were invited and accepted through January 13, 2003. NMFS received one comment on the proposed specifications. This comment is summarized and responded to in the Response to Comments section. Public consultation with the Council occurred during the December 2002 Council meeting in Anchorage, AK. After considering public comments, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the final 2003 groundfish specifications as recommended by the Council.

Regulations at § 679.20(c)(2)(ii) establish the interim amounts of each proposed initial TAC (ITAC) and allocations thereof, of each CDQ reserve established by § 679.20(b)(1)(iii), and of the proposed PSQ reserves and PSC allowances established by § 679.21 that become available at 0001 hours, A.l.t., January 1, and remain available until superseded by the final specifications. NMFS published the interim 2003 groundfish harvest specifications in the **Federal Register** on December 26, 2002 (67 FR 78739). Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for either the hook-and-line and pot gear sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) management plan. The final 2003 groundfish harvest specifications, PSQ reserves and PSC allowances contained in this action supersede the interim 2003 groundfish harvest specifications.

Implementation of Steller Sea Lion Conservation Measures

In accordance with a biological opinion issued by NMFS on October 19, 2001, NMFS implemented a final rule for the start of the 2003 BSAI groundfish fisheries (68 FR 204, January 2, 2003), that contains measures that were deemed necessary to avoid the likelihood that the pollock, Pacific cod, and Atka mackerel fisheries off Alaska would jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. The final rule implements three types of management measures for the pollock, Pacific cod and Atka mackerel fisheries of the BSAI: (1) Measures to temporally disperse fishing effort, (2) measures to spatially disperse fishing effort, and (3) measures to provide sufficient protection from competition with pollock fisheries for prey in waters immediately adjacent to rookeries and important haulouts.

The final rule establishes a Steller Sea Lion Conservation Area (SCA) to regulate total removals of pollock in an area considered to be critical to the recovery of the endangered western population of Steller sea lions. The final rule restricts pollock harvests within the SCA to a percentage of each sector's seasonal allocation as recommended by the Council.

On December 18, 2002, the United States District Court for the Western District of Washington entered an Order remanding the October 19, 2001, biological opinion prepared for the groundfish fisheries. *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 reached an agreement with the Plaintiffs that the 2003 groundfish fisheries will commence pursuant to the Steller sea lion protection measures examined in the biological opinion pending completion of the remand. The Court issued an order on December 30, 2002, that supported the agreement and extended the effective date of the 2001 Steller sea lion protection measures biological opinion until June 30, 2003.

Acceptable Biological Catch (ABC) and TAC Specifications

The final ABC levels are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used in computing ABCs and overfishing levels (OFLs). The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fishery scientists. This information is categorized into a successive series of six tiers.

At its December 2002 meeting, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed current biological information about the condition of groundfish stocks in the BSAI. This information was compiled by the Council's Plan Team and is presented in the final 2002 SAFE report for the BSAI groundfish fisheries, dated November 2002. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species or species category.

In December 2002, the SSC, AP, and Council reviewed the Plan Team's recommendations. Except for Bogoslof pollock, sablefish, northern rockfish, Atka mackerel and the ''other species'' category, the SSC, AP, and Council endorsed the Plan Team's ABC recommendations. Based on the best

available information, the SSC recommended slightly higher ABCs for sablefish and Atka mackerel and slightly lower ABCs for Bogoslof pollock and the ''other species'' category than the Plan Team recommended. For sablefish, the SSC increased the ABC from the Plan Team's recommendation based on the projected 5-year average of catches under the Council's $F_{40\%}$ policy. For Atka mackerel, the SSC recommended a higher, yet still conservative, ABC compared to the Plan Team. The SSC's recommendation was based on an ABC option presented by the stock assessment author that should maintain stock biomass at or near $B_{40\%}$. For Bogoslof pollock, the SSC recommended using a procedure that reduces the ABC proportionately to the ratio of current stock biomass to target stock biomass. For ''other species'', the SSC recommended for the 5th year, a procedure that moves gradually to a higher ABC over a 10-year period instead of a large increase in one year. For all species, the AP endorsed the ABCs recommended by the SSC, and the Council adopted them. The final ABCs, as adopted by the Council, are listed in Table 1. For northern rockfish, the SSC concluded that a reliable Bering Sea biomass estimate was not available and therefore used a more conservative procedure than the Plan Team for calculating OFLs and ABCs. This resulted in establishing separate OFLs and ABCs for the Bering Sea and Aleutian Islands subareas. At the Council meeting in January 2003, the SSC and Council received additional reports on northern rockfish biomass estimates and concluded that although variability in the estimates is high, the estimates are considered to be conservative. Thus both the SSC and Council recommended that NMFS consider following the historical approach of BSAI-wide northern rockfish OFL and ABC amounts. This was the approach proposed by NMFS (68 FR 76362, December 12, 2002) and is determined to be appropriate for this stock.

The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required optimum yield (OY) range of 1.4 million to 2.0 million mt. The Council adopted the AP's TAC recommendations. None of the Council's recommended TACs for 2003 exceed the final ABC for any species category. NMFS finds that the recommended ABCs and TACs are consistent with the biological condition of groundfish stocks as described in the 2002 SAFE document that was approved by the Council.

Table 1 lists the 2003 OFL, ABC, TAC, ITAC and CDQ reserve amounts of groundfish in the BSAI. The apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1.—2003 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI [1]

[Amounts are in mt]

Species	Area	OFL	ABC	TAC	ITAC [2]	CDQ reserve [3]
Pollock [4]	Bering Sea (BS)	3,530,000	2,330,000	1,491,760	1,342,584	149,176
	Aleutian Islands (AI)	52,600	39,400	1,000	1,000	.....
	Bogoslof District	45,300	4,070	50	50	.....
Pacific cod	BSAI	324,000	223,000	207,500	176,375	15,563
Sablefish [5]	BS	4,290	2,900	2,900	1,233	399
	AI	4,590	3,100	3,100	659	523
Atka mackerel	Total	99,700	63,000	60,000	51,000	4,500
	Western AI	.....	22,990	19,990	16,992	1,499
	Central AI	.....	29,360	29,360	24,956	2,202
	Eastern AI/BS	.....	10,650	10,650	9,053	799
Yellowfin sole	BSAI	136,000	114,000	83,750	71,188	6,281
Rock sole	BSAI	132,000	110,000	44,000	37,400	3,300
Greenland turbot	Total	17,800	5,880	4,000	3,400	300
	BS	.....	3,920	2,680	2,278	201
	AI	.....	1,960	1,320	1,122	99
Arrowtooth flounder	BSAI	139,000	112,000	12,000	10,200	900
Flathead sole	BSAI	81,000	66,000	20,000	17,000	1,500
Other flatfish [6]	BSAI	21,400	16,000	3,000	2,550	225
Alaska plaice	BSAI	165,000	137,000	10,000	8,500	750
Pacific ocean perch	BSAI	18,000	.....	.....	.....	.....
	BS	.....	2,410	1,410	1,199	106
	AI Total	.....	12,690	12,690	10,787	952
	Western AI	.....	5,850	5,850	4,973	439
	Central AI	.....	3,340	3,340	2,839	251
	Eastern AI	.....	3,500	3,500	2,975	263
Northern rockfish	BSAI	9,468	7,101	.....	.....	.....
	BS	.....	.....	121	103	9
	AI	.....	.....	5,879	4,997	441
Shortraker/rougheye	BSAI	1,289	967	.....	.....	.....
	BS	.....	.....	137	116	10
	AI	.....	.....	830	706	62
Other rockfish [7]	BS	1,280	960	960	816	72
	AI	846	634	634	539	48
Squid	BSAI	2,620	1,970	1,970	1,675	.....
Other species [8]	BSAI	81,100	43,300	32,309	27,463	2,423

TABLE 1.—2003 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI [1]—Continued

[Amounts are in mt]

Species	Area	OFL	ABC	TAC	ITAC [2]	CDQ reserve [3]
Total		4,867,308	3,296,382	2,000,000	1,771,540	187,540

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the Bering Sea subarea includes the Bogoslof District.

[2] Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

[3] Except for pollock and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see §§ 679.20(b)(1)(iii) and 679.31).

[4] The American Fisheries Act (AFA) requires that 10 percent of the annual Bering Sea pollock TAC be allocated as a CDQ reserve and the entire Aleutian Islands and Bogoslof District pollock ITAC be allocated as an incidental catch allowance. NMFS then subtracts 3.5 percent of the remaining Bering Sea pollock as an incidental catch allowance, which is not apportioned by season or area. The remainder of the ITAC is further allocated by sector as directed fishing allocations as follows: inshore, 50 percent; catcher/processor, 40 percent; and motherships, 10 percent.

[5] The ITAC for sablefish reflected in Table 1 is for trawl gear only. Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear and 7.5 percent of the sablefish TAC allocated to trawl gear is reserved for use by CDQ participants (see § 679.20(b)(1)(iii)).

[6] ''Other flatfish'' includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder and Alaska plaice.

[7] ''Other rockfish'' includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[8] ''Other species'' includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2, are not included in the ''other species'' category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. The AFA supersedes this provision for pollock by requiring that the TAC for this species be fully allocated among the CDQ program, the ICA, and the inshore, catcher/processor, and mothership directed fishery allocations.

Regulations at § 679.20(b)(1)(iii) require that one-half of each TAC amount placed in the non-specified reserve be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Regulations at § 679.20(a)(5)(i)(A) also require that 10 percent of the Bering Sea subarea pollock TAC be allocated to the pollock CDQ reserve. The entire Aleutian Islands subarea and Bogoslof District pollock TAC is allocated as an ICA (§ 679.20(a)(5)(i)(A)(*1*)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Under regulations at § 679.20(a)(5)(i)(A)(*1*), NMFS allocates 3.5 percent of the Bering Sea subarea pollock TAC as an ICA after subtraction of the 10-percent CDQ reserve. This allowance is based on an examination of the incidental catch of pollock in non-pollock target fisheries from 1998 through 2002. During this 5-year period, the incidental catch of pollock ranged from a low of 3 percent in 1998, 2001 and 2002 to a high of 5 percent in 1999, with a 5-year average of 3 percent.

The regulations do not designate the remainder of the non-specified reserve by species or species group, and any amount of the reserve may be apportioned to a target species or to the ''other species'' category during the year, providing that such apportionments do not result in overfishing. The Administrator of the Alaska Region for NMFS (Regional Administrator), has determined that the ITACs specified for the species listed in Table 2 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning the amounts shown in Table 2 from the nonspecified reserve to increase the ITAC to an amount that is equal to TAC minus the CDQ reserve.

TABLE 2.—APPORTIONMENT OF RESERVES TO ITAC CATEGORIES

[Amounts are in mt]

Species—area or subarea	Reserve amount	Final ITAC
Atka mackerel—Western Aleutian district	1,499	18,491
Atka mackerel—Central Aleutian district	2,202	27,158
Atka mackerel—Eastern Aleutian district and Bering Sea subarea	799	9,851
Other flatfish—BSAI	225	2,775
Alaska plaice—BSAI	750	9,250
Pacific ocean perch—Western Aleutian district	439	5,411
Pacific ocean perch—Central Aleutian district	251	3,090
Pacific ocean perch—Eastern Aleutian district	263	3,238
Pacific cod—BSAI	15,563	191,938
Shortraker/rougheye rockfish—Bering Sea subarea	10	126
Shortraker/rougheye rockfish—Aleutian Islands subarea	62	768
Northern rockfish—Bering Sea subarea	9	112

TABLE 2.—APPORTIONMENT OF RESERVES TO ITAC CATEGORIES—Continued

[Amounts are in mt]

Species—area or subarea	Reserve amount	Final ITAC
Northern rockfish—Aleutian Islands subarea	441	5,438
Other rockfish—Bering Sea subarea	72	888
Other species—BSAI	2,423	29,886
Total	25,008	308,420

Allocation of Pollock TAC Under the AFA

Section 206(a) of the AFA requires the allocation of 10 percent of the BSAI pollock TAC as a CDQ reserve (§ 679.20(a)(5)(i)(A)). The remainder of the BSAI pollock TAC, after the subtraction of an allowance for the incidental catch of pollock by vessels (3.5 percent), including CDQ vessels, harvesting other groundfish species, is allocated as directed fishing allocations (DFA) as follows: 50 percent to catcher vessels harvesting pollock for processing by the inshore component, 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component, and 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component (§ 679.20(a)(5)(i)). These amounts are listed in Table 3.

The AFA also contains several specific requirements concerning pollock and pollock allocations. First, at § 679.20(a)(5)(i)(A)(*4*)(*i*) and (*ii*), NMFS will allocate 91.5 percent of the catcher/processor sector allocation to AFA catcher/processors engaged in directed fishing for pollock and 8.5 percent of the catcher/processor sector allocation to AFA catcher vessels delivering to catcher/processors unless changed by the cooperative contracts. Second, unlisted AFA catcher/processors (§ 679.4(k)(1)(2)(ii)) are limited to harvesting not more than 0.5 percent of the catcher/processor sector allocation of pollock (§ 679.20(a)(5)(i)(A)(*4*)(*iii*)).

Table 3 also lists seasonal apportionments of pollock and harvest limits within the SCA. Regulations implementing Steller sea lion protection measures at § 679.20(a)(5)(ii)(A)(*1*) apportion the pollock directed fishing allowances allocated to each component into two seasonal allowances. The first allowance, 40 percent of the DFA, is made available for directed fishing from January 20 to June 10 (''A'' season), and the second seasonal allowance, 60 percent of the DFA, is made available from June 10 to November 1 (''B'' season)(Table 3). The harvest within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the annual DFA until April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each industry sector in proportion to each sector's allocated percentage of the DFA as set forth in the AFA.

TABLE 3.—2003 ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE (DFA) TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENTS [1]

[Amounts are in mt]

Area and sector	2003 allocations	A Season [1]		B Season [1]
		A season DFA (40% of Annual DFA)	SCA harvest limit [2]	B season DFA (60% of Annual DFA)
Bering Sea subarea	1,491,760			
CDQ	149,176	59,670	41,769	89,506
ICA [3]	46,990			
AFA Inshore	647,797	259,119	181,383	388,678
AFA Catcher/Processors [4]	518,237	207,295	145,106	310,942
Catch by C/Ps [4]	474,187	189,675		284,512
Catch by CVs [4]	44,050	17,620		26,430
Restricted C/P cap [5]	2,591	1,036		1,555
AFA Motherships	129,559	51,824	36,277	77,736
Excessive harvesting share [6]	226,729			
Aleutian Islands ICA [7]	1,000			
Bogoslof District ICA [7]	50			

[1] After subtraction for the CDQ reserve (10 percent) and the ICA (3.5 percent), the pollock TAC is allocated as a DFA: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. Under § 679.20(a)(5)(i)(A), the CDQ reserve for pollock is 10 percent. The A season, January 20—June 10, is allocated 40 percent of the DFA and the B season, June 10—November 1, is allocated 60 percent of the DFA.

[2] No more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3] The pollock ICA for the BS subarea is 3.5 percent of the TAC after subtraction of the CDQ reserve.

[4] Under § 679.20(a)(5)(i)(A)(*4*)(i) and (*ii*), NMFS will allocate 91.5 percent of the catcher/processor sector allocation to AFA catcher/processors engaged in directed fishing for pollock and 8.5 percent of the catcher/processor sector allocation to AFA catcher vessels delivering to catcher/processors unless changed by the cooperative contracts.

[5] Under § 679.20(a)(5)(i)(A)(*4*)(*iii*), unlisted AFA catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processor sector allocation of pollock.

[6] Under § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the directed fishing allowances established under paragraphs (a)(5)(i) and (a)(5)(ii) of this section.

[7] The Aleutian Islands subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season or sector.

Allocation of the Atka Mackerel TAC

Regulations implementing Steller sea lion protection measures at § 679.20(a)(8)(ii) apportion the Atka mackerel ITAC into two equal seasonal allowances. After subtraction of the jig gear allocation, the first allowance is made available for directed fishing from January 1 (January 20 for trawl gear) to April 15 (''A'' season), and the second seasonal allowance is made available from September 1 to November 1 (''B'' season)(Table 4). Under § 679.20(a)(8)(ii)(C)(*1*), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian districts.

Under § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian district and the Bering Sea subarea Atka mackerel ITAC may be allocated to the jig gear fleet. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended, and NMFS approved, a 1-percent allocation of the Atka mackerel ITAC in the Eastern Aleutian district and the Bering Sea subarea to the jig gear fleet in 2003. Based on an ITAC and a reserve apportionment which together total 9,851 mt, the jig gear allocation is 99 mt.

A lottery system is used for the HLA Atka mackerel directed fisheries to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two areas (§ 679.20(a)(8)(iii)).

TABLE 4.—2003 SEASONAL AND SPATIAL APPORTIONMENTS, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC [1]

[Amounts are in mt]

Subarea & Component	TAC	CDQ reserve	ITAC	Seasonal apportionment [2]			
				A Season [3]		B Season [4]	
				Total	HLA Limit [5]	Total	HLA Limit [5]
Western Aleutian district	19,990	1,499	18,491	9,245	5,547	9,245	5,547
Central Aleutian district	29,360	2,202	27,158	13,579	8,147	13,579	8,147
Eastern AI/BS subarea [6]	10,650	799	9,851	.....	.....	.....	.....
Jig (1%) [7]	.....	.....	99	.....	.....	.....	.....
Other gear (99%)	.....	.....	9,753	4,876	.....	4,876	.....
Total	60,000	4,500	55,500	27,701	.....	27,701	.....

[1] Regulations at §§ 679.20(a)(8)(ii) and 679.22(a)(8) establish temporal and spatial limitations for the Atka mackerel fishery.

[2] The seasonal apportionment of Atka mackerel is 50 percent in the A season and 50 percent in the B season.

[3] The A season is January 1 through April 15, however trawl gear is prohibited until January 20.

[4] The B season is September 1 through November 1.

[5] HLA limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2003, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian districts.

[6] Eastern Aleutian district and the Bering Sea subarea.

[7] Regulations at § 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian district and the Bering Sea subarea ITAC be allocated to the jig gear fleet. The amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7)(i)(A), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. Under regulations at § 679.20(a)(7)(i)(B), the portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors. Under regulations at § 679.20(a)(7)(i)(C)(*1*), a portion of the Pacific cod allocated to hook-and-line or pot gear is set aside as an ICA of Pacific cod in directed fisheries for groundfish using these gear types. Based on anticipated incidental catch in these fisheries, the Regional Administrator specifies an ICA of 500 mt. The remainder of Pacific cod is further allocated to vessels using hook-and-line or pot gear as the following directed fishing allowances: 80 percent to hook-and-line catcher/processors, 0.3 percent to hook-and-line catcher vessels, 18.3 percent to pot gear vessels, and 1.4 percent to catcher vessels under 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear.

Due to concerns about the potential impact of the Pacific cod fishery on Steller sea lions and their critical habitat, the Pacific cod fisheries are temporally dispersed by the apportionment of the ITAC into two seasonal allowances (§§ 679.23(e)(5) and 679.20(a)(7)(iii)(A)). For most non-trawl gear the first allowance of 60 percent of the ITAC is made available for directed fishing from January 1 to June 10, and the second seasonal allowance of 40 percent of the ITAC is made available from June 10 to December 31. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is January 20 to April 1 and is allocated 60 percent of the ITAC. The second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processor allocation is allocated 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. Table 5 lists the 2003 allocations and seasonal apportionments of the Pacific cod ITAC. In accordance with §§ 679.20(a)(7)(ii)(D) and 679.20(a)(7)(iii)(B), any unused portion of a seasonal Pacific cod allowance will become available at the

beginning of the next seasonal allowance.

TABLE 5.—2003 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC

[Amounts are in mt]

Gear sector	Percent	Share of gear sector total (mt)	Subtotal percentages for gear sectors	Share of gear sector total (mt)	Seasonal apportionment [1]	
					Date	Amount (mt)
Total hook-and-line and pot gear allocation of Pacific cod TAC.	51	97,888				
Incidental Catch Allowance				500		
Catcher/Processor and Catcher Vessel sub-total		97,388				
Hook-and-line			80	77,911	Jan 1–Jun 10	46,747
Catcher/Processors					Jun 10–Dec 31	31,164
Hook-and-line			0.3	292	Jan 1–Jun 10	175
Catcher Vessels					Jun 10–Dec 31	117
Pot Gear Vessels			18.3	17,822	Jan 1–Jun 10	10,693
					Sept 1–Dec 31	7,129
Catcher Vessels < 60 feet LOA using hook-and-line or pot gear.			1.4	1,363		
Trawl gear total	47	90,211				
Trawl Catcher Vessel			50	45,105	Jan 20–Apr 1	31,574
					Apr 1–Jun 10	4,510
					Jun 10–Nov 1	9,021
Trawl Catcher/Processor			50	45,105	Jan 20–Apr 1	22,553
					Apr 1–Jun 10	13,531
					Jun 10–Nov 1	9,021
Jig	2	3,839			Jan 1–Jun 10	2,303
					Jun 10–Dec 31	1,536
Total	100	191,938				

[1] For non-trawl gear the first season is allocated 60 percent of the TAC and the second season is allocated 40 percent of the TAC. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is allocated 60 percent of the TAC and the second and third seasons are each allocated 20 percent of the TAC. The trawl catcher vessels' allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processors' allocation is allocated 50 percent in the first season, 30 percent in the second season and 20 percent in the third season. Any unused portion of a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.

Allocation of the Shortraker and Rougheye Rockfish TAC

Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear. Based on the 2003 ITAC and the reserve apportionment which together total 768 mt, the trawl allocation is 538 mt and the non-trawl allocation is 230 mt.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4)(iii) and (iv) require that sablefish TACs for subareas of the BSAI be allocated between trawl and hook-and-line or pot gear. Gear allocations of TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line/pot gear and for the Aleutian Islands subarea are 25 percent for trawl gear and 75 percent for hook-and-line/pot gear. Regulations at § 679.20(b)(1)(iii)(B) require that 20 percent of the hook-and-line and pot gear allocation of sablefish be apportioned to the CDQ reserve. Additionally, regulations at § 679.20(b)(1)(iii)(A) require that 7.5 percent of the trawl gear allocation of sablefish (one half of the reserve) be apportioned to the CDQ reserve. Gear allocations of the sablefish TAC and CDQ reserve amounts are specified in Table 6.

TABLE 6.—2003 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in mt]

Subarea and gear	Percent of TAC	Share of TAC (mt)	ITAC (mt) [1]	CDQ reserve
Bering Sea subarea:				
Trawl [2]	50	1,450	1,233	109
Hook-and-line/pot gear [3]	50	1,450	N/A	290
Total	100	2,900	1,233	399
Aleutian Islands subarea:				
Trawl [2]	25	775	659	58
Hook-and-line/pot gear [3]	75	2,325	N/A	465

TABLE 6.—2003 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS—Continued

[Amounts are in mt]

Subarea and gear	Percent of TAC	Share of TAC (mt)	ITAC (mt) [1]	CDQ reserve
Total	100	3,100	659	523

[1] Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] The portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the CDQ program.

[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring

PSC limits for halibut are set forth in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,675 mt of halibut mortality and for non-trawl fisheries, the limit is 900 mt of halibut mortality. For chinook salmon, regulations at § 679.21(e)(1)(vii) specify a scheduled reduction of the chinook salmon PSC limit until the final limit is reached in 2004. For 2003, the chinook salmon PSC limit for the pollock fishery is 33,000 fish. PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

The red king crab mature female abundance is estimated to be 18.6 million king crab and the effective spawning biomass is estimated to be 37.7 million pounds (17,100 mt) from the 2002 survey data. Based on the criteria set out at § 679.21(e)(1)(ii), the 2003 PSC limit of red king crab in Zone 1 for trawl gear is 97,000 animals as a result of the mature female abundance above 8.4 million king crab and the effective spawning biomass estimate greater than 14.5 (6,577 mt) but less than 55 million pounds (24,948 mt).

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to up to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/ ''other flatfish'' fishery category and must be based on the need to optimize the groundfish harvest relative to red king crab bycatch. The Council recommended, and NMFS approves, a red king crab bycatch limit equal to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/ ''other flatfish'' fishery category within the RKCSS.

Based on 2002 survey data, the *C. bairdi* crab abundance is estimated to be 464.9 million animals. Given the criteria set out at § 679.21(e)(1)(iii), the 2003 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2 as a result of the *C. bairdi* crab abundance estimate of over 400 million animals.

Under § 679.21(e)(1)(iv), the PSC limit for *C. opilio* crab is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2002 survey estimate of 1.49 billion animals, the calculated limit is 1,169,000 animals. Because this limit is less than 4.5 million, under § 679.21(e)(1)(iv)(B), the 2003 *C. opilio* crab PSC limit is 4,350,000 animals.

Under § 679.21(e)(1)(vi), the PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. NMFS' best estimate of 2003 herring biomass is 152,574 mt. This amount was derived using 2001 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit for 2003 is 1,526 mt.

Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for halibut and crab is allocated as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit into PSC bycatch allowances among five fishery categories. The fishery bycatch allowances for the trawl and non-trawl fisheries are listed in Table 7.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS, after consultation with the Council, is exempting pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because these fisheries use selective gear types that take few halibut compared to other gear types such as nonpelagic trawl. In 2002, total groundfish catch for the pot gear fishery in the BSAI was approximately 15,518 mt with an associated halibut bycatch mortality of about 8 mt. The 2002 groundfish jig gear fishery harvested about 172 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

As in past years, the Council recommended the sablefish IFQ fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of 50 CFR part 679). The sablefish IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. NMFS is approving the Council's recommendation. This action results in less halibut discard in the sablefish fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. Estimates for 1996 through 2002 have not been calculated, however NMFS has no information indicating that it would be significantly different.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are: (1) Seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to

prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of seasonal PSC apportionments on industry sectors. In December 2002, the Council's AP recommended seasonal PSC apportionments in order to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based upon the above criteria.

The Council adopted and NMFS approves the PSC apportionments specified in Table 7.

TABLE 7.—PROHIBITED SPECIES CATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES [1]

	Prohibited Species and Zone					
	Halibut mortality (mt) BSAI [6]	Herring (mt) BSAI	Red King Crab (animals) Zone 1	C. opilio (animals) COBLZ [2]	C. bairdi (animals)	
					Zone 1	Zone 2
Trawl Fisheries						
Yellowfin sole	886	139	16,664	2,776,981	340,844	1,788,459
January 20—April 1	262					
April 1—May 21	195					
May 21—June 29	49					
June 29—December 31	380					
Rock sole/flat. sole/other flatfish [3]	779	20	59,782	969,130	365,320	596,154
January 20—April 1	448					
April 1—June 29	164					
June 29—December 31	167					
RKCSS [3]			20,924			
Turbot/sablefish/arrowtooth [4]		9		40,238		
Rockfish (June 29—Dec. 31)	69	7		40,237		10,988
Pacific cod	1,434	20	13,079	124,736	183,112	324,176
Pollock/Atka/other [5]	232	146	200	72,428	17,224	27,473
Midwater trawl pollock		1,184				
Total Trawl PSC	3,400	1,526	89,725	4,023,750	906,500	2,747,250
Non-Trawl Fisheries						
Pacific cod—Total	775					
January 1—June 10	320					
June 10—August 15	0					
August 15—December 31	455					
Other non-trawl—Total	58					
May 1—December 31	58					
Groundfish pot & jig	Exempt					
Sablefish hook-&-line	Exempt					
Total Non-Trawl	833					
PSQ RESERVE [7]	342		7,275	326,250	73,500	222,750
GRAND TOTAL	4,575	1,526	97,000	4,350,000	980,000	2,970,000

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at 50 CFR part 679, Figure 13.
[3] The Council at its December 2002 meeting recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)). ''Other flatfish'' for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), greenland turbot, rock sole, yellowfin sole and arrowtooth flounder.
[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[5] Pollock other than pelagic trawl pollock, Atka mackerel, and ''other species'' fishery category.
[6] With the exception of the non-trawl Pacific cod directed fishery, any unused halibut PSC apportionment may be added to the following season's apportionment. Any unused halibut PSC apportioned to the non-trawl Pacific cod directed fishery during the January 1 through June 10 time period will not be available until August 15.
[7] With the exception of herring, 7.5 percent of each PSC limit is allocated to the CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator will use observed halibut bycatch rates, assumed mortality rates, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The assumed mortality rates are based on the best information available, including information contained in the annual SAFE report.

The Council recommended, and NMFS concurs, that the assumed halibut discard mortality rates (DMRs) developed by the International Pacific Halibut Commission (IPHC) for the 2002 BSAI groundfish fisheries be adopted for purposes of monitoring halibut bycatch allowances established for 2003 (Table 8). In 2001, the IPHC recommended, and the Council and NMFS concurred, to use the 10-year average DMRs for the 2001 through 2003 BSAI non-CDQ groundfish fisheries. Plots of annual DMRs against the 10-year average indicated little change since 1990 for some fisheries, particularly the major trawl fisheries. DMRs were more variable for the smaller fisheries which typically take minor amounts of halibut bycatch. The IPHC also will continue to conduct annual analyses of observer data and recommend changes to the Preseason Assumed DMR where a fishery DMR shows large variation from the average. Results from analysis of halibut release condition data for 2002 showed continued stability in halibut DMRs for many fisheries. The IPHC annually examines the CDQ fisheries and provides recommendations for any appropriate DMR revisions for those fisheries. The IPHC has been calculating the CDQ fisheries DMRs since 1998 and a 10-year average is not available. The Council recommended, and NMFS concurs, with the DMRs recommended by the IPHC for 2003 CDQ fisheries. The

justification for these DMRs is discussed in Appendix A of the final SAFE report dated November 2002.

TABLE 8.—2003 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES

Fishery	Preseason assumed mortality (percent)
Hook-and-line gear fisheries:	
Greenland turbot	18
Other species	12
Pacific cod	12
Rockfish	25
Sablefish	22
Trawl gear fisheries:	
Atka mackerel	75
Flathead sole	67
Greenland turbot	70
Midwater pollock	84
Nonpelagic pollock	76
Other flatfish	71
Other species	67
Pacific cod	67
Rockfish	69
Rock sole	76
Sablefish	50
Yellowfin sole	81
Pot gear fisheries:	
Other species	8
Pacific cod	8
CDQ trawl fisheries:	
Atka mackerel	80
Flathead sole	90
Midwater pollock	89
Nonpelagic pollock	90
Rockfish	90
Yellowfin sole	83
CDQ hook-and-line fisheries:	
Greenland turbot	4
Pacific cod	11
CDQ pot fisheries:	
Pacific cod	2
Sablefish	46

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines that any allocation or apportionment of a target species or ''other species'' category has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (§ 697.20(d)(1)(iii)). Similarly, under § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab or *C. opilio* crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the following remaining allocation amounts will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year:

TABLE 9.—DIRECTED FISHING CLOSURES [1]

Area/species	Gear types	Incidental catch amount
Bogoslof District:		
Pollock	All	50
Aleutian Islands subarea:		
Pollock	All	1,000
Northern rockfish	All	5,438
Shortraker/Rougheye rockfish, trawl	All	538
Shortraker/Rougheye rockfish, non-trawl	All	230
Other rockfish	All	539
Bering Sea subarea:		
Northern rockfish	All	112
''Other rockfish''	All	888

TABLE 9.—DIRECTED FISHING CLOSURES [1]—Continued

Area/species	Gear types	Incidental catch amount
Pacific ocean perch	All	1,199
Shortraker/rougheye rockfish	All	126
Bering Sea Aleutian Islands:		
Other species	All	29,886

[1] The Regional Administrator has determined that the incidental catch amounts will be necessary to support other anticipated groundfish fisheries for the 2003 fishing year (§ 679.20(d)(1)(ii)(B)).

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for these species in the specified areas and these closures are effective immediately through 2400 hrs, A.l.t., December 31, 2003.

In addition, the BSAI Zone 1 annual red king crab allowance specified for the trawl rockfish fishery (§ 679.21(e)(3)(iv)(D)) is 0 mt and the BSAI first seasonal halibut bycatch allowance specified for the trawl rockfish fishery is 0 mt. The BSAI annual halibut bycatch allowance specified for the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories is 0 mt (§ 679.21(e)(3)(iv)(C)). Therefore, in accordance with § 679.21(e)(7)(ii) and (v), NMFS is prohibiting directed fishing for rockfish by vessels using trawl gear in Zone 1 of the BSAI and directed fishing for Greenland turbot/arrowtooth flounder/sablefish by vessels using trawl gear in the BSAI effective immediately through 2400 hrs, A.l.t., December 31, 2003. NMFS is also prohibiting directed fishing for rockfish outside Zone 1 in the BSAI through 1200 hrs, A.l.t., June 29, 2003.

Under authority of the interim 2003 harvest specifications (67 FR 78739, December 26, 2002), NMFS prohibited directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI effective 1200 hrs, A.l.t., January 22, 2003, through 1200 hrs, A.l.t., September 1, 2003 (68 FR 2920, January 22, 2003). NMFS opened the first directed fisheries in the HLA in area 542 and area 543 effective 1200 hrs, A.l.t., January 24, 2003. The first HLA fishery in area 542 remained open through 1200 hrs, A.l.t., January 29, 2003. The first HLA fishery in area 543 remained open through 1200 hrs, A.l.t., January 28, 2003. The second directed fisheries in the HLA in area 542 and area 543 opened effective 1200 hrs, A.l.t., January 31, 2003. The second HLA fishery in area 542 remained open through 1200 hrs, A.l.t., February 5, 2003. The second HLA fishery in area 543 remained open through 1200 hrs, A.l.t., February 4, 2003. NMFS prohibited directed fishing for CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea effective 1200 hrs, A.l.t., January 22, 2003, through 2400 hrs, A.l.t., December 31, 2003 (68 FR 3823, January 23, 2003). Fishing with non-pelagic trawl gear in the red king crab savings subarea of the BSAI closed February 12, 2003, through 2400 hrs, A.l.t., December 31, 2003 (68 FR 8153, February 20, 2003). NMFS prohibited directed fishing for rock sole, flathead sole, and ''other flatfish'' by vessels using trawl gear in the BSAI effective 1200 hrs, A.l.t., February 18, 2003, through 2400 hrs, A.l.t., April 1, 2003 (68 FR 8726, February 25, 2003).

These closures remain effective under authority of the final 2003 harvest specifications.

These closures supersede the closures announced in the 2003 interim specifications (67 FR 78739, December 26, 2002). While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at § 679. In the BSAI, ''other rockfish'' includes *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, shortraker, rougheye, and northern rockfish.

Bering Sea Subarea Inshore Pollock Allocations

Regulations at § 679.4(l), set forth procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. NMFS received applications from seven inshore catcher vessel cooperatives. Table 10 lists the pollock allocations to the seven inshore catcher vessel pollock cooperatives based on 2003 cooperative allocations that have been approved and permitted by NMFS for the 2003 fishing year. Allocations for cooperatives and vessels not participating in cooperatives are not made for the AI subarea because the AI subarea has been closed to directed fishing for pollock.

TABLE 10.—2003 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories [1] (mt)	Percentage of inshore sector allocation (percent)	Annual co-op allocation (mt)
Akutan Catcher Vessel Association	245,527	28.085	181,932
ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER			
Arctic Enterprise Association	36,807	4.210	27,273
BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER			

TABLE 10.—2003 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS—Continued

Cooperative name and member vessels	Sum of member vessel's official catch histories [1] (mt)	Percentage of inshore sector allocation (percent)	Annual co-op allocation (mt)
Northern Victor Fleet Cooperative	73,656	8.425	54,578
ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL			
Peter Pan Fleet Cooperative	18,693	2.138	13,851
AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PROVIDIAN, TOPAZ, WALTER N			
Unalaska Cooperative	106,737	12.209	79,091
ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN			
UniSea Fleet Cooperative	201,566	23.056	149,357
ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN–MAR, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE			
Westward Fleet Cooperative	189,942	21.727	140,744
A.J., ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC CHALLENGER, PACIFIC KNIGHT, PACIFIC PRINCE, STARWARD, VIKING, WESTWARD I			
Open access AFA vessels	1,309	0.150	970
Total inshore allocation	874,238	100	647,797

[1] According to regulations that will be effective with the final rule to implement major provisions of the AFA at 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

According to regulations at § 679.20(a)(5)(i)(A)(*3*), NMFS must subdivide the inshore allocation into allocations for cooperatives and vessels not fishing in a cooperative (*i.e.*, the open access sector). In addition, under § 679.22(a)(7)(vii), NMFS must establish harvest limits inside the SCA and provide a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA during the A season. Accordingly, Table 11 lists the apportionment of the Bering Sea subarea inshore pollock allocation into allocations for vessels fishing in a cooperative and allocations for vessels not participating in a cooperative and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for sector catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 11. These allocations may be revised based on any corrections to AFA vessels' catch history.

TABLE 11.—2003 BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY

[Amounts are in mt]

	A season TAC	SCA harvest limit [1,2]	B season TAC
Cooperative sector:			
Vessels >99 ft	n/a	155,616	n/a
Vessels ≤99 ft	n/a	25,495	n/a
Total	258,731	181,111	388,096
Open access sector	388	272	582
Total inshore	259,119	181,383	388,678

[1] Steller sea lion conservation area established at § 679.22(a)(7)(vii).

[2] The SCA harvest limits for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(7)(vii)(C)(*2*) which specifies that ''the Regional Administrator will prohibit directed fishing for pollock by vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A season to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening.''

Listed AFA Catcher/processor Sideboard Limits

In 2003, the formula for setting AFA catcher/processor sideboard limits for non-pollock groundfish changed from calculations made for the sideboard limits in 2000 through 2002. The Council made a distinction between retained and total catch for the purpose of calculating sideboard limits and determined that AFA vessels should not receive sideboard credit for groundfish that were discarded and not utilized. Under regulations at § 679.64(a), the listed catcher/processor sideboard limits for BSAI groundfish (except Atka mackerel, Pacific cod, and some Pacific ocean perch) will be based on the 1995 through 1997 retained catch of such groundfish species by the 20 AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA. For Pacific cod, the sideboard limit will be based on 1997 retained catch only and for Pacific ocean perch in the Aleutian Islands subarea, the sideboard limits will be based on 1996 and 1997 retained catch only. The AFA catcher/processor sideboard limit for Atka mackerel is zero percent of the Bering Sea subarea and Eastern Aleutians annual TAC, 11.5 percent of the Central Aleutian districts annual TAC, and 20 percent of the Western Aleutian districts annual TAC.

The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). The 2003 catcher/processor sideboard limits are set out in Table 12.

All non-pollock groundfish that is harvested by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Table 12. However, non-pollock groundfish that are delivered to listed catcher/processors by catcher vessels will not be deducted from the 2003 sideboard limits for the listed catcher/processors.

TABLE 12.—2003 LISTED BSAI AFA CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

[Amounts are in mt]

Target species	Area	1995—1997			2003 ITAC available to trawl C/Ps	2003 C/P sideboard limit
		Retained catch	Available TAC	Ratio		
Pacific cod trawl	BSAI	12,424	51,450	0.241	45,105	10,870
Sablefish trawl	BS	8	1,736	0.005	1,233	6
	AI	0	1,135	0.000	659	0
Atka mackerel	Western AI					
	A season[1]	n/a	n/a	0.200	9,245	1,849
	HLA limit[2]					1,109
	B season[1]	n/a	n/a	0.200	9,245	1,849
	HLA limit[2]					1,109
	Central AI					
	A season[1]	n/a	n/a	0.115	13,579	1,562
	HLA limit[2]					937
	B season[1]	n/a	n/a	0.115	13,579	1,562
	HLA limit[2]					937
Yellowfin sole	BSAI	100,192	527,000	0.190	71,188	13,526
Rock sole	BSAI	6,317	202,107	0.031	37,400	1,159
Greenland turbot	BS	121	16,911	0.007	2,278	16
	AI	23	6,839	0.003	1,122	3
Arrowtooth flounder	BSAI	76	36,873	0.002	10,200	20
Flathead sole	BSAI	1,925	87,975	0.022	17,000	374
Alaska plaice	BSAI	3,243		0.035	9,250	324
Other flatfish	BSAI	3,243	92,428	0.035	2,775	97
Pacific ocean perch	BS	12	5,760	0.002	1,199	2
	Western AI	54	12,440	0.004	5,411	22
	Central AI	3	6,195	0.000	3,090	0
	Eastern AI	125	6,265	0.020	3,238	65
Northern rockfish	BS	8		0.008	112	1
	AI	83	13,254	0.006	5,438	33
Shortraker/rougheye	BS	8		0.008	126	1
	AI	42	2,827	0.015	538	8
Other rockfish	BS	18	1,026	0.018	888	16
	AI	22	1,924	0.011	539	6
Squid	BSAI	73	3,670	0.020	1,675	34
Other species	BSAI	553	65,925	0.008	29,886	239

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Unrestricted AFA catcher/processors are limited to incidental catch amounts in the Eastern Aleutian district and Bering Sea subarea, 20 percent of the available TAC in the Western Aleutian district, and 11.5 percent of the available TAC in the Central Aleutian district.

[2] HLA limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2003, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian districts. Pacific cod harvest by trawl gear in the Aleutian Islands HLA, west of 178 degrees W. long. is prohibited during the Atka mackerel HLA directed fisheries.

Regulations at § 679.64(a)(5) establish a formula for PSC sideboard limits for listed AFA catcher/processors. These amounts are equivalent to the percentage of the PSC amounts taken in the non-pollock groundfish fisheries by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997. PSC amounts taken by listed catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 13. These data were used to calculate the relative amount of PSC limits by pollock

catcher/processors, that were then used to determine the PSC sideboard limits for listed AFA catcher/processors in the 2003 non-pollock groundfish fisheries.

PSC that is caught by listed AFA catcher/processors participating in any non-pollock groundfish fishery listed in Table 13 would accrue against the 2003 PSC limits for the listed AFA catcher/processors. Regulations at § 679.21(e)(3)(v) authorize NMFS to close directed fishing for non-pollock groundfish for listed AFA catcher/processors once a 2003 PSC limit listed in Table 13 is reached.

Crab or halibut PSC that is caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under regulations at § 679.21(e).

TABLE 13.—2003 LISTED BSAI AFA CATCHER/PROCESSOR PROHIBITED SPECIES CATCH SIDEBOARD LIMITS [1]

PSC species	1995–1997			2003 PSC available to trawl vessels	2003 C/P PSC sideboard limit
	PSC catch	Total PSC	Ratio		
Halibut mortality	955	11,325	0.084	3,400	286
Red king crab	3,098	473,750	0.007	89,725	628
C. opilio	2,323,731	15,139,178	0.153	4,023,750	615,634
C. bairdi					
Zone 1	385,978	2,750,000	0.140	906,500	126,910
Zone 2	406,860	8,100,000	0.050	2,747,250	137,363

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboard Limits

Regulations at § 679.64(b) establish formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). The 2003 AFA catcher vessel sideboard limits are shown in Tables 14 and 15.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the sideboard limits listed in Table 14.

TABLE 14.—2003 BSAI AFA CATCHER VESSEL (CV) SIDEBOARD LIMITS

[Amounts are in mt]

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2003 Initial TAC	2003 catcher vessel sideboard limit
Pacific cod	BSAI			
	jig gear	0.0000	3,839	0
	hook-and-line CV			
	Jan 1–Jun 10	0.0006	175	0
	.			
	Jun 10–Dec 31	0.0006	117	0
	pot gear			
	Jan 1–Jun 10	0.0006	10,693	6
	Sept 1–Dec 31	0.0006	7,129	4
	CV < 60 feet LOA	0.0006	1,363	0
	using hook-and-line or pot gear			
	trawl gear			
	catcher vessel			
	Jan 20–Apr 1	0.8609	31,574	27,182
	Apr 1–Jun 10	0.8609	4,510	3,883
	Jun 10–Nov 1	0.8609	9,021	7,766
Sablefish	BS trawl gear	0.0906	1,233	112
	AI trawl gear	0.0645	659	43
Atka mackerel	*Eastern AI/BS*			
	jig gear	0.0031	99	0
	other gear			
	Jan 1–Apr 15	0.0032	4,876	16
	Sept 1–Nov 1	0.0032	4,876	16
	Central AI			
	Jan 1–Apr 15	0.0001	13,579	1
	HLA limit	0.0001	8,147	1
	Sept 1–Nov 1	0.0001	13,579	1
	HLA limit	0.0001	8,147	1
	Western AI			
	Jan 1–Apr 15	0.0000	9,245	0
	HLA limit	0.0000	5,547	0
	Sept 1–Nov 1	0.0000	9,245	0
	HLA limit	0.0000	5,547	0
Yellowfin sole	BSAI	0.0647	71,188	4,606
Rock sole	BSAI	0.0341	37,400	1,275

TABLE 14.—2003 BSAI AFA CATCHER VESSEL (CV) SIDEBOARD LIMITS—Continued

[Amounts are in mt]

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2003 Initial TAC	2003 catcher vessel sideboard limit
Greenland turbot	BS	0.0645	2,278	147
	AI	0.0205	1,122	23
Arrowtooth flounder	BSAI	0.0690	10,200	704
Aalaska plaice	BSAI	0.0441	9,250	408
Other flatfish	BSAI	0.0441	2,775	122
Pacific ocean perch	BS	0.1000	1,199	120
	Eastern AI	0.0077	3,238	25
	Central AI	0.0025	3,090	8
	Western AI	0.0000	5,411	0
Northern rockfish	BS	0.0280	112	3
	AI	0.0089	5,438	48
Shortraker/Rougheye	BS	0.0048	126	1
	AI	0.0035	768	3
Other rockfish	BS	0.0048	888	4
	AI	0.0095	539	5
Squid	BSAI	0.3827	1,675	641
Other species	BSAI	0.0541	29,886	1,617
Flathead sole	BS trawl gear	0.0505	17,000	859

The AFA catcher vessel PSC limit for halibut and each crab species in the BSAI for which a trawl bycatch limit has been established, will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997. For the BSAI, the PSC sideboard limits are listed in Table 15.

Halibut and crab PSC that are caught by AFA catcher vessels participating in any non-pollock groundfish fishery listed in Table 15 will accrue against the 2003 PSC limits for the AFA catcher vessels. Regulations at § 679.21(d)(8) and (e)(3)(v) provide authority to close directed fishing for non-pollock groundfish for AFA catcher vessels once a 2003 PSC limit listed in Table 15 for the BSAI is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under regulations at § 679.21(e).

TABLE 15.—2003 AFA CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]

PSC species	Target fishery category [2]	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2003 PSC limit	2003 AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	0.6183	1,434	887
	Pacific cod hook-and-line or pot	0.0022	775	2
	Yellowfin sole			
	January 20—April 1	0.1144	262	30
	April 1—May 21	0.1144	195	22
	May 21—June 29	0.1144	49	6
	June 29—December 31	0.1144	380	43
	Rock sole/flathead sole/other flatfish [5]			
	January 20—April 1	0.2841	448	127
	April 1—June 29	0.2841	164	47
	June 29—December 31	0.2841	167	47
	Turbot/Arrowtooth/sablefish	0.2327	0	0
	Rockfish	0.0245	69	2
	Pollock/Atka mackerel/Other species	0.0227	232	5
Red King Crab	Pacific cod	0.6183	13,079	8,087
Zone 1 [4]	Yellowfin sole	0.1144	16,664	1,906
	Rock sole/flathead sole/other flatfish [5]	0.2841	59,782	16,984
	Pollock/Atka mackerel/Other species	0.0227	200	5
C. opilio	Pacific cod	0.6183	124,736	77,124
COBLZ [3]	Yellowfin sole	0.1144	2,776,981	317,687
	Rock sole/flathead sole/other flatfish [5]	0.2841	969,130	275,330
	Pollock/Atka mackerel/Other species	0.0227	72,428	1,644
	Rockfish	0.0245	40,237	986
	Turbot/Arrowtooth/sablefish	0.2327	40,238	9,363
C. bairdi	Pacific cod	0.6183	183,112	113,218
Zone 1	Yellowfin sole	0.1144	340,844	38,993
	Rock sole/flathead sole/other flatfish [5]	0.2841	365,320	103,787

TABLE 15.—2003 AFA CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]—Continued

PSC species	Target fishery category [2]	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2003 PSC limit	2003 AFA catcher vessel PSC sideboard limit
	Pollock/Atka mackerel/Other species	0.0227	17,224	391
C. bairdi	Pacific cod	0.6183	324,176	200,438
Zone 2	Yellowfin sole	0.1144	1,788,459	204,600
	Rock sole/flathead sole/other flatfish [5]	0.2841	596,154	169,367
	Pollock/Atka mackerel/Other species	0.0227	27,473	624
	Rockfish	0.0245	10,988	269

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at Figure 13 of 50 CFR part 679.
[4] The Council at its December 2002 meeting recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/'other flatfish'' fishery category (§ 679.21(e)(3)(ii)(B)).
[5] ''Other flatfish'' for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

Sideboard Directed Fishing Closures

AFA Catcher/Processor and Catcher Vessel Sideboard Closures

The Regional Administrator has determined that many of the AFA catcher/processor and catcher vessel sideboard limits listed in Tables 12 and 14 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the sideboard limits listed in Tables 12 and 14 as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by listed AFA catcher/processors for the species in the specified areas set out in Table 16 and directed fishing by non-exempt AFA catcher vessels for the species in the specified areas set out in Table 17.

TABLE 16.—AFA LISTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES [1]

Species	Area	Gear types	Incidental catch amount
Sablefish trawl	BS	Trawl	6
	AI	Trawl	0
Rock sole	BSAI	all	1,159
Greenland turbot	BS	all	16
	AI	all	3
Arrowtooth flounder	BSAI	all	20
Pacific ocean perch	BS	all	2
	Western AI	all	22
	Central AI	all	0
	Eastern AI	all	65
Northern rockfish	BS	all	1
	AI	all	33
Shortraker/Rougheye rockfish	BS	all	1
	AI	all	8
Other rockfish	BS	all	16
	AI	all	6
Squid	BSAI	all	34
Other species	BSAI	all	239

[1] Maximum retainable percentages may be found in Table 11 to 50 CFR part 679.

TABLE 17.—AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES [1]

Species	Area	Gear	Incidental catch amount
Pacific cod	BSAI	hook-and-line	0
	BSAI	pot	10
	BSAI	jig	0
Sablefish	BS	trawl	112
	AI	trawl	43
Atka mackerel	Eastern AI/BS	jig	0
	Eastern AI/BS	other	32
	Central AI	all	2
	Western AI	all	0
Greenland Turbot	BS	all	147
	AI	all	23
Arrowtooth flounder	BSAI	all	704

TABLE 17.—AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES [1]—Continued

Species	Area	Gear	Incidental catch amount
Pacific ocean perch	BS	all	120
	Western AI	all	0
	Central AI	all	8
	Eastern AI	all	25
Northern rockfish	BS	all	3
	AI	all	48
Shortraker/Rougheye rockfish	BS	all	1
	AI	all	3
Other rockfish	BS	all	4
	AI	all	5
Squid	BSAI	all	641
Other species	BSAI	all	1,617

[1] Maximum retainable percentages may be found in Table 11 to 50 CFR part 679.

Response to Comments

NMFS received one letter of comment in response to the proposed 2003 harvest specifications (67 FR 76362, December 12, 2002.)

Comment 1. A request for an extension of time in which to comment on the document.

Response. Regulations at 50 CFR 679.20(c)(1)(i)(B) provide for a 30-day comment period on the proposed specifications. NMFS has determined that an extension of the 30-day comment period on the proposed harvest specifications would pose unacceptable management implications for the 2003 groundfish fisheries. Without proposed and interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishery industry. Therefore, NMFS declines to extend the comment period on the proposed specifications.

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary management measures are to announce final 2003 harvest specifications and prohibited species bycatch allowances for the groundfish fishery of the BSAI. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2003 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. This action affects all fishermen who participate in the BSAI fishery. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact the 2003 harvest specifications may have on small entities, in accordance with the provisions of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 603(b)). Notice of the availability of the IRFA, and a summary, were published in the classification section of the proposed harvest specifications for the groundfish fisheries in the BSAI in the **Federal Register** on December 12, 2002 (67 FR 76362). The comment period on the proposed BSAI harvest specifications and IRFA ended on January 13, 2003. NMFS did not receive any comments on the IRFA. NMFS has prepared a FRFA for this action and a copy is available from the Council (see **ADDRESSES**).

The small entities affected by this action are those that harvest fish under the terms of the specifications in the BSAI. The FRFA identified 193 small catcher vessels, 31 small catcher/processors, and six small CDQ groups.

No projected additional reporting, recordkeeping or other compliance requirements were identified in connection with the final notice of specifications.

Four alternatives were evaluated, in addition to the preferred alternative. Alternatives were defined by the use of different harvest rates (F values). Impacts of the alternatives were estimated on the basis of their associated overall fleet gross revenue levels. Three alternatives (set F equal to 50% of max F_{ABC}, set F equal to the most recent five year average actual F, and set F equal to zero) all appeared to have greater adverse impacts on small entities than the preferred alternative. Alternative 1 (set F equal to max F_{ABC}) had impacts on small entities that appeared to be similar to those of the preferred alternative. However, this alternative was not chosen because it used 2002 TACs, which do not take into consideration biological survey information collected and analyzed in 2002, and evaluated by the Council and its SSC and AP committees at the end of 2002. The preferred alternative was chosen, rather than Alternative 1, because the TACs in the preferred alternative take into account the best and most recent information available regarding the status of the groundfish stocks, public testimony, and socio-economic concerns.

The apportionment of a portion of the nonspecified reserve (see Table 2) is necessary to provide increased ITAC to provide for more efficient operation of intensive fast-paced fisheries for Pacific cod, Atka mackerel and Pacific ocean perch, and to allow for the orderly conduct of the flatfish and rockfish fisheries. Also, U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. Therefore, a delay for prior notice and public procedure is contrary to the public interest. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive the requirement for prior notice under 5 U.S.C. 553(b)(3). In accordance with 50 CFR 679(b)(3), comments on the apportionment of reserves are invited by March 18, 2003.

In some cases, the interim specifications currently in effect are not sufficient to allow directed fisheries to continue, resulting in unnecessary closures and disruption within the fishing industry. This action establishes the harvest specifications for the 2003

fisheries in the BSAI. Hence, the action must be effective immediately to provide consistent, uninterrupted management and conservation of fishery resources and to allow the fishing industry to plan its fishing operations. Accordingly, the Assistant Administrator for Fisheries, NOAA, finds there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date.

This action must be effective immediately to provide consistent management and conservation of fishery resources and to give the fishing industry the earliest possible opportunity to plan its fishing operations. Accordingly, the AA finds there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of the effective date.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: February 24, 2003.

Rebecca Lent,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 110602B]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2003 Harvest Specifications for Groundfish

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

ACTION: Final 2003 harvest specifications for groundfish and associated management measures; closures.

SUMMARY: NMFS announces final 2003 harvest specifications for groundfish, reserves and apportionments thereof, Pacific halibut prohibited species catch (PSC) limits, and associated management measures for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2003 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the GOA (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final 2003 harvest specifications and associated management measures are effective at 1200 hrs, Alaska local time (A.l.t.), February 25, 2003, through 2400 hrs, A.l.t, December 31, 2003.

ADDRESSES: Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action and the Final 2002 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2002, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK, 99510 (907–271–2809) or from its homepage at *http://www.fakr.noaa.gov/npfmc*.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780 or e-mail at *tom.pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background for the 2003 Final Harvest Specifications

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the FMP. The Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20(a)(1)(ii)). Regulations at § 679.20(c)(3)(i) further require NMFS to publish annually the final annual TACs, halibut PSC amounts, and seasonal allowances of pollock, Pacific cod, and inshore/offshore Pacific cod. The final specifications set forth in Tables 1 to 11 of this document satisfy these requirements. For 2003, the sum of TAC amounts is 236,440 mt.

The proposed GOA groundfish specifications and Pacific halibut PSC allowances for the groundfish fishery of the GOA were published in the **Federal Register** on December 12, 2002 (67 FR 76344). Comments were invited and accepted through January 13, 2003. NMFS received one comment on the proposed specifications. This comment is summarized and responded to in the ''Response to Comments'' section. Public consultation with the Council occurred during the December 2002 Council meeting in Anchorage, AK. After considering public comments received, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the final 2003 groundfish specifications as recommended by the Council.

Regulations at § 679.20(c)(2)(i) establish interim amounts of each proposed TAC and apportionment thereof, and proposed PSC allowances established under § 679.21 that become available at 0001 hours, A.l.t., January 1, and remain available until superseded by the final specifications. NMFS published the interim 2003 groundfish harvest specifications in the **Federal Register** on December 26, 2002 (67 FR 78733). The final 2003 groundfish harvest specifications, apportionments, and halibut PSC allowances contained in this action supersede the interim 2003 groundfish harvest specifications.

Implementation of Steller Sea Lion Conservation Measures

In accordance with a biological opinion issued by NMFS on October 19, 2001, NMFS implemented a final rule for Steller sea lion protection (68 FR 204, January 2, 2003) that contains measures that were deemed necessary to avoid the likelihood that the pollock, Pacific cod, and Atka mackerel fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. The final rule implements three types of management measures for the pollock and Pacific cod fisheries of the GOA: (1) measures to temporally disperse fishing effort, (2) measures to spatially disperse fishing effort, and (3) measures to provide sufficient protection from competition with pollock fisheries for prey in waters immediately adjacent to rookeries and important haulouts.

On December 18, 2002, the United States District Court for the Western District of Washington entered an Order remanding the October 19, 2001, biological opinion prepared for the groundfish fisheries. *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 reached an agreement with the Plaintiffs that the 2003

groundfish fisheries will commence pursuant to the Steller sea lion protection measures examined in the biological opinion pending completion of the remand. The Court issued an order on December 30, 2002, that supported the agreement and extended the effective date of the 2001 Steller sea lion protection measures biological opinion until June 30, 2003.

Acceptable Biological Catch (ABC) and TAC Specifications

The final ABC levels are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used in computing ABCs and overfishing levels (OFLs). The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers.

The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed the most current biological information about the condition of GOA groundfish stocks at their meetings in December 2002. This information was compiled by the Council's GOA Plan Team and was presented in the final 2002 SAFE report for the GOA groundfish fisheries, dated November 2002.

The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species or species category.

The SSC, AP, and Council adopted the Plan Team's ABC recommendations for all groundfish species categories except sablefish. For sablefish, the SSC increased the ABC from the Plan Team's recommendation based on the projected 5–year average of catches under the Council's F40% policy. The AP endorsed the ABC for sablefish recommended by the SSC, and the Council adopted the ABC. The final ABCs, as adopted by the Council are listed in Table 1.

As in 2002, the SSC's, AP's and Council's recommendation for the method of apportioning the sablefish ABC among management areas includes commercial fishery as well as survey data. NMFS stock assessment scientists believe that the use of unbiased commercial fishery data reflecting catch-per-unit effort provides a desirable input for stock distribution assessments. The use of commercial fishery data needs to be evaluated annually to assure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern GOA and makes available 5 percent of the combined Eastern GOA ABCs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat District.

The AP and Council recommended that the ABC for Pacific cod in the GOA be apportioned among regulatory areas based on the three most recent NMFS summer trawl surveys. As in previous years, the Plan Team, SSC, and Council recommended that total removals of Pacific cod from the GOA not exceed ABC recommendations. Accordingly, the AP and Council recommended that the TACs be adjusted downward from the ABCs by amounts equal to the 2003 guideline harvest levels (GHL) established for Pacific cod by the State of Alaska (State) for seasons which occur in State waters in the GOA. The effect of the State's GHL on the Pacific cod TAC is discussed in greater detail below.

The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC with the required OY range of 116,000 to 800,000 mt. The Council adopted the AP's TAC recommendations. None of the Council's recommended TACs for 2003 exceeds the final ABC for any species category. NMFS finds that the recommended ABCs and TACs are consistent with the biological condition of groundfish stocks as described in the 2002 SAFE report and approved by the Council.

Table 1 lists the final annual 2003 OFL, ABC, TAC, and area apportionments of groundfish in the GOA. The sum of 2003 ABCs for all assessed groundfish is 416,600 mt, which is higher than the 2002 ABC total of 394,780 mt. The apportionment of TAC amounts among gear types, processing sectors, and seasons is discussed below.

Specification and Apportionment of TAC Amounts

The Council adopted the AP's proposals for the 2003 GOA TAC amounts. The Council recommended TACs equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, shortraker and rougheye rockfish, northern rockfish, Pacific Ocean perch, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, and Atka mackerel. The Council-recommended TACs are less than the ABC for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, and other rockfish.

The apportionment of annual pollock TAC among three statistical areas of the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below.

The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal apportionments. The annual pollock TAC in the combined Western/Central/West Yakutat (W/C/WYK) area of the GOA is 47,890 mt. The annual TAC in the Western and Central Regulatory Areas of the GOA is apportioned among Statistical Areas 610, 620, and 630 as well as equally among each of the following four seasons: the A season (January 20 through February 25), the B season (March 10 through May 31), the C season (August 25 through September 15), and the D season (October 1 through November 1)(§ 679.23(d)(2)(i) through (iv) and § 679.20(a)(5)(ii)(B)).

The 2003 Pacific cod TAC is affected by the State's developing fishery for Pacific cod in State waters in the Central and Western GOA, as well as Prince William Sound (PWS). The SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals should not exceed the ABC. Accordingly, the Council recommended that Pacific cod TAC be reduced from ABC levels to account for State GHLs in each regulatory area of the GOA. Respective TACs, therefore, are reduced from ABCs as follows: (1) Eastern GOA 800 mt, (2) Central GOA 6,310 mt, and (3) Western GOA 5,150 mt. These amounts reflect the sum of State's 2003 GHLs in these areas which are 25 percent, 21.75 percent, and 25 percent of the Eastern, Central, and Western GOA ABCs, respectively. These percentages are unchanged from 2002.

NMFS is also establishing seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot and jig

gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§ 679.23(d)(3) and § 679.20(a)(11)). These seasonal apportionments of the annual Pacific cod TAC are discussed in greater detail below.

The FMP specifies that the amount for the ''other species'' category is calculated as 5 percent of the combined TAC amounts for target species. The 2003 GOA-wide ''other species'' TAC is 11,260 mt, which is 5 percent of the sum of the combined TAC amounts (225,180 mt) for the other groundfish species for which TAC is specified. The sum of the TACs for all GOA groundfish is 236,440 mt, which is within the OY range specified by the FMP. The sum of the 2003 TACs is lower than the 2002 TAC sum of 237,890 mt.

NMFS finds that the Council's recommendations for OFL, ABC, and TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt. NMFS has reviewed the Council's recommended TAC specifications and apportionments and approves these specifications under § 679.20(c)(3)(ii). The final 2003 ABCs, TACs, and OFLs are shown in Table 1.

Table 1 - Final 2003 ABCs, TACs, and OFLs of Groundfish for the Western/Central/West Yakutat (W/C/WYK), Western (W), Central (C), Eastern (E) Regulatory Areas, and in the West Yakutat (WYK), Southeast Outside (SEO), and Gulf-Wide (GW) Districts of the GOA. [Amounts are in mt]

Species	Area[1]	ABC	TAC	OFL
Pollock[2]				
Shumagin	(610)	16,788	16,788	
Chirikof	(620)	19,685	19,685	
Kodiak	(630)	10,339	10,339	
WYK	(640)	1,078	1,078	
Subtotal	W/C/WYK	47,890	47,890	69,410
SEO	(650)	6,460	6,460	8,610
Total		54,350	54,350	78,020
Pacific cod[3]				
	W	20,600	15,450	
	C	29,000	22,690	
	E	3,200	2,400	
Total		52,800	40,540	70,100
Flatfish[4] (deep-water)	W	180	180	
	C	2,220	2,220	
	WYK	1,330	1,330	
	SEO	1,150	1,150	
Total		4,880	4,880	6,430
Rex sole	W	1,280	1,280	
	C	5,540	5,540	
	WYK	1,600	1,600	
	SEO	1,050	1,050	
Total		9,470	9,470	12,320
Flathead sole	W	16,420	2,000	
	C	20,820	5,000	
	WYK	2,900	2,900	
	SEO	1,250	1,250	
Total		41,390	11,150	51,560
Flatfish[5] (shallow-water)	W	23,480	4,500	
	C	21,740	13,000	
	WYK	1,160	1,160	
	SEO	2,960	2,960	
Total		49,340	21,620	61,810

Table 1. (continued)

Species	Area[1]	ABC	TAC	OFL
Arrowtooth flounder	W	17,990	8,000	
	C	113,050	25,000	
	WYK	18,190	2,500	
	SEO	5,910	2,500	
Total		155,140	38,000	181,390
Sablefish[6]	W	2,570	2,570	
	C	6,440	6,440	
	WYK	2,320	2,320	
	SEO	3,560	3,560	
Subtotal	E	5,880	5,880	
Total		14,890	14,890	20,020
Pacific[7] ocean perch	W	2,700	2,700	3,220
	C	8,510	8,510	10,120
	WYK	810	810	
	SEO	1,640	1,640	
Subtotal	E			2,900
Total		13,660	13,660	16,240
Short raker/ rougheye[8]	W	220	220	
	C	840	840	
	E	560	560	
Total		1,620	1,620	2,340
Other rockfish[9,10]	W	90	90	
	C	550	550	
	WYK	270	150	
	SEO	4,140	200	
Total		5,050	990	6,610
Northern Rockfish[10,12,15]	W	890	890	
	C	4,640	4,640	
	E	N/A	N/A	
Total		5,530	5,530	6,560
Pelagic shelf rockfish[13]	W	510	510	
	C	3,480	3,480	
	WYK	640	640	
	SEO	860	860	
Total		5,490	5,490	8,220
Thornyhead rockfish	W	360	360	
	C	840	840	
	E	800	800	
Total		2,000	2,000	3,050

Table 1. (continued)

Species	Area[1]	ABC	TAC	OFL
Demersal shelf rockfish[11]	SEO	390	390	540
Atka mackerel	GW	600	600	6,200
Other[14,15] species	GW	N/A	11,260	N/A
TOTAL[16]		416,600	236,440	531,410

1 Regulatory areas and districts are defined at § 679.2.

2 Pollock is apportioned in the Western/Central Regulatory areas among three statistical areas. During the A season, the apportionment is based upon an adjusted estimate of relative distribution of pollock biomass at 25 percent, 56 percent, and 19 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 25 percent, 66 percent, and 9 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 47 percent, 23 percent, and 30 percent in Statistical Areas 610, 620, and 630, respectively. These seasonal apportionments are shown in Table 3. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

3 The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Seasonal apportionments and component allocations of TAC are shown in Table 4.

4 "Deep water flatfish" means Dover sole, Greenland turbot, and deep sea sole.

5 "Shallow water flatfish" means flatfish not including "deep water flatfish," flathead sole, rex sole, or arrowtooth flounder.

6 Sablefish is allocated to trawl and hook-and-line gears (Table 2).

7 "Pacific ocean perch" means Sebastes alutus.

8 "Shortraker/rougheye rockfish" means Sebastes borealis (shortraker) and S. aleutianus (rougheye).

9 "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means slope rockfish.

10 "Slope rockfish" means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. babcocki (redbanded), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergrey), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), and S. reedi (yellowmouth). In the Eastern GOA only, "slope rockfish" also includes northern rockfish,

S. polyspinous.

[11] "Demersal shelf rockfish" means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye).

[12] "Northern rockfish" means Sebastes polyspinis.

[13] "Pelagic shelf rockfish" means Sebastes ciliatus (dusky), S. entomelas (widow), and S. flavidus (yellowtail).

[14] "Other species" means sculpins, sharks, skates, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of assessed target species.

[15] N/A means not applicable.

[16] The total ABC is the sum of the ABCs for assessed target species.

Apportionment of Reserves

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish, and the ''other species'' category be set aside in reserves for possible apportionment at a later date (§ 679.20(b)(2)). In 2002, NMFS reapportioned all of the reserves in the final harvest specifications. NMFS proposed reapportionment of all reserves in the proposed 2003 GOA groundfish specifications published in the **Federal Register** on December 12, 2002 (67 FR 76344). NMFS received no public comments on the proposed reapportionments. For the final 2003 GOA harvest specifications, NMFS has reapportioned all of the reserve for pollock, Pacific cod, flatfish, and ''other species''. Specifications of TAC shown in Table 1 reflect apportionment of reserve amounts for these species and species groups.

Apportionments of the Sablefish TAC Amounts to Vessels Using Hook-and-line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Areas, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Western, Central, and Eastern Regulatory Areas may only be used to support incidental catch of sablefish in directed fisheries for other target species. In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended, and NMFS concurs, that 5 percent of the combined Eastern GOA sablefish TAC be allocated to trawl gear in the WYK District and the remainder to vessels using hook-and-line gear. This recommendation results in an allocation of 294 mt to trawl gear and 2,026 mt to hook-and-line gear in the WYK District and 3,560 mt to hook-and-line gear in the SEO District. In the SEO District, 100 percent of the sablefish TAC is allocated to vessels using hook-and-line gear, resulting in a 3,560 mt allocation. Table 2 shows the allocations of the 2003 sablefish TACs between hook-and-line gear and trawl gear.

Table 2 - Final 2003 Sablefish TAC Specifications in the GOA and Allocations Thereof to Hook-and-line and Trawl Gear. (Amounts are in mt)

Area/District	TAC	Hook-and-line Allocation	Trawl Allocation
Western	2,570	2,056	514
Central	6,440	5,152	1,288
West Yakutat	2,320	2,026	294
Southeast Outside	3,560	3,560	0
TOTAL	14,890	12,794	2,096

Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Under regulations at § 679.20(a)(5)(ii)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal apportionments of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season apportionments are available from January 20 through February 25, from March 10 through May 31, from August 25 through September 15, and from October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA in the A and B seasons are apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of pollock biomass, as determined by a composite of NMFS winter surveys, and in the C and D seasons in proportion to

the distribution of pollock biomass, as determined by the four most recent NMFS summer surveys. The Plan Team recommended an adjustment to the distribution of pollock in the Central Regulatory Area during the A season. The Plan Team recommended that during the A season, the winter and summer distribution of pollock be averaged in the Central Regulatory Area to better reflect the distribution of pollock and the performance of the fishery in the area during the A season. The SSC, AP, and Council concurred with the Plan Team's recommendation. Within any fishing year, the underage or overage of a seasonal apportionment may be added to or subtracted from subsequent seasonal apportionments in a manner to be determined by the Administrator, Alaska Region, NMFS, (Regional Administrator), provided that the sum of the revised seasonal apportionment does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(ii)(B)). For 2003, 30 percent of the annual TAC for the Central and Western Regulatory Areas is 14,044 mt. The WYK and SEO District pollock TACs of 1,078 mt and 6,460 mt, respectively are not apportioned seasonally.

Regulations at § 679.20(a)(6)(ii) require that the entire amount of the pollock TAC in all regulatory areas and all seasonal allowances thereof be allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). At this time, these incidental catch amounts are unknown and will be determined during the fishing year.

The seasonal biomass distribution of pollock in the Western and Central GOA, area apportionments, and seasonal apportionments for the A, B, C, and D seasons are summarized in Table 3, except that allocations of pollock for processing by the inshore and offshore components are not shown.

Table 3 - Distribution of Pollock in the Central and Western Regulatory Areas of the GOA; Seasonal Biomass Distribution, Area Apportionments; and Seasonal Apportionments of Annual TAC in 2003. (Amounts are in mt)

Season	Shumagin (Area 610) (biomass distribution)	Chirikof (Area 620) (biomass distribution)	Kodiak (Area 630) (biomass distribution)	Total (biomass distribution)
A	2,894 (25%)	6,535 (56%)	2,274 (19%)	11,703 (100%)
B	2,894 (25%)	7,778 (66%)	1,031 (9%)	11,703 (100%)
C	5,500 (47%)	2,686 (23%)	3,517 (30%)	11,703 (100%)
D	5,500 (47%)	2,686 (23%)	3,517 (30%)	11,703 (100%)
Annual Total	16,788	19,685	10,339	46,812

Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot and jig gear the A season begins on January 1 and ends on June 10, and the B season begins on September 1 and ends on December 31. For trawl gear, the A season begins on January 20 and ends on June 10, and the B season begins on September 1 and ends on November 1 (§ 679.23(d)(3)). Sixty percent of the annual TAC will be available as a directed fishing allowance during the A season and, after subtraction of incidental catch, the remaining 40 percent of the annual TAC will be available for catch during the B season, and will be allocated between the inshore and offshore processing components as provided in 50 CFR § 679.20(a)(6)(iii). Between the A and B seasons, directed fishing for Pacific cod is closed and fishermen participating in other directed fisheries may retain Pacific cod up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). For purposes of clarification, NMFS points out that the A and B season Pacific cod fishery dates differ from those of the A, B, C, and D season dates for the pollock fisheries. In accordance with § 679.20(a)(11)(ii), any overage or underage of Pacific cod harvest from the A season shall be subtracted from or added to the subsequent B season.

Regulations at § 679.20(a)(6)(iii) require that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These seasonal apportionments and component allocations of the Pacific cod TAC for 2003 are shown in Table 4.

Table 4 - Final 2003 Seasonal Apportionments and Allocations of Pacific cod TAC Amounts in the GOA; Allocations for Processing by the Inshore and Offshore Components. (Amounts are in mt)

Regulatory area	TAC	Component Allocation	
		Inshore (90%)	Offshore (10%)
Western	15,450	13,905	1,545
A Season (60%)	9,270	8,343	927
B Season (40%)	6,180	5,562	618
Central	22,690	20,421	2,269
A Season (60%)	13,614	12,253	1,361
B Season (40%)	9,076	8,168	908
Eastern	2,400	2,160	240
TOTAL:	40,540	36,486	4,054

"Other Species" TAC

The FMP specifies that amounts for the "other species" category are calculated as 5 percent of the combined TAC amounts for target species. The GOA-wide "other species" TAC is calculated as 11,260 mt, which is 5 percent of the sum of combined TAC amounts for the target species.

Pacific Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear. In December 2002, the Council recommended that NMFS maintain the 2002 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries, with 10 mt of the hook-and-line limit apportioned to the demersal shelf rockfish (DSR) fishery in the SEO District and the remainder to the remaining hook-and-line fisheries. The DSR fishery is defined at § 679.21(d)(4)(iii)(A) and historically has been apportioned this amount in recognition of its small scale harvests. Although observer data are not available to verify actual bycatch amounts, given most vessels are less than 60 ft (18.3 m) length overall (LOA) and are exempt from observer coverage, halibut bycatch in the DSR fishery is assumed to be low because of the short soak times for the gear and the short duration of the DSR fishery. Also, the DSR fishery occurs in the winter when less of an overlap exists in the distribution of DSR and halibut.

Regulations at § 679.21(d)(4) authorize exemption of specified nontrawl fisheries from the halibut PSC limit. The Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the nontrawl halibut limit for 2003. The Council recommended, and NMFS concurs with, these exemptions because of the low halibut bycatch mortality experienced in the pot gear fisheries (4 mt in 2001 and 2 mt in 2002) and because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota (IFQ) program. The sablefish IFQ program requires legal-size halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. Halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers. However, halibut mortality is assumed to be very low given the small amount of groundfish harvested by jig gear (336 mt in 2001 and 277 mt in 2002) and the assumed high survival rate of any halibut that are incidentally caught by jig gear and released.

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP and regulations require that the following information be considered by the Council and NMFS in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The emergency interim rule establishing the final 2002 groundfish and PSC specifications (66 FR 956, January 8, 2002) summarizes Council findings with respect to each of the FMP considerations set forth here. At this time, the Council's and NMFS' findings are unchanged from those set forth in 2002. The opening date for the third seasonal allowance of the trawl halibut PSC limit and the start date for directed fishing for rockfish by trawl gear is June 29, 2003. This date will facilitate inseason management of the rockfish fisheries and reduce the effect of the rockfish fisheries on the annual NMFS sablefish survey which occurs later in July.

NMFS concurs with the Council's recommendations described here and listed in Table 5. Regulations at § 679.21(d)(5)(iii) and (iv) specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the following seasonal apportionment within the 2003 fishing year. The following types of

information as presented in, or summarized from, the current SAFE report, or as otherwise available from NMFS, Alaska Department of Fish and Game, the International Pacific Halibut Commission (IPHC) or public testimony were considered when establishing the halibut PSC limits:

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2002. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through December 7, 2002, is 1,997 mt, 246 mt, and 2 mt, respectively, for a total halibut mortality of 2,245 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2002 fishing year. Trawling during the second season closed for the shallow-water complex on May 15 (67 FR 35448, May 20, 2002) and for the deep-water fishery complex on May 24 (67 FR 37726, May 30, 2002). Trawling during the third season closed for the shallow-water complex on August 5 (67 FR 51499, August 8, 2002) and for the deep-water fishery complex on August 2 (67 FR 51129, August 7, 2002). Trawling during the fourth season closed for both the shallow-water complex and the deep-water fishery complex on September 1 (67 FR 55730, August 30, 2002 and 67 FR 56320, September 3, 2002). Except for a brief period between November 6 and 10, 2002 (67 FR 67798, November 7, 2002), all trawling in the GOA closed (with the exception of pelagic trawl gear targeting pollock) for the remainder of the year on October 13 (67 FR 64066, October 17, 2002).

The amount of groundfish that vessels using trawl gear might have harvested if halibut catch limitations had not restricted the season in 2002 is unknown.

(B) Expected Changes in Groundfish Stocks

In December 2002, the Council adopted higher 2003 ABCs for flathead sole, arrowtooth, sablefish, other rockfish, northern rockfish, Pacific ocean perch, demersal shelf rockfish, and thornyhead rockfish than those established for 2002. The Council adopted lower 2003 ABCs for pollock, Pacific cod, and shallow water flatfish than those established for 2002. For the remaining targets, the Council recommended that ABC levels remain unchanged from 2002. More information on these changes is included in the final SAFE report (November 2002) and in the Council and SSC December 2002 meeting minutes.

(C) Expected Changes in Groundfish Catch

The total of the 2003 TACs for the GOA is 236,440 mt, a decrease of less than 1 percent from the 2002 TAC total of 237,638 mt. Those fisheries for which the 2003 TACs are lower than in 2002 are pollock (decreased to 54,350 mt from 58,250 mt), Pacific cod (decreased to 40,540 mt from 44,230 mt), and other species (decreased to 11,260 mt from 11,330 mt). Those species for which the 2003 TACs are higher than in 2002 are shallow water flatfish (increased to 21,620 mt from 20,420 mt), flathead sole (increased to 11,150 mt from 9,280 mt), sablefish (increased to 14,890 mt from 12,820 mt), northern rockfish (increased to 5,530 mt from 4,980 mt), Pacific ocean perch (increased to 13,660 mt from 13,190 mt), demersal shelf rockfish (increased to 390 mt from 350 mt), and thornyhead rockfish (increased to 2,000 mt from 1,990 mt).

(D) Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was prepared by the IPHC in December 2002. The halibut resource is considered to be healthy, with total catch near record levels. Using the low range of estimates, the current exploitable halibut biomass for 2003 in Alaska is estimated to be 263,086 mt. This is similar to the estimate of 273,950 mt for 2002.

The exploitable biomass of the Pacific halibut stock apparently peaked at 326,520 mt in 1988. According to the IPHC, the long-term average reproductive biomass for the Pacific halibut resource was estimated at 118,000 mt. Long-term average yield was estimated at 26,980 mt, round weight. The species is fully utilized. Recent average catches (1994–96) were 33,580 mt for the U.S. and 6,410 mt for Canada, for a combined total of 39,990 mt for the entire Pacific halibut resource. This catch was 48 percent higher than long-term potential yield, which reflects the good condition of the Pacific halibut resource. In January 2003, the IPHC recommended commercial catch limits totaling 36,812 mt (round weight equivalents) for Alaska in 2003, the same as in 2002. Through December 31, 2003, commercial hook-and-line harvests of halibut in Alaska total 37,219 mt (round weight equivalents).

At its January 2003 meeting, IPHC staff reported on the assessment of the halibut stock in 2002. There were some significant changes in the assessment as a result of changes in the underlying data being analyzed and the persistence of smaller sizes at age in the central port of the halibut range. These changes created some uncertainty about differences in the biomass of the stock estimated from the current and previous assessments. Analyses were conducted for the 2002 assessment to ensure that the stock is not in danger of being overharvested. However, the IPHC staff intends to resolve these technical issues with the assessment over the next year. In addition, IPHC staff are investigating a new harvest policy that may result in greater stability in the yield from the fishery and insulate the process of setting catch limits from technological changes in the assessment. This harvest policy will also be reviewed by the IPHC. The resolution of technical issues of the assessmentmay indicate a larger estimate of biomass in the central region of the stock distribution, but application of the proposed harvest policy might dictate slightly lower yields. Because these two processes may be somewhat counterbalancing, IPHC staff wish to complete their investigations before recommending any changes to present catch limits or the harvest policy. While the trajectory of the halibut stock biomass is downward, the biomass is still above the long-term average level and is expected to remain above this level for the next several years.

Additional information on the Pacific halibut stock assessment and the proposed harvest policy may be found in the IPHC's 2002 Pacific halibut stock assessment (dated December 2002), available from the IPHC on its website at *http://www.iphc.washington.edu/hal.com.*

(E) Other Factors

The proposed 2003 specifications (67 FR 76344, December 12, 2002) discuss potential impacts of expected fishing for groundfish on halibut stocks, as well as methods available for, and costs of, reducing halibut bycatch in the groundfish fisheries.

Table 5 - Final 2003 Pacific halibut PSC limits, allowances, and apportionments. The Pacific halibut PSC limit for hook-and-line gear is apportioned to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits. (Amounts are in mt)

Trawl gear		Hook-and line gear			
Dates	Amount	Other than DSR		DSR	
		Dates	Amount	Dates	Amount
Jan 20 - Apr 1	550 (27.5%)	Jan 1 - June 10	250 (86%)	Jan - Dec 31	10 (100%)
Apr 1 - June 29	400 (20%)	June 10 - Sept 1	5 (2%)		
June 29 - Sept 1	600 (30%)				
Sept 1 - Oct 1	150 (7.5%)	Sept 1 - Dec 31	35 (12%)		
Oct 1 - Dec 31	300 (15%)				
Total:	2,000 (100%)		290 (100%)		10 (100%)

Regulations at § 679.21(d)(3)(ii), authorize the trawl halibut PSC limit to be further apportioned to trawl fishery categories, based on each category's proportional share of the anticipated halibut bycatch mortality during the fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are: a deep-water species complex, comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder; and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species'' § 679.21(d)(3)(iii). The final apportionment for these two fishery complexes is presented in Table 6.

Table 6 - Final 2003 apportionment of Pacific halibut PSC trawl limits between the trawl gear deep-water species complex and shallow-water species complex. (Amounts are in mt)

Season	Shallow-water	Deep-water	Total
Jan. 20-April 1	450	100	550
April 1-June 29	100	300	400
June 29-Sept. 1	200	400	600
Sept. 1-Oct. 1	150	Any Remainder	150
Subtotal			
Jan. 20-Oct. 1	900	800	1,700
Oct. 1-Dec. 31	---	—	300
Total	---	—	2,000

No apportionment between shallow-water and deep-water fishery complexes during the 5th season (Oct. 1 - Dec. 31)

Halibut Discard Mortality Rates

The Council recommended, and NMFS concurs, that the halibut discard mortality rates (DMRs) recommended by the IPHC staff for the 2002 GOA groundfish fisheries be used to monitor halibut bycatch mortality limits established for the 2003 GOA groundfish fisheries. The IPHC recommended use of long-term average DMRs for the 2001–2003 groundfish fisheries. The IPHC recommendation also includes a provision that DMRs could be revised should analysis indicate that a fishery's annual DMR diverges substantially (up or down) from the long-term average. Most of the DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1990 and 1999. DMRs were lacking for some fisheries, so rates from the most recent years were used. For the ''other species'' fishery, where insufficient mortality data are available, the mortality rates of halibut caught in the trawl, hook-and-line, and pot gear Pacific cod fisheries were recommended as a default rate. The DMRs for 2003 are unchanged from those used in 2002 in the GOA. The DMRs for hook-and-line targeted fisheries range from 8 to 24 percent. The DMRs for trawl targeted fisheries range from 58 to 72 percent. The DMRs for all pot targeted fisheries is 14 percent. The final 2003 DMRs are listed in Table 7. The justification for these DMRs is discussed in Appendix A of the final SAFE report dated November 2002.

Table 7 - Final 2003 Pacific Halibut Discard Mortality Rates for Vessels Fishing in the GOA. (Listed Amounts are percent of halibut bycatch assumed to be dead)

Gear and Target	Mortality Rate
HOOK-AND-LINE	
Other species	14
Pacific cod	14
Rockfish	8
Sablefish	24
TRAWL	
Arrowtooth Flounder	62
Atka mackerel	70
Deep-water flatfish	60
Flathead sole	58
Nonpelagic pollock	61
Other species	61
Pacific cod	61
Pelagic pollock	72
Rex sole	61
Rockfish	69
Sablefish	66
Shallow-water flatfish	69
POT	
Other species	14
Pacific cod	14

Non-exempt American Fisheries Act (AFA) Catcher Vessel Groundfish Harvest and PSC Limitations

Regulations at § 679.64 established groundfish harvesting and processing limitations, also called sideboards, on AFA catcher/processors and catcher vessels in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors, who have not directly benefitted from the AFA, from fishermen and processors who have received exclusive harvesting and processing privileges under the AFA. Under the AFA regulations, listed AFA catcher/processors (§ 679.4(l)(2)(i)) are prohibited from harvesting any species of fish in the GOA (§ 679.7(k)(1)(ii)) and from processing any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA (§ 679.7(k)(1)(iv)). The Council recommended, and NMFS concurs, that certain AFA catcher vessels in the GOA be exempt from groundfish sideboard limits. The AFA regulations exempt AFA catcher vessels in the GOA less than 125 ft (38.1 m) LOA whose annual Bering Sea and Aleutian Islands (BSAI) pollock landings totaled less than 5,100 mt and that made 30 or more GOA groundfish landings from 1995 through 1997 (§ 679.64(b)(2)(i)(A)).

For non-exempt AFA catcher vessels in the GOA, sideboard limits are based upon their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. The AFA regulations base the groundfish sideboard limits in the GOA on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period (§ 679.64(b)(3)(iii)). These amounts are listed in Table 8. All catch of sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Table 8.

Table 8 - Final 2003 GOA Non-Exempt AFA Catcher Vessel (CV) Groundfish Harvest Limitations (Sideboards). (Amounts are in mt)

Species	Apportionments and Allocations by Area/Season/processor/Gear	Ratio of 1995-1997 Non-Exempt AFA CV Catch to 1995-1997 TAC	2003 TAC	2003 Non-Exempt AFA Catcher Vessel Sideboard
Pollock	A Season (W/C areas only)			
	January 20 - February 25			
	Shumagin (610)	0.6112	2,894	1,769
	Chirikof (620)	0.1427	6,535	933
	Kodiak (630)	0.2438	2,274	554
	B Season (W/C areas only)			
	March 10 - June 1			
	Shumagin (610)	0.6112	2,894	1,769
	Chirikof (620)	0.1427	7,778	1,110
	Kodiak (630)	0.2438	1,031	251
	C Season (W/C areas only)			
	August 25 - September 15			
	Shumagin (610)	0.6112	5,500	3,362
	Chirikof (620)	0.1427	2,686	383
	Kodiak (630)	0.2438	3,517	857
	D Season (W/C areas only)			
	October 1 - November 1			
	Shumagin (610)	0.6112	5,500	3,362
	Chirikof (620)	0.1427	2,686	383
	Kodiak (630)	0.2438	3,517	857
	Annual			
	WYK (640)	0.3499	1,078	377
	SEO (650)	0.3499	6,460	2,260

Pacific cod	A Season[1] January 1 - June 10			
	W inshore	0.1423	8,343	1,187
	offshore	0.1026	927	95
	C inshore	0.0722	12,253	885
	offshore	0.0721	1,361	98
	B Season[2] September 1 - December 31			
	W inshore	0.1423	5,562	791
	offshore	0.1026	618	63
	C inshore	0.0722	8,168	590
	offshore	0.0721	908	65
	Annual			
	E inshore	0.0079	2,160	17
	offshore	0.0078	240	2
Flatfish deep-water	W	0.0000	180	0
	C	0.0670	2,220	149
	E	0.0171	2,480	42
Rex sole	W	0.0010	1,280	1
	C	0.0402	5,540	223
	E	0.0153	2,650	41
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	130
	E	0.0048	4,150	20
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	4,120	52
Arrow-tooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	773
	E	0.0020	5,000	10
Sable-fish	W trawl gear	0.0000	514	0
	C trawl gear	0.0720	1,288	93
	E trawl gear	0.0488	294	14
Pacific Ocean perch	W	0.0623	2,700	168
	C	0.0866	8,510	737
	E	0.0466	2,450	114
Short-raker/ Rougheye	W	0.0000	220	0
	C	0.0237	840	20
	E	0.0124	560	7
Other rockfish	W	0.0034	90	0
	C	0.2065	550	114
	E	0.0000	350	0

Northern rockfish	W C	0.0003 0.0336	890 4,640	0 156
Pelagic shelf rockfish	W C E	0.0001 0.0000 0.0067	510 3,480 1,500	0 0 10
Thorny-head rockfish	W C E	0.0308 0.0308 0.0308	360 840 800	11 26 25
Demersal shelf rockfish	SEO	0.0020	390	1
Atka mackerel	Gulf wide	0.0309	600	19
Other species	Gulf wide	0.0090	11,260	101

[1] The Pacific cod A season for trawl gear opens January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

PSC sideboard limits for non-exempt AFA catcher vessels in the GOA are based upon the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.64(b)(4)). These amounts are shown in Table 9.

Table 9 - Final 2003 Non-Exempt AFA Catcher Vessel PSC Limits for the GOA. (Amounts are in mt)

PSC Species	Target Fishery and Season	Ratio Of 1995-1997 Non-Exempt AFA CV Retained Catch to Total Retained Catch	2003 PSC Limit	2003 Non-Exempt AFA Catcher Vessel PSC Limit
Halibut (mortality in mt)	Trawl 1st Seasonal Allowance January 20 - April 1			
	shallow water targets	0.340	450	153
	deep water targets	0.070	100	7
	Trawl 2nd Seasonal Allowance April 1- June 29			
	shallow water targets	0.340	100	34
	deep water targets	0.070	300	21
	Trawl 3rd Seasonal Allowance June 29 - Sept 1			
	shallow water targets	0.340	200	68
	deep water targets	0.070	400	28
	Trawl 4th Seasonal Allowance Sept 1 - October 1			
	shallow water targets	0.340	150	51
	deep water targets	0.070	0	0
	Trawl 5th Seasonal Allowance October 1 - December 31 all targets	0.205	300	62

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines that any allocation or apportionment of a target species or "other species" category apportioned to a fishery or, with respect to pollock and Pacific cod, to an inshore or offshore component, will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA Regulatory Area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the following TAC amounts for the species and species groups listed in Table 10 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year.

Table 10 - Incidental Catch Needed to Support Other Directed Fisheries in the GOA in 2003. (Amounts are in mt)

Target	Regulatory Area	Gear/Component	Amount
Atka Mackerel	entire GOA	all	600
Thornyhead Rockfish	entire GOA	all	2,000
Shortraker Rougheye Rockfish	entire GOA	all	1,620
Other Rockfish	entire GOA	all	990
Sablefish	entire GOA	trawl	2,096
Pollock	entire GOA	all/offshore	unknown

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the species or species groups listed in Table 10 as zero.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species, areas, gear types, and processing components listed in Table 10. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2003.

Regulations at § 679.64(b)(5) provide for management of AFA catcher vessel groundfish harvest limits and PSC limits using directed fishing closures and PSC closures according to procedures set out at §§ 679.20(d)(1)(iv) and 679.21(d)(8) and (e)(3)(v). The Regional Administrator has determined that in addition to the closures listed above, many of the non-exempt AFA catcher vessel sideboard amounts listed in Table 9 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the directed fishing allowances for the species and species groups in the specified areas in Table 11 as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA catcher vessels in the GOA for the species and species groups in the specified areas in Table 11. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2003.

Table 11 - Non-Exempt AFA Catcher Vessel Sideboard Directed Fishing Closures in the GOA. (Amounts are in mt)

Species	Regulatory Area/District	Gear	Amount
Pacific cod	E GOA	all	19
Deep-water flatfish	W and E GOA	all	0 and 42
Rex sole	W and E GOA	all	1 and 41
Flathead sole	E GOA	all	20
Shallow-water flatfish	E GOA	all	52
Arrowtooth flounder	E GOA	all	10
Pacific ocean perch	W GOA	all	168
Northern rockfish	W GOA	all	0
Pelagic shelf rockfish	entire GOA	all	10
Demersal shelf rockfish	SEO District	all	1
Other species	entire GOA	all	101

Under authority of the interim 2003 specifications (67 FR 78733, December 26, 2002), pollock fishing opened on January 20, 2003, for amounts specified in that notice. NMFS has since closed Statistical Area 610 to directed fishing for pollock effective 1200 hrs, A.l.t., January 23, 2003 (68 FR 4115, January 28, 2003), and Statistical Area 630 to directed fishing for pollock effective 1200 hrs, A.l.t., January 21, 2003 (68 FR 2921, January 22, 2003), and opened Statistical Area 630 to directed fishing for pollock effective 1200 hrs., A.l.t., February 13, 2003 through 1200 hrs, A.l.t., February 14, 2003 (68 FR 7448, February 14, 2003). The closures for pollock in Statistical Areas 610 and 630 will remain in effect through 1200 hrs, A.l.t., March 10, 2003. NMFS has prohibited directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component effective 1200 hrs, A.l.t., February 1, 2003 (68 FR 5585, February 1, 2003), by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area, effective 1200 hrs, A.l.t., February 9, 2003 (68 FR 7323, February 13, 2003), and by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area, effective 1200 hrs, A.l.t., February 17, 2003 (68 FR 8154, February 20, 2003). The closures for Pacific cod in the Western and Central Regulatory Areas will remain in effect through 1200 hrs, A.l.t., September 1, 2003.

These closures supersede the closures announced in the interim 2003 harvest specifications (67 FR 78733, December 26, 2002). While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at § 679. NMFS may implement other closures during the 2003 fishing year as necessary for effective conservation and management.

Response to Comments

NMFS received one letter of comment in response to the proposed 2003 harvest specifications (67 FR 76344, December 12, 2002).

Comment 1. A request for an extension of time in which to comment on the document.

Response. Regulations at 50 CFR 679.20(c)(1)(i)(B) provide for a 30–day comment period on the proposed specifications. NMFS has determined that an extension of the 30–day comment period on the proposed harvest specifications would pose unacceptable management implications for the 2003 groundfish fisheries. Without proposed and interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishing industry. Therefore, NMFS declines to extend the comment period on the proposed specifications.

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This rule's primary management measures are to announce final 2003 harvest specifications and prohibited species bycatch allowances for the groundfish fishery of the GOA. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2003 fishing year and to accomplish the goals and objectives of the Fishery

Management Plan for the Groundfish of the GOA. This action affects all fishermen who participate in the GOA fishery. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact the 2003 harvest specifications may have on small entities, in accordance with the provisions of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 603(b)). Notice of the availability of the IRFA, and a summary, were published in the classification section of the proposed specifications for the groundfish fisheries in the GOA in the **Federal Register** on December 12, 2002 (67 FR 76344). The comment period on the proposed GOA harvest specifications and IRFA ended on January 13, 2003. NMFS did not receive any comments on the IRFA. NMFS has prepared a FRFA for this action and a copy is available from the Council (see **ADDRESSES**).

The small entities affected by this action are those that harvest fish under the terms of the specifications in the GOA. The FRFA identified 1,264 small catcher vessels and 16 small catcher/processors.

No projected additional reporting, recordkeeping or other compliance requirements were identified in connection with the final notice of specifications.

Four alternatives were evaluated, in addition to the preferred alternative used for the specifications. Alternatives were defined by the use of different harvest rates (F values). Impacts of the alternatives were estimated on the basis of their associated overall fleet gross revenue levels. Three alternatives (set F equal to 50 percent of max FABC, set F equal to the most recent 5–year average actual F, and set F equal to zero) all appeared to have greater adverse impacts on small entities than the preferred alternative. One alternative (set F equal to max FABC) had estimated overall gross revenues that were about 4 percent greater than those under the preferred alternative in the GOA. However, this alternative one was not chosen because it was based on 2002 TACs, which do not take into consideration biological survey information collected and analyzed in 2002 and evaluated by the Council and its SSC and AP committees at the end of 2002. The preferred alternative was chosen, rather than alternative one, because the TACs take into account the best and most recent information available regarding the status of the groundfish stocks, public testimony, and socio-economic concerns.

In some cases, the interim specifications currently in effect are not sufficient to allow directed fisheries to continue, resulting in unnecessary closures and disruption within the fishing industry. This action establishes the harvest specifications for the 2003 fisheries in the GOA. Hence, the action must be effective immediately to provide consistent, uninterrupted management and conservation of fishery resources and to allow the fishing industry to plan its fishing operations. Accordingly, the Assistant Administrator for Fisheries, NOAA, finds there is good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in the effective date.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: February 24, 2003.

Rebecca Lent,

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

[FR Doc. 03–4814 Filed 2–25–03; 3:57 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 022403E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processors and Catcher Vessels 60 Feet (18.3 m)Length Overall and Longer Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear and catcher vessels 60 feet (18.3 m) length overall (LOA) and longer using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 interim total allowable catch (TAC) of Pacific cod allocated to these vessels using pot gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 26, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the BSAI, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 interim TAC of Pacific cod allocated to vessels using pot gear in the BSAI was established as a directed fishing allowance of 9,465 metric tons by the interim 2003 harvest specifications for groundfish in the BSAI (67 FR 78739, December 26, 2002). See § 679.20(c)(2)(ii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 interim TAC of Pacific cod allocated as a directed fishing allowance to vessels using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear and catcher vessels 60 feet (18.3 m) LOA and longer using pot gear in the BSAI. Vessels less than 60 feet (18.3 m) LOA using pot gear in the BSAI may continue to participate in the directed fishery for Pacific cod under a separate Pacific cod allocation to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is

contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 interim TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 25, 2003.

Bruce C. Morehead,

Acting Director,Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4887 Filed 2–26–03; 2:55 pm]

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Proposed Rules

Federal Register
Vol. 68, No. 41
Monday, March 3, 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

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV03–930–1]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a continuance referendum be conducted among eligible growers and processors of tart cherries in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin to determine whether they favor continuance of the marketing order regulating the handling of tart cherries grown in the production area.

DATES: The referendum will be conducted from March 17 through March 28, 2003. To vote in this referendum, growers and processors must have been engaged in producing or processing tart cherries within the production area during the period July 1, 2001 through June 30, 2002.

ADDRESSES: Copies of the marketing order may be obtained from USDA, Washington, DC Marketing Field Office, 4700 River Road, Unit 155, Room 2A38, Riverdale, Maryland 20737, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Regional Manager, Washington, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 4700 River Road Unit 155, Room 2A38, Riverdale, MD 20737; telephone (301) 734–5243; fax (301) 734–5275; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 1035, Moab, UT 84532; telephone (435) 259–7988; fax (435) 259–4945.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 930 (7 CFR part 930), hereinafter referred to as the ''order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers and processors. The referendum shall be conducted during the period March 10 through March 21, 2003, among eligible tart cherry growers and processors in the production area. Only growers and processors that were engaged in the production or processing of tart cherries in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin during the period of July 1, 2001, through June 30, 2002, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers and processors favor continuation of marketing order programs. The USDA would not consider termination of the order if continuance is favored by more than 50 percent of the growers and processors who vote in the referendum provided that they represent more than 50 percent of the volume of produced and processed tart cherries represented in the referendum.

In evaluating the merits of continuance versus termination, the USDA will not only consider the results of the continuance referendum. The USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, processors, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0177. It has been estimated that it will take an average of 30 minutes for each of the approximately 40 processors and 905 producers of tart cherries in the production area to cast a ballot. Participation is voluntary. Ballots postmarked after March 21, 2003, will be marked invalid and not included in the vote tabulation.

Kenneth G. Johnson, James B. Wendland, Patricia A. Petrella and Dawana Clark of the Washington, DC Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of USDA to conduct such referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR Part 900.400 *et. seq*).

Ballots will be mailed to all growers and processors of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

Authority: 7 U.S.C. 601–674.

Dated: February 25, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–4874 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1405 and 1499

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 211

RIN 0560–AG49

Ocean Freight Claims Administrative Appeal Process

AGENCIES: Commodity Credit Corporation, USDA, and Agency for International Development.

ACTION: Proposed rule.

SUMMARY: This rule would establish an administrative appeals procedure that would be used by the Commodity Credit Corporation (CCC) with respect to ocean transportation cargo loss and damage claims arising under shipments of agricultural commodities made available by CCC under various foreign donation programs. Whether or not title to the commodities has passed from CCC to a cooperating sponsor, which may be a foreign government, private voluntary organization, or private entity, CCC either retains the right or may be assigned the right to initiate, prosecute, and, with certain limited exceptions, retain the proceeds of cargo loss and damage claims. The rule would require that any recipient of CCC-donated commodities must include in the contract for the ocean transportation of the commodities a provision that the maritime carrier agrees to participate in this administrative appeal process.

For CCC claims initiated on behalf of the United States Agency for International Development (USAID), the rule would also require consultations between agencies and the crediting of funds collected into USAID accounts.

DATES: Comments must be submitted on or before April 2, 2003, to be assured of consideration.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Steve Mikkelsen, Director, Procurement and Donations Division, USDA/FSA/PDD/STOP 0551, 1400 Independence Avenue, SW., Washington, DC 20250–0551 or sent electronically to: *steve_mikkelsen@wdc.fsa.usda.gov.* Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Comments concerning USAID programs should also be addressed to Lauren Landis, Director, Office of Food For Peace, Bureau for Democracy, Conflict, and Humanitarian Assistance, U.S. Agency for International Development, Room 7.06–157, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523 or sent electronically to: *llandis@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen of CCC on (202) 720–5074, or Jeffrey Drummond of USAID on (202) 712–0238.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866 and has been determined to be not significant.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither CCC nor the United States Agency for International Development (USAID) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, or the private sector, in the aggregate of $100 million or more in any 1 year. This rule contains no Federal mandates under the regulatory provisions of title II of the UMRA for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection requirements imposed by this rule have been previously submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). OMB has assigned control number 0051–0035 for this information collection. This regulation does not change any of the information collection requirements.

Background

The regulations set forth at 7 CFR part 1499 establish the general terms and conditions governing CCC's donation of commodities to cooperating sponsors under section 416(b) of the Agricultural Act of 1949 and the Food for Progress programs. Under 7 CFR 1499.15(d)(1), notwithstanding the transfer of title, CCC has the right to file, pursue and, with certain exceptions, retain the proceeds from claims arising from ocean transportation cargo loss and damage arising out of shipments of commodities provided to governmental cooperating sponsors. Under 7 CFR 1499.15(d)(8), if a nongovernmental cooperating sponsor is unable to effect collection of a claim or negotiate an acceptable compromise, the nongovernmental cooperating sponsor is required to assign its rights to the claim to CCC. Nongovernmental cooperating sponsors must also assign their claim rights to CCC upon CCC's request.

The regulations set forth at 22 CFR part 211 establish the general terms and conditions governing the U.S. Agency for International Development's (USAID) food donation programs under title II, Public Law 480. CCC makes the agricultural commodities available to USAID for use in these programs. Under 22 CFR 211.9(c)(2)(i), whether or not title to commodities is transferred from CCC to the cooperating sponsor, if USAID contracted for the ocean transportation, CCC has the right to initiate, prosecute, and retain the proceeds of all claims against maritime carriers for cargo loss and damage arising out of shipments of commodities made available by CCC. Under 22 CFR 211.9(c)(2)(ii)(F), if a nongovernmental cooperating sponsor is unable to effect collection of a claim or negotiate an acceptable compromise, the nongovernmental cooperating sponsor is required to assign its rights to the claim to CCC. Nongovernmental sponsors must also assign their claim rights to CCC upon CCC's request.

If the commodity is lost or damaged in transit due to the fault of the carrier, existing admiralty law principles control whether the party contracting for the transportation of the goods may recover damages from the carrier. The provisions of the Carriage of Goods by Sea Act (46 U.S.C. 1300 *et seq.*) either

apply by law, or are incorporated by reference into the cargo bookings and charter parties.

CCC does not have an established administrative appeal process to handle the internal review of these cargo claims before the claims are referred to the U.S. Department of Justice for collection through litigation. This rule would establish an administrative appeal process. CCC intends that independent hearing officers would make written determinations with respect to the claims. Once the administrative appeal was completed, if the carrier was determined to be liable for the loss and damage to cargo, CCC would follow the CCC debt settlement policies and procedures set forth in 7 CFR part 1403 to collect the debt. This would include but would not be limited to the administrative offset of the amount of the debt against other freight earned by the carrier which had not been paid or freight earned in the future.

Section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354) provides that, notwithstanding any other provision of law, a person shall exhaust all administrative appeal procedures established by the Secretary of Agriculture before a person may bring an action in a court of competent jurisdiction against the Secretary, the Department of Agriculture, or agency, office, officer or employee of the Department. Therefore, a carrier would have to participate in the administrative appeals procedure before it could file an action in court contesting the establishment of the debt or possible subsequent offset of the debt. The court's review would be limited to the administrative record established in the administrative appeal.

This rule also establishes a consultative process between USAID and CCC for claims pursued under title II, Public Law 480 food donation programs. It also requires CCC to credit the appropriate title II account for any funds collected by or remitted to CCC pursuant to 22 CFR 211.9(c)(2).

List of Subjects

7 CFR Part 1405

Administrative practice and procedure, Agricultural commodities, Cargo claims, Cooperating sponsor, Maritime carriers.

7 CFR Part 1499

Agricultural commodities, Cooperating sponsor.

22 CFR Part 211

Agricultural commodities, Cooperating sponsor.

Accordingly, for the reasons set forth in the preamble, CCC proposes to amend 7 CFR parts 1405 and 1499, and USAID proposes to amend 22 CFR part 211 as follows:

7 CFR CHAPTER XIV

PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

1. The authority citation for 7 CFR part 1405 continues to read as follows:

Authority: 15 U.S.C. 714(b) and 714(c).

2. Add § 1405.100 to read as follows:

§ 1405.100 Cargo claims appeal process.

(a) *Applicability.* (1) The administrative appeals process set forth in this section is applicable to all ocean transportation cargo loss and damage claims arising under shipments of agricultural commodities made available by CCC under section 416(b) of the Agricultural Act of 1949, the Food for Progress Act of 1985, and Title II of the Agricultural Trade Development and Assistance Act of 1954, commonly known as Public Law 480, and any other regulation or contract that incorporates by reference the provisions of this section. This includes the movement of cargoes under through bills of lading to inland destinations.

(2) This section is applicable to any determination made by CCC relating to the resolution of disputed cargo loss and damage claims between CCC and the maritime carrier.

(b) *Delegations of authority.* (1) The Deputy Vice President, CCC, who is Deputy Administrator for Commodity Operations of the Farm Service Agency (Deputy Administrator), shall be responsible for administering this section. The Deputy Administrator may delegate the authority provided in this section in the manner deemed appropriate by the Deputy Administrator.

(2) The Executive Vice President, CCC, who is the Administrator for the Farm Service Agency, may modify or reverse any action of the Deputy Administrator or a designee of the Deputy Administrator made with respect to this section.

(c) *Appeal procedure.* (1) If CCC determines that a maritime carrier is liable for loss and damage that occurred during the transportation of commodities made available by CCC, CCC will notify the carrier in writing of the nature of the violation. The carrier will be given 30 days in which to appeal the determination to CCC and request either a hearing before a hearing officer or a hearing by telephone. CCC will provide to the carrier a written acknowledgment of their appeal and request for a hearing.

(2) If the carrier requests to pursue an appeal but not a hearing, CCC will allow the carrier to submit, in writing, the reasons why the carrier believes the determination of CCC to be in error. The carrier will be given 30 days from the receipt of the acknowledgment to file any statements and documents in support of its appeal. The carrier will be given an additional 15 days to respond to any new issues raised by CCC in response to the carrier's initial submission.

(3) If the carrier requests to pursue an appeal and requests a hearing, CCC will notify the carrier of the date of the hearing. All hearings will be held at the Kansas City Commodity Office of the Farm Service Agency, 6501 Beacon Drive, Kansas City, Missouri 64133–4675, except as may be determined by CCC. If a hearing is requested, the carrier will be notified of the date of the hearing and will be afforded 30 days from the receipt of the notification of the scheduling of the hearing to submit any statements and documents in support of the appeal. The carrier will be given an additional 15 days following the date of the hearing to submit any additional material that may have been determined necessary due to issues raised at the hearing.

(4) Determinations of the hearing officer shall be final and no further appeal within CCC shall be available except as may be specified in the final determination of the hearing officer.

(d) *Exhaustion of administrative remedy.* A carrier may not initiate an action in any court of competent jurisdiction prior to the exhaustion of the administrative appeal process set forth in this section.

PART 1499—FOREIGN DONATION PROGRAMS

3. The authority citation for 7 CFR part 1499 continues to read as follows:

Authority: 7 U.S.C. 1431(b), 7 U.S.C. 1736o, E.O. 12752.

4. Amend § 1499.15 by adding paragraph (j) to read as follows:

§ 1499.15 Liability for loss, damage, or improper distribution of commodities—claims and procedures.

* * * * *

(j) *Required contract term.* Any cooperating sponsor must include the following provision in the contract for the transportation of the commodity made available by CCC: ''The provisions

of 7 CFR 1405.100 shall be applicable to this contract and are incorporated by reference in their entirety.''

22 CFR CHAPTER II

PART 211—TRANSFER OF FOOD COMMODITIES FOR FOOD USE IN DISASTER RELIEF, ECONOMIC DEVELOPMENT AND OTHER ASSISTANCE

5. The authority citation for 22 CFR part 211 continues to read as follows:

Authority: Section 207(c) of the Agricultural Trade Development and Assistance Act of 1954, as amended; see Public Law 101–624, 104 Stat. 3632, 3641, 7 U.S.C. 1726a(c).

6. Amend § 211.9 by adding paragraph (c)(2)(v) to read as follows:

§ 211.9 Liability for loss damage or improper distribution of commodities.

* * * * *

(c) * * *

(2) * * *

(v) Any funds collected by or remitted to CCC pursuant to this section shall be credited to the appropriate Title II account. CCC shall also consult with USAID's Office of Food For Peace in Washington, DC (USAID/FFP) before it authorizes the settlement, compromise, or termination of a claim. CCC shall also consult with USAID/FFP before it authorizes a CS to compromise a claim pursuant to paragraph (c)(2)(ii)(E) of this section.

* * * * *

(i) *Required contract term.* Any cooperating sponsor must include the following provision in the contract for carriage of the commodity donated by CCC: ''The provisions of 7 CFR 1405.100 shall be applicable to this contract and are incorporated by reference in their entirety.''

Dated: February 18, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

Dated: January 17, 2003.

Roger P. Winter,

Assistant Administrator, DCHA, Agency for International Development.

[FR Doc. 03–4574 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–259–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires a one-time inspection to detect abrasion damage and installation discrepancies of the wire bundles located below the P37 panel, and corrective action if necessary. For airplanes already subject to the existing AD, this action would require inspecting to determine whether the existing location of a certain wire support standoff is adequate, relocating the wire support standoff if necessary, installing protective sleeving over the wire bundles, and installing wire bundle support clamps if necessary. This action also would expand the applicability of the existing AD to include additional airplanes, and require inspecting the sleeving on certain wire bundles, and accomplishing corrective action if necessary, on those airplanes. The actions specified in this proposed AD are intended to detect and prevent abrasion damage and correct installation discrepancies of the wire bundles located below the P37 panel, which could result in arcing to structure and consequent fire or loss of function of affected systems.

DATES: Comments must be received by April 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–259–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-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–259–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 the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6478; fax (425) 917–6590.

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 shall 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.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 2001–NM–259–AD.''

The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–259–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 15, 2001, the FAA issued AD 2001–17–28 R1, amendment 39–12510 (66 FR 58924, November 26, 2001), applicable to certain Boeing Model 767 series airplanes, to require a one-time inspection to detect abrasion damage and installation discrepancies of the wire bundles located below the P37 panel, and corrective action if necessary. That action was prompted by findings of abrasion damage and installation discrepancies of these wire bundles on certain Boeing Model 767 series airplanes. The requirements of that AD are intended to detect and correct such abrasion damage and installation discrepancies, which could result in arcing to structure and consequent fire or loss of function of affected systems.

In the preamble to AD 2001–17–28 R1, we indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered to add requirements to relocate the wire support standoff and install protective sleeving over the wire bundles, and to expand the applicability of the AD to include certain additional airplanes. We have now determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

We have previously reviewed and approved Boeing Alert Service Bulletins 767–24A0134 (for Model 767–200 and –300 series airplanes) and 767–24A0135 (for Model 767–400ER series airplanes), both Revision 1, both dated October 18, 2001. AD 2001–17–28 R1 refers to those alert service bulletins as appropriate sources of service information for the actions required by that AD. Those alert service bulletins identify two ''Work Packages,'' and two groups of airplanes. Work Package 1 describes procedures for the actions that are currently required by AD 2001–17–28 R1 for airplanes listed in Group 1 in the alert service bulletins. Work Package 2, for Group 1 airplanes, describes procedures for performing an inspection to determine whether the existing location of a certain wire support standoff is adequate and whether a grommet is installed and not damaged (*e.g.*, chafed), installing a new grommet if not already installed or if the existing grommet is damaged, relocating the wire support standoff if necessary, installing protective sleeving over certain wire bundles, and installing wire bundle support clamps. Work Package 2, for Group 2 airplanes, describes procedures for inspecting certain wire bundles to determine the type of protective sleeving that is installed and the location of that sleeving, relocating protective sleeving or replacing it with new sleeving if necessary, and installing wire bundle support clamps if necessary. The alert service bulletins specify to make sure that wire bundles are installed inboard/above the insulation blankets when wire bundle support clamps are installed. Accomplishment of the actions specified in the applicable alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001–17–28 R1 to continue to require a one-time inspection to detect abrasion damage and installation discrepancies of the wire bundles located below the P37 panel, and corrective action if necessary. The proposed AD would also require, for airplanes already subject to the existing AD, inspecting to determine whether the existing location of a certain wire support standoff is adequate, relocating the wire support standoff if necessary, and installing protective sleeving over the wire bundles. On airplanes not included in the applicability of the existing AD, the proposed AD would require inspecting the protective sleeving on certain wire bundles, and corrective action if necessary. The actions would be required to be accomplished in accordance with the alert service bulletin described previously, except as discussed under the heading, ''Difference Between Proposed AD and Alert Service Bulletins.''

In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the proposed actions. In light of all of these factors, we find an 18-month compliance time for completing the new proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Explanation of Change Made To Existing Requirements

We have changed all references to a ''detailed visual inspection'' in the existing AD to ''detailed inspection'' in this proposed AD.

Also, we have changed the alert service bulletin citations throughout this proposed AD to exclude the Evaluation Form. The airplane manufacturer intends for operators to complete and submit this form to provide input on the quality of the alert service bulletin. However, this proposed AD would not include such a requirement.

Difference Between Proposed AD and Alert Service Bulletins

Operators should note that the instructions under Work Package 2 in the alert service bulletins do not specify what type of inspection is needed to determine whether the existing location of a certain wire support standoff is adequate (Group 1 airplanes), or to determine the type of protective sleeving that is installed and the location of that sleeving (Group 2 airplanes). We have determined that a detailed inspection is necessary to make these determinations.

Cost Impact

There are approximately 839 airplanes of the affected design in the worldwide fleet. We estimate that 325 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 2001–17–28 R1 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 on U.S. operators is estimated to be $39,000, or $120 per airplane.

For airplanes in both Groups 1 and 2 as listed in the alert service bulletins, the new proposed actions would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be negligible. Based on these figures, the cost impact of the new proposed requirements on U.S. operators is estimated to be $39,000, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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 39–12510 (66 FR 58924, November 26, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–259–AD. Supersedes AD 2001–17–28 R1, amendment 39–12510.

Applicability: Model 767 airplanes, certificated in any category, line numbers (L/Ns) 1 through 853 inclusive.

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)(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.

To detect and prevent abrasion damage and correct installation discrepancies of the wire bundles located below the P37 panel, which could result in arcing to structure and consequent fire or loss of function of affected systems, accomplish the following:

Requirements of AD 2001–17–28 R1

Inspection for Damage and Installation Discrepancies

(a) For airplanes with L/Ns 1 through 815 inclusive: Within 90 days after September 13, 2001 (the effective date of AD 2001–17–28, amendment 39–12419), perform a one-time detailed inspection of the wire bundles located below the P37 panel to detect abrasion damage and wire installation discrepancies (including missing standoffs; missing, chafed, or loose cable clamps; chafed grommets; and wire bundles located beneath an insulation blanket), in accordance with Boeing Alert Service Bulletin 767–24A0134, excluding Evaluation Form, dated March 15, 2001, or Revision 1, excluding Evaluation Form, dated October 18, 2001 (for Model 767–200 and –300 series airplanes); or 767–24A0135, excluding Evaluation Form, dated March 15, 2001, or Revision 1, excluding Evaluation Form, dated October 18, 2001 (for Model 767–400ER series airplanes). If any damage or other discrepancy is found, prior to further flight, perform corrective actions in accordance with the applicable alert service bulletin. After December 11, 2001 (the effective date of AD 2001–17–28 R1, amendment 39–12510), only Revision 1 of the alert service bulletins may be used.

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

(b) Within 18 months after the effective date of this AD, do all actions in Work Package 2 of Boeing Alert Service Bulletin 767–24A0134 (for Model 767–200 and –300 series airplanes) or 767–24A0135 (for Model 767–400ER series airplanes), both Revision 1, both excluding Evaluation Form, both dated October 18, 2001, as applicable, in accordance with the Accomplishment Instructions of the applicable alert service bulletin. For Group 1 airplanes, the procedures in Work Package 2 include performing a detailed inspection to determine whether the location of the wire support standoff for wire bundle W298 is adequate and whether a grommet is installed and not damaged (*e.g.*, chafed), installing a new grommet if not already installed or if the existing grommet is damaged, relocating the wire support standoff as applicable, installing protective sleeving over certain wire bundles, and installing wire bundle support clamps. When installing wire bundle support clamps, make sure that wire bundles are installed inboard/above the insulation blankets. For Group 2 airplanes, the procedures in Work Package 2 include performing a detailed inspection of the sleeving on wire bundles W298, W235, and W2130, as applicable, to determine the type of protective sleeving installed and the location of that sleeving, relocating the sleeving or replacing the sleeving with new sleeving as applicable, and installing wire bundle support clamps as applicable. When installing wire bundle support clamps, make sure that wire bundles are installed inboard/above the insulation blankets.

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 Maintenance 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 2001–17–28 R1, amendment 39–12510, are approved as alternative methods of compliance with the corresponding requirements of this AD.

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

Special Flight Permits

(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 accomplished.

Issued in Renton, Washington, on February 24, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4842 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–90–30 airplanes. This proposal would require replacement of the starter relay of the auxiliary power unit (APU) with a new, improved relay. This action is necessary to prevent failure of the APU starter relay, which could result in depleted main airplane batteries, overheated APU starters, and damage to the wiring adjacent to the APU starter. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–196–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-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–196–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 the proposed rule 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 FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: William S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

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 shall 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.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 2001–NM–196–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that main electrical contacts had become stuck on the auxiliary power unit (APU) starter relay on McDonnell Douglas Model MD–90–30 airplanes. The events led to smoke emanating from the APU starter and/or depletion of the main airplane batteries. Analysis of failed relays revealed burned and welded main electrical contacts of the starter relay. Sticking relay contacts may lead to failure of the APU starter relay and consequent depleted main airplane batteries, overheated APU starters, and damage to the wiring adjacent to the APU starter.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD90–49A025, Revision 01, dated April 16, 2002, including an Evaluation Form, which describes procedures for replacing the existing APU starter relay with a new, improved relay. The improved relay has a coil that can maintain main contact pressure (force) at reduced battery voltage, which will minimize the possibility of APU starter relay failure. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,039 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $23,079, or $1,099 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed 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. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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 adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–196–AD.

Applicability: All Model MD–90–30 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 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 failure of the starter relay of the auxiliary power unit (APU), which could result in depleted main airplane batteries, overheated APU starters, and damage to the wiring adjacent to the APU starter, accomplish the following:

Starter Relay Replacement

(a) Within 6 months after the effective date of this AD, replace the APU starter relay with a new, improved relay, in accordance with McDonnell Douglas Alert Service Bulletin MD90–49A025, Revision 01, dated April 16, 2002, excluding the Evaluation Form.

(b) Replacement of the APU starter relay before the effective date of this AD, in accordance with McDonnell Douglas Alert Service Bulletin MD90–49A025, dated December 13, 2000, is acceptable for compliance with the requirements of this AD.

Parts Installation

(c) As of the effective date of this AD, no person may install a contactor (starter relay) having part number 5D0387–1, A–770–WA–3, or AH–CXA–016 on any airplane.

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, Los Angeles Aircraft Certification Office, 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

(e) 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.

Issued in Renton, Washington, on February 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4841 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, –300F, –400, and –400ER Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires revising the Airworthiness Limitations Section of the Maintenance Planning Data (MPD) Document (767 Airworthiness Limitations Instructions (ALI)). The revision incorporates into the ALI certain inspections and compliance times to detect fatigue cracking of principal structural elements (PSE). This action would expand the applicability in the existing AD, and would require incorporating a new revision into the Airworthiness Limitations Section of the MPD Document. The actions specified by the proposed AD are intended to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–240–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-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–240–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 the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

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 shall 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.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 2001–NM–240–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 19, 2001, the FAA issued AD 2001–08–28, amendment 39–12205 (66 FR 21077, April 27, 2001), applicable to certain Boeing Model 767 series airplanes, to require revising the Airworthiness Limitations Section of the Maintenance Planning Data (MPD) Document (767 Airworthiness Limitations Instructions (ALI)). The revision will incorporate into the ALI certain inspections and compliance times to detect fatigue cracking of principal structural elements (PSE). That action was prompted by analysis of data that identified specific initial inspection thresholds and repetitive inspection intervals for certain PSEs to be added to the ALI. The requirements of that AD are intended to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

Actions Since Issuance of Previous Rule

In the preamble to AD 2001–08–28, we indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered. We now have determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

New Revisions of ALI

We have reviewed and approved Subsection B, Section 9, of Boeing Document D622T001–9, entitled ''Airworthiness Limitations and Certification Maintenance Requirements,'' Revisions June 2000, February 2001, and October 2002, of the Boeing 767 MPD Document. That document describes specific initial inspection thresholds and repetitive inspection intervals for certain PSEs (identified as structural significant items in the ALI). That document explicitly identifies all of the PSEs that are to be inspected in accordance with the requirements of the ALI. Boeing Document D622T001–9, Revision June 1997, was referenced in the existing AD for accomplishment of the actions specified.

Subsection B, Section 9, of Boeing Document D622T001–9 of the Boeing 767 MPD Document references Appendix B, Revision December 2002, which provides Damage Tolerance Rating (DTR) Check Forms and the procedures for using the forms after accomplishment of the initial inspections identified in the MPD to determine the repetitive inspection thresholds.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001–08–28 to expand the applicability in the existing AD and require operators to revise the Boeing Model 767 ALI to incorporate Boeing Document D622T001–9, Revisions June 2000, February 2001, and October 2002 of the Boeing 767 MPD Document. However, nothing in this proposed AD is intended to affect any of the requirements related to the life limits or certification maintenance requirements that are contained elsewhere in the MPD. This proposed AD is intended to address only those PSE inspections that are referred to in Subsection B, Section 9, entitled ''Airworthiness Limitations—Structural Inspections'' of Boeing Document D622T001–9, Revision October 2002.

Cost Impact

There are approximately 884 airplanes of the affected design in the worldwide fleet. We estimate that 393 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 2001–08–28 take approximately 1 work hour 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 $60 per airplane.

The new actions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S.

operators is estimated to be $23,580, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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 39–12205 (66 FR 21077, April 27, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–240–AD. Supersedes AD 2001–08–28, amendment 39–12205.

Applicability: Model 767–200, –300, –300F, –400 and –400ER series airplanes having line numbers 1 through 895 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(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.

To ensure that fatigue cracking of various principal structural elements, which could adversely affect the structural integrity of these airplanes, is detected and corrected, accomplish the following:

Restatement of Requirements of AD 2001–08–28

Revise Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document

(a) For Model 767–200 and –300 series airplanes having line numbers 1 through 669 inclusive: Within 3 years after June 1, 2001 (the effective date of AD 2001–08–28, amendment 39–12205), revise Subsection B, Section 9 of Boeing Document D622T001–9 entitled ''Airworthiness Limitations and Certification Maintenance Requirements'' to incorporate Revision June 1997, June 2000, February 2001, or October 2002.

Note 2: The referenced Subsection B contains a requirement that cracks found during the specified inspections be reported to the Seattle Aircraft Certification Office (ACO), FAA. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 3: For the purposes of this AD, the terms principal structural elements (PSEs) as used in this AD, and structural significant items (SSIs) as used in Section 9 of Model 767 MPD Document, are considered to be interchangeable.

Alternative Inspections and Inspection Intervals

(b) Except as provided by paragraph (e)(1) of this AD: After the actions required by paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the SSIs contained in Section 9 of Boeing 767 MPD Document D622T001–9, Revisions June 1997, June 2000, or February 2001.

New Requirements of This AD

Revise Section 9 of the Boeing 767 MPD

(c) For Model 767–200, –300, –300F, –400 and –400ER series airplanes having line numbers 1 through 895 inclusive: Within 18 months after the effective date of this AD, revise Subsection B, Section 9 of Boeing Document D622T001–9 entitled ''Airworthiness Limitations and Certification Maintenance Requirements'' to incorporate Revision October 2002; and Appendix B, Revision December 2002.

Alternative Inspections and Inspection Intervals

(d) Except as provided by paragraph (e)(1) of this AD: After the actions required by paragraph (c) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the SSIs contained in Section 9 of Boeing 767 MPD Document D622T001–9, Revision October 2002.

Alternative Methods of Compliance

(e)(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, 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, Seattle ACO.

(2) Except as provided by paragraph (e)(3) of this AD: Alternative methods of compliance, approved previously in accordance with AD 2001–08–28, amendment 39–12205, are approved as alternative methods of compliance with paragraphs (a) and (c) of this AD.

(3) The procedures specified in Subsection B of Boeing Document D622T001–9, Revision JUNE 2000; are not approved as alternative methods of compliance with paragraph (d) of this AD.

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

Special Flight Permits

(f) 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.

Issued in Renton, Washington, on February 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4840 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–399–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 900 and Falcon 900EX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 900 and Falcon 900EX series airplanes. This proposal would require replacement of certain self-adhering soundproofing mats under the passenger consoles in the cabin, which are not sufficiently fire-retardant, with mats that are not self-adhering and are sufficiently fire-retardant. This action is necessary to prevent an uncontrolled fire in the cabin due to self-adhering soundproofing mats under the passenger consoles in the cabin, which are not sufficiently fire-retardant. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–399–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-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–399–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 the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

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 shall 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.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 2001–NM–399–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–399–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Mystere-Falcon 900 and Falcon 900EX series airplanes. The DGAC advises that a new type of self'adhering soundproofing mat has been installed under the passenger cabin console on these two airplane models. These mats are placed behind the air-conditioning ducts and are covered with a protective film to prevent sticking. Tests have demonstrated that due to their composition, *i.e.*, self-adhering silicon foam and polyester film, these mats are insufficiently fire retardant. This condition, if not corrected, could result in an uncontrolled fire in the cabin.

Explanation of Relevant Service Information

Dassault has issued Service Bulletins F900–220 and F900EX–109, both including Service Bulletins Compliance Form, both dated June 29, 2001. These service bulletins describe procedures for replacement of certain self-adhering soundproofing mats under the passenger consoles in the cabin, which are not sufficiently fire-retardant, with mats that are not self-adhering and are sufficiently fire-retardant. The service bulletins also describe procedures for reporting compliance. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2001–267–035(B), dated June 27, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, 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 Proposed 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, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except that reporting compliance is not required.

Cost Impact

The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $86,400, or $4,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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 adding the following new airworthiness directive:

Dassault: Docket 2001–NM–399–AD.

Applicability: Model Mystere-Falcon 900 series airplanes, serial numbers 184 through 187 inclusive, and Model Falcon 900EX series airplanes, serial numbers 28 and 65 through 85 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontrolled fire in the cabin due to self-adhering soundproofing mats under the passenger consoles in the cabin, which are not sufficiently fire-retardant, accomplish the following:

(a) Within seven months after the effective date of this AD, replace the self-adhering soundproofing mats with mats that are not self-adhering and are sufficiently fire-retardant, per paragraphs 2.A. through 2.D. of the Accomplishment Instructions of Dassault Service Bulletin F900–220 (for Model Mystere-Falcon 900 series airplanes), or F900EX–109 (for Model Falcon 900EX series airplanes); both excluding Service Bulletins Compliance Form; both dated June 29, 2001.

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, International Branch, ANM–116. 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 2: 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

(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 accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–267–035(B), dated June 27, 2001.

Issued in Renton, Washington, on February 25, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4839 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 03N–0068]

Beverages: Bottled Water; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its bottled water quality standard regulations by establishing an allowable level for the contaminant uranium. As a consequence, bottled water manufacturers would be required to monitor their finished bottled water products for uranium at least once each year under the current good manufacturing practice (CGMP) regulations for bottled water. Bottled water manufacturers would also be required to monitor their source water for uranium as often as necessary, but at least once every 4 years unless they meet the criteria for the source water monitoring exemptions under the CGMP regulations. FDA is not proposing any change in the existing allowable levels for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity. This proposed rule will ensure that the minimum quality of bottled water, as affected by uranium, combined radium-

226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity, remains comparable with the quality of public drinking water that meets the Environmental Protection Agency's (EPA's) standards. This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit written or electronic comments by May 2, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Paul South, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1640.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. The companion proposed rule and the direct final rule are substantively identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comment and is withdrawn. The comment period for the companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. FDA is publishing the direct final rule because the rule contains noncontroversial changes, and the agency anticipates that it will receive no significant adverse comments. A detailed discussion of this rule is set forth in the preamble of the direct final rule. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation notice, after the comment period ends, to confirm the effective date of the direct final rule. The confirmation notice will publish no later than June 11, 2003. FDA intends the direct final rule to become effective December 8, 2003. If FDA receives significant adverse comment, the agency will withdraw the direct final rule. FDA will proceed to respond to all of the comments received regarding the rule, and, if appropriate, the rule will be finalized under this companion proposed rule using notice-and-comment procedures.

In the **Federal Register** of December 7, 2000 (65 FR 76708), EPA published the Radionuclides Rule to address potential public health effects from the presence of radionuclides in drinking water. This rulemaking finalized a proposed rule that EPA published in the **Federal Register** of July 18, 1991 (56 FR 33050).

Radionuclides are radioactive elements that occur naturally in the Earth's crust or are formed as a result of cosmic ray interactions. Human activities can also add radionuclides to the environment. Radionuclides emit ionizing radiation when they radioactively decay. The potential for harmful health effects from radionuclide exposure results from the ability of ionizing radiation to chemically change molecules that make up biological tissue through a process called ionization. Studies have shown long-term exposure to radionuclides including uranium in drinking water may result in increased risk of cancer and that exposure to uranium can have adverse health effects on kidney function (65 FR 76708 at 76712–76713).

National primary drinking water regulations (NPDWRs) are issued by EPA to protect the public health from the adverse effects of contaminants in drinking water. NPDWRs specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants. In addition, at the same time that it issues NPDWRs, EPA publishes maximum contaminant level goals (MCLGs), which are not regulatory requirements but rather are nonenforceable health goals that are based solely on considerations of protecting the public from adverse health effects of drinking water contamination.

In the Radionuclides Rule, EPA issued an NPDWR containing an MCL for uranium. EPA retained the existing MCLs for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity and indicated the analytical methods it approved for testing for uranium and three other contaminants. Finally, EPA published an MCLG of zero for all radionuclides. EPA's NPDWR has an effective date of December 8, 2003.

Under section 410(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349(b)(1)), not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300g-l), FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled water. The effective date for any such standard of quality regulation is to be the same as the effective date of the NPDWR. In addition, section 410(b)(2) of the act provides that a quality standard regulation issued by FDA shall include monitoring requirements that the agency determines to be appropriate for bottled water. Further, section 410(b)(3) of the act requires a quality standard for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public health than EPA's treatment technique requirements for the same contaminant.

II. Additional Information

For additional information see the corresponding direct final rule published elsewhere in this issue of the **Federal Register**. All persons who wish to submit comments should review the detailed rationale for these amendments set out in the preamble discussion of the direct final rule.

If FDA receives any significant adverse comments regarding this rule, FDA will publish a document withdrawing the direct final rule and will proceed to respond to the comments under this companion proposed rule using usual notice-and-comment procedures.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. A comment recommending a rule change that is in addition to the rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

III. EPA Standards

The SDWA, as amended in 1996, requires EPA to publish an NPDWR that specifies either an MCL or a treatment technique requirement for contaminants that may ''have an adverse effect on the health of persons,'' are ''known to occur or [have] a substantial likelihood [of occurring] in public water systems with a frequency and at levels of public

health concern,'' and for which ''regulation * * * presents a meaningful opportunity for health risk reduction for persons served by public water systems'' (SDWA section 1412(b)(1)(A)). The SDWA (section 300g-l(a)(3)) also requires that EPA issue MCLGs at the same time it issues NPDWRs. MCLGs are nonenforceable health goals that are based solely on considerations of protecting the public from the adverse health effects of contaminants, and not on other considerations, such as potential costs of regulating contaminants and potential technical difficulties of achieving the health goals (59 FR 38668 at 38671). EPA sets MCLs, the enforceable contaminant levels, as close as feasible to the nonenforceable MCLGs.

In its proposed rule on radionuclides (56 FR 33050), EPA proposed comprehensive changes to radionuclides standards in drinking water. However, after conducting a review of costs, benefits and treatment technologies, in the Radionuclides Rule, EPA established an MCL of 30 micrograms per liter (µg/L) for uranium and retained the existing MCLs of 5 picocuries per liter (pCi/L) for combined radium-226/-228, 15 pCi/L for gross alpha (excluding radon and uranium), and 4 millirem (mrem)/year for beta particle and photon radioactivity (65 FR 76708 at 76722).

Because uranium is a kidney toxin as well as a carcinogen, EPA chose an MCL for uranium, expressed in µg/L, that is protective of both kidney toxicity and carcinogenicity (65 FR 76708 at 76716). Analytical methods approved by EPA for uranium monitoring include activity and mass concentration analyses. If uranium is determined by activity-type methods, a 0.67 pCi/µg conversion factor is used to convert activity to mass concentration (65 FR 76708 at 76725).

IV. FDA Standards

A. The Agency's Approach to the Bottled Water Quality Standards Established Under Section 410 of the Act

Under section 401 of the act (21 U.S.C. 341), the agency may issue a regulation establishing a standard of quality for a food under its common or usual name, when in the judgment of the Secretary of Health and Human Services such action will promote honesty and fair dealing in the interest of consumers. On November 26, 1973 (38 FR 32558), FDA established a quality standard for bottled water that is set forth in § 165.110 (21 CFR 165.110).

Producers of bottled water are responsible for assuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard (§ 165.110(b)). Bottled water that is of a quality below the prescribed standard is required by § 165.110(c) to be labeled with a statement of substandard quality. Moreover, any bottled water containing a substance at a level that causes the food to be adulterated under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)) is subject to regulatory action, even if the bottled water bears a label statement of substandard quality.

FDA has traditionally fulfilled its obligation under section 410 of the act to respond to EPA's issuance of NPDWRs by amending the quality standard regulations for bottled water introduced or delivered for introduction into interstate commerce to maintain compatibility with EPA's drinking water regulations. In general, FDA believes that, with few exceptions, EPA standards for contaminants in drinking water are appropriate as allowable levels for contaminants in the quality standard for bottled water when bottled water may be expected to contain the same contaminants.

FDA generally has not duplicated the efforts of EPA in judging the adequacy of MCLs or treatment techniques in NPDWRs for contaminants when determining their applicability to bottled water in order to protect the public health. FDA believes that, in general, it would be redundant for FDA to reevaluate the drinking water standards prescribed by EPA. Further, because bottled water is increasingly used in some households as a replacement for tap water, consumption patterns considered by EPA for tap water can be used as an estimate for the maximum expected consumption of bottled water by some individuals. Therefore, FDA's view is that generally in cases where bottled water is subject to the same contaminants as tap water, FDA should establish standard of quality levels in bottled water at the same levels that EPA establishes as MCLs for such contaminants in tap water.

B. Quality Standard for Radionuclides

The quality standard for bottled water, as set forth in § 165.110(b)(5)(i), prescribes that bottled water shall not contain: (A) combined radium-226/-228 activity in excess of 5 picocuries per liter of water, (B) gross alpha particle activity (including radium-226, but excluding radon and uranium) in excess of 15 picocuries per liter of water, and (C) beta particle and photon radioactivity from manmade radionuclides in excess of that which would produce an annual dose equivalent to the total body or any internal organ of 4 millirems per year calculated on the basis of an intake of 2 liters of the water per day. If two or more beta or photon-emitting radionuclides are present, the sum of their annual dose equivalent to the total body or to any internal organ shall not exceed 4 millirems per year. The quality standard for bottled water, however, does not currently prescribe an allowable level for uranium.

With the exception of uranium, FDA's existing allowable levels for radionuclides (i.e., combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity) in the bottled water quality standard are the same as EPA's existing MCLs for the same radionuclides in drinking water that EPA retained in the Radionuclides Rule. Therefore, FDA is not proposing any change to the existing allowable levels for these radionuclides in bottled water.

FDA has evaluated the MCL for uranium established by EPA for drinking water. FDA has tentatively concluded that EPA's MCL for uranium, as a standard of quality level for bottled water, is adequate for the protection of public health. Certain waters used for bottled water may be expected to contain uranium; thus, FDA believes that adopting EPA's MCL for uranium will ensure that the quality of bottled water is equivalent to the quality of public drinking water that meets EPA standards.

Therefore, FDA is proposing to establish in a new paragraph (b)(5)(i)(D) in § 165.110, an allowable level for uranium of 30 micrograms per liter of water.

C. Analytical Methods for Radionuclides

In the Radionuclide Rule, EPA listed the analytical methods that it had approved for use by public water systems to determine compliance with the radionuclide MCLs (i.e. for uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity) (65 FR 76708 at 76724). FDA is proposing to revise § 165.110(b)(5)(ii) by incorporating by reference EPA approved analytical methods (65 FR 76708 at 76725) for determining compliance with the quality standard for uranium activity in bottled water. FDA is also proposing to revise § 165.110(b)(5)(ii) by incorporating by reference EPA approved analytical methods for determining compliance with the

quality standard for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity in bottled water (65 FR 76708 at 76725). FDA believes that these methods are sufficient to use for determining the level of uranium in bottled water.

D. Monitoring Provisions of CGMP Regulations for Bottled Water

FDA has established CGMP regulations for bottled water in part 129 (21 CFR part 129). Under § 129.35(a)(3)(i), source water must be analyzed by the plant as often as necessary, but at least once every 4 years for radiological contaminants. Therefore, once the rule becomes effective, bottlers would be required to test their source water as often as necessary but at least once every 4 years for uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity, unless the bottlers meet the provisions in § 129.35(a)(4) for source water monitoring exemptions. Further, to ensure that a plant's production complies with applicable standards, § 129.80(g)(2) requires radiological analysis by the plant, at least annually, of a representative sample from a batch or segment of a continuous production run for each type of bottled water produced during a day's production. Therefore, once this rule becomes effective, bottlers would be required to test their finished bottled water products at least once a year for uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity. In addition, bottled water must comply with the allowable levels for radionuclides in the quality standard for bottled water (§ 165.110(b)(5)(i)) unless the label bears a statement of substandard quality under § 165.110(c). As stated in § 165.110(d), bottled water is deemed adulterated if it contains a substance at a level considered injurious to health under section 402(a)(1) of the act.

V. Environmental Impact

The agency has determined under 21 CFR 25.32(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

A. Initial Regulatory Impact Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

1. The Need for Regulation

In the Radionuclides Rule, EPA published an NPDWR establishing an MCL for uranium. Under section 410 of the act, when EPA issues a regulation establishing an MCL for a contaminant in public drinking water, FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health. FDA's standard of quality regulations must also include appropriate monitoring requirements. Of the radionuclide standards addressed in EPA's final rule, only the uranium requirement does not have a current standard of quality regulation for bottled water. If FDA does not issue a standard of quality regulation by 180 days before the effective date of EPA's NPDWRs or make a finding that such a regulation is not necessary to protect the public health, the NPDWRs become applicable to bottled water.

2. Regulatory Options

FDA considers three options for this analysis:

Option 1. FDA does not establish a uranium quality standard regulation or make a finding that it is not necessary to protect the public health because uranium is not found in water used for bottled drinking water. Bottled water producers would be subject to the requirements set forth in the NPDWR for uranium.

Option 2. FDA establishes a uranium quality standard regulation. Bottled water producers would be subject to allowable levels in § 165.110 and CGMP monitoring requirements in §§ 129.35 and 129.80.

Option 3. Bottled water producers are not subject to either an FDA quality standard regulation or an EPA NPDWR for uranium..

Note on Option 3: Since water used for bottled water comes from sources that likely contain some level of naturally occurring uranium, section 410(b)(1) of the act does not allow this option. The act specifies two alternatives: ''promulgate a standard of quality regulation under this subsection,'' or find that ''such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems * * * but not in water used for bottled drinking water.'' However, the Office of Management and Budget (OMB) cost-benefit analysis guidelines recommend discussing statutory requirements that affect the selection of regulatory approaches. These guidelines also recommend analyzing the opportunity cost of legal constraints that prevent the selection of the regulatory action that best satisfies the philosophy and principles of Executive Order 12866. Our analysis finds that option 3 does not have the highest net benefits. Therefore, even if option 3 were permissible, the statute does not preclude the option with the highest net benefits.

Assumptions and Estimations Applicable to All Options

For the purposes of this analysis, FDA makes the following assumptions:

- Option 3, which has zero costs and benefits, will be considered the baseline for this analysis.
- The regulatory options we consider will have no organoleptic effect on the final bottled water product, and thus no impact on sales due to product quality. The cost of the regulation will be limited to the direct cost of testing, recordkeeping, and possible treatment technology investment or other compliance activity.
- Bottled water producers market their products based on meeting government safety testing requirements. However, any change in sales resulting from successful marketing either transfers revenue from one producer to another with no net loss to society, or causes increased sales of bottled water, which would mitigate the cost of this regulatory effort.
- Both the EPA NPDWR and the FDA standard of quality regulations will compel facilities to comply with the

new uranium standard. Therefore, FDA assumes that options 1 or 2 will not differ in terms of the number of illnesses avoided or the burden placed on facilities compelled to adopt treatment technology. However, EPA and FDA do have differing monitoring requirements.

• *The number of facilities*: Approximately 1,550 plants produced bottled water in 1998 (63 FR 25764, May 11, 1998). According to another database search conducted in 2002, the industry contains only 914 plants that would be subject to these rules. The 2002 count may not include bottled water services to business, but the decrease in facilities may also be a result of industry consolidation (Ref. 1). Because of this uncertainty, we use both totals to define our uncertainty interval.

• *Facilities out of compliance*: As in the EPA NPDWR analysis, we estimate the baseline incidence of facilities out of compliance by using the EPA's National Inorganics and Radionuclides Survey (NIRS). EPA took the results of the concentration of radionuclides found in the NIRS and extrapolated to the expected percent of municipal water facilities that would be out of compliance—by type and population served—for various uranium levels. Since most bottled water facilities that do not use a public water source use ground water, and are relatively small when compared to municipal water plants, we assume that the percent of bottled water plants out of compliance with the uranium standard is approximately the same percent as the number of ground water municipal plants that serve less than 500 people. EPA used two methods to extrapolate the NIRS results to all facilities. Using both approaches, small ground water facilities have by far the largest estimated out of compliance percentages, so this is a conservative assumption. Table 1 of this document presents the four possible numbers of facilities out of compliance, using our two bottled water facility counts and EPA's two percentage estimates for groundwater facilities.[1] The lowest and the highest number of facilities identified here (8–22 facilities) will be used as the out of compliance uncertainty interval for cost calculations.

[1] This is actually a percentage out of compliance for all facilities, but the percentage is dominated by small groundwater facilities. Above an MCL of 40 μg/L, no facilities other than groundwater facilities serving less than 500 people were predicted to be out of compliance. Since EPA did not directly estimate compliance percentages for the EPA MCL of 30 μg/L, we must assume that the number of facilities that are not small groundwater and are out of compliance would be negligible.

TABLE 1.—NUMBER OF FACILITIES POTENTIALLY OUT OF COMPLIANCE WITH THE URANIUM STANDARD

Total Number of Facilities	EPA Method 1 (1.4% out of compliance)	EPA Method 2 (0.9% out of compliance)
1,550	22.	14
914	13	8

Cost Calculations under Options 1 and 2

This cost analysis is separated into two sections: Possible compliance activity that firms may have to undertake to meet the uranium standard, and monitoring requirement for all facilities. Between 914 and 1,550 facilities may have to adopt a test for the uranium standard, and between 8 and 22 facilities may also have to take measures to come into compliance with the uranium standard. Uranium testing is a standard procedure that is available in many labs around the country. Firms can choose among many types of treatment options to come into compliance, including water softening/iron removal, point-of-use reverse osmosis, point-of-use anion exchange/activate alumina, blending, or finding an alternative source.

Compliance costs. FDA assumes that all facilities will come into compliance under options 1 and 2, so the relative ranking of options 1 and 2 is not affected by compliance cost calculations. In their 2000 NPDWR analysis, EPA estimated compliance investment needed per volume of water treated (here presented as per 83,000 gallons, which is the annual per household water use estimate used by EPA) for each of their extrapolation methods mentioned above, for each facility size category, and for several different uranium standards. However, they did not directly estimate the compliance cost of the 30 μg/L standard considered here. We use an average of the compliance costs per gallon between the 40 and 20 μg/L standard levels for which costs were estimated directly tested by EPA. We also assume that each facility out of compliance is of average size. According to EPA's per capita total water use estimates applied to bottled water, an average bottled water facility processes as much water as a municipal system serving between 42 and 72 households, so we use the compliance cost estimated for groundwater facilities serving between 100 and 500 people, which is the closest category EPA presents.

The extrapolation methods used to construct the uncertainty intervals explained above affect both the percent of facilities out of compliance and the total amount of uranium that would need to be removed to come into compliance. Therefore, the per volume costs will be different under EPA's different estimation methods even for identically sized facilities. As mentioned previously, firms can choose among many types of treatment options. Our central value of uncertain compliance cost estimates is based on EPA's study of technology adoption for previous standards and their decision tree analysis, and our uncertainty interval is defined by the least (alternative sourcing) and most (point-of-use methods) expensive options being adopted by every one of the 8–22 facilities assumed to be affected.

Table 2 of this document summarizes these calculations. Considerable economies of scale exist in water treatment, but EPA only estimates the effect of economies of scale between their grouped size categories. Therefore, within the EPA size category we are assuming applies to bottled water, total treatment cost depends only on the amount of water treated, even though it is probable that larger facilities within this class have a lower per volume cost of treating their water. Also, for these options we base estimates of the amount of bottled water treated per facility not on our uncertain number of facilities but on a fixed total estimate of bottled water production in the United States. Therefore, except for rounding, our compliance cost estimate is not dependent on the number of facilities. We do expect that fewer facilities treating a larger amount of water would lead to lower per volume costs, but our most accurate estimate cannot take this into account, and this uncertainty does not affect the ranking of alternatives. We assume costs are incurred every year indefinitely into the future. The annual volume of bottled water consumed in the United States increased by an average of 7 percent over the past 11 years (Ref. 3), but again since the cost of treating water is subject to considerable economies of scale (Ref. 2) we assume that per year compliance costs will be roughly constant in the future. The discount rate used is 7 percent. We use the average of all four estimates of the middle value to construct the measure of central tendency, and the average of the two rounded lowest values and the two rounded highest values to construct the uncertainty interval. According to this analysis, total present value compliance costs will average approximately

$1,085,000, with a range of $61,000-$2,660,000 for both options 1 and 2.

TABLE 2.—COMPLIANCE COST FOR EPA METHODS 1 AND 2

EPA Calculation Method	No. of Facilities	Cost /83,000 Gallons ($)	Cost Per Facility ($)	Total Annual ($)	Present Value ($)
1	22	100 (10–190)	4,200 (300–7,900)	92,000 (7,000–174,000)	1,406,000 (107,000–2,660,000)
1	13	100 (10–190)	7,200 (500–13,400)	94,000 (7,000–174,000)	1,437,000 (107,000–2,660,000)
2	14	80 (10–190)	3,600 (300–7,900)	50,000 (4,000–111,000)	764,000 (61,000–1,697,000)
2	8	80 (10–190)	6,000 (500–13,400)	48,000 (4,000–107,000)	734,000 (61,000–1,636,000)

Monitoring Costs. FDA has collected several estimates for uranium testing cost, ranging from $25-$150 per sample.[2] We will use the average of these testing costs of $105 as a most likely value and the entire range to define uncertainty. EPA and FDA required testing frequencies under options 1 and 2 differ substantially, as explained below.

Option 1 (EPA) Testing Frequency. Under the EPA testing regime, the 914 or 1,550 facilities would have to adopt a test for the uranium standard. According to the Radionuclides Rule (65 FR 76708 at 76711), all facilities would have to first perform four consecutive quarterly samples. We assume that bottled water facilities would test these samples in the first year after adoption. Based on the average results of these samples, facilities would have to sample once every 3 years (average greater than 50 percent of MCL), once every 6 years (average less than 50 percent of MCL), or once every 9 years (not detected). We assume one-third of facilities would fall in each of these categories, and that future tests would be uniformly distributed across years; for example, one-third of the facilities that only have to test once every 3 years will conduct the test in any one year.

Option 2 (FDA) Testing Frequency. Under § 129.35(a)(3), bottled water producers are required to test their source water for radiological contaminants at least once every 4 years unless exempted from such testing under § 129.35(a)(4). For example, one possible exemption is that the 25 percent of bottled water facilities that use a public water source already subject to EPA regulations may substitute public water system testing results for source water testing. We assume that no facilities that use a public water source will need to test their source water for uranium, and that all bottled water producers using nonpublic water will need to test their source water. All bottled water producers are required to test their final bottled water product for radiological contaminants at least once per year under § 129.80(g)(2).

Table 3 of this document presents the calculations for each option. The low bound is calculated by the low facility count multiplied by the low testing cost estimate, the high bound is calculated by the high facility count multiplied by the high testing cost estimate, and the middle value is the average of the low and high facility counts multiplied by the average of the testing cost estimates. Multiplying all low and high estimates together probably renders the low and high bounds extremely unlikely, but since we do not have a probability distribution associated with these values we have no other method of defining uncertainty. The present value is calculated as if all testing were to be continued indefinitely, with a discount rate of 7 percent.

TABLE 3.—MONITORING COST ESTIMATES

Options	Year 1 tests	Year 1 Cost ($)	Subsequent year tests	Subsequent year cost ($)	Present Value ($)
Option 1 (EPA)	4	517,000 (91,000–930,000)	.61	79,000 (14,000–142,000)	1,645,000 (291,000–2,956,000)
Option 2 (FDA)	1.19	154,000 (27,000–277,000)	1.19	154,000 (27,000–277,000)	2,353,000 (416,000–4,229,000)

3. Benefits of the Regulatory Options

FDA assumes that both option 1 and option 2 would compel all bottled water facilities to come into compliance with the 30 μg/L uranium standard. Uranium carries two distinct risks: An increased risk of cancer and kidney toxicity. In addition, treatment technologies put in place to remove uranium will also reduce the concentration of other bottled water contaminants. However, EPA was unable to quantify the effect of uranium on kidney toxicity and the effect of uranium treatment technology on cocontaminants due to lack of information, and FDA has not found any information made available that would allow the quantification of these effects since EPA's 2000 analysis.

Cases of Cancer Avoided

Exposure. According to the *Bottled Water Reporter*, Americans consumed a per capita average of approximately 73.8 liters of bottled water in 2001 (Ref. 3). This is approximately 18 percent of the per capita consumption of water from all sources estimated by the EPA (Ref 2). Bottled water consumption has been increasing at a rate of approximately 7 percent per year in the United States

[2] A private lab called General Engineering Laboratories (GEL) in Charleston, SC, provides uranium testing of private wells at a cost of $25 per sample: *http://www.scdhec.net/eqc/water/html/urtest2.html*, accessed August 15, 2002. The New Hampshire Department of Environmental Services charges $140 per uranium test: *http://www.des.state.nh.us/factsheets/ws/ws-3-11.htm*, accessed August 15, 2002. The Maine Health and Environmental Testing Laboratory charges $150 per uranium test: *http://www.state.me.us/dhs/etl/pubgd99w.html*, accessed August, 15, 2002.

over the past 11 years, and this trend may continue (Ref 3).

Risk and Valuation of Risk. In September 1999, EPA updated a series of coefficients they developed to express the incremental lifetime risk of cancer morbidity or mortality per unit of intake. They then combined this per unit risk to the average and 90th percentile annual and lifetime intake of water from all sources (including bottled water, but they adjusted for bottled water that did not originate in the municipal water supplies they regulated) to calculate: (1) The total morbidity and mortality cancer risk due to drinking water containing uranium, and (2) the reduction in risk due to their proposed NPDWR for uranium. We adjust these values based on our calculation of the average annual intake of bottled water described previously in this document. The mortality risk coefficient per µg of uranium ingested is 3.97E–11, and the morbidity coefficient is 6.13E–11 (Ref. 4). In other words, for each µg of uranium ingested the lifetime risk of getting cancer increases by approximately 6 in 100 billion, while the lifetime risk of dying from cancer increases by approximately 4 in 100 billion.

This risk estimate is applied to the decrease in Uranium ingested due to options 1 and 2. Between 0.9 percent and 1.4 percent of bottled water is expected to initially have uranium concentrations over 30 µg/L. Based on 2001 total bottled water consumption, this translates into between 49 million and 76 million gallons of bottled water possibly above the standard. In the Radionuclides Rule, EPA expected that the reduction in uranium concentration in the out of compliance municipal water facilities would yield an annual decrease in the number of new fatal and nonfatal statistical[3] cancer cases of 0.82 from an affected number of gallons of approximately 73 million.

For the calculations below, we assume that every bottled water consumer has an equal chance of drinking water from a facility that would be out of compliance with the standard. This makes the calculation much simpler, and since the mortality and morbidity risk coefficients are linear and are not based on past exposure, the total reduction in risk is identical. If out-of-compliance bottled water facilities have uranium concentrations roughly equal to the EPA estimates, then applying this assumed reduction and the total annual per capita consumption attributable to the affected bottled water facilities yields a total number of fatal and nonfatal cancer cases avoided of between 0.55 and 0.85 per year for both options 1 and 2. We use a 6 percent growth rate to take into account an increase in exposure and population, in relation to the 7 percent discount rate used for the cost calculations. We also assume that the cancer mortality will occur 20 years in the future. The central estimate is somewhat sensitive to these assumptions, so we test different assumptions in the net benefits section below. Using standard valuation techniques for cancer morbidity and mortality yields an expected present value benefit of between $8,700,000 and $13,500,000. The calculations summary is in Table 4 of this document.

TABLE 4.—BENEFITS CALCULATIONS

Options	Cases of Cancer Avoided: EPA Method 1	Cases of Cancer Avoided: EPA Method 2	Present Value ($) of Annual Cancer Cases (low-high)	Total Present Value ($) (low-high)
1 and 2	.85	.55	629,000 (494,000–764,000)	11,112,000 (8,731,000–13,493,000)

A final source of uncertainty we need to account for is the upper and lower bound estimated by EPA for their cancer risk coefficients. In the 2000 analysis, EPA assumes an uncertainty cancer risk interval extending one order of magnitude above and below their risk coefficients. Applying this uncertainty interval to the benefits we have already calculated yields a final benefits interval of between $870,000 and $135,000,000. Although EPA does not include a probabilistic confidence interval associated with this additional source of uncertainty, they do state that the central tendency values they use for their main calculations are more likely (Ref. 2).

Sensitivity to Assumptions and Uncertainty: Benefits

These benefits calculations are subject to considerable uncertainty. The uncertainty interval used in the analysis is due to the uncertainty in the incidence and concentration of naturally occurring uranium and uncertainty in the uranium risk coefficients. However, the main uncertain benefits that we do not quantify are: (1) The reduction in kidney disease due to reducing uranium concentration in bottled water, and (2) the reduction in cocontaminants due to the adoption of treatment technologies for uranium. Therefore, the quantified cancer benefits probably underestimate the true positive impact of the uranium standard.

4. Net benefits

Table 5 of this document presents the total costs and benefits for all three options.

TABLE 5.—COSTS AND BENEFITS

Options	Total Costs ($) (low-high)	Total Benefits ($) (low-high)
1 (EPA Monitoring Requirement)	2,930,000 (352,000–5,616,000)	11,112,000 (8,731,000–13,493,000)
2 (FDA Monitoring Requirement)	3,438,000 (477,000–6,889,000)	11,112,000 (8,731,000–13,493,000)
3 (No Action Taken)	0	0

In the most likely central values in the distribution of cost and benefits, EPA option 1 has positive net measured benefits and FDA option 2 has positive net measured benefits. The ranking of option 1 and 2 depends completely on the frequency of required testing: FDA would require an average of 1.19 tests per year per facility, while EPA, after a series of four tests, would only require an average of .61 test per year per facility. We tested the effects of 5 percent-7 percent discount rates and 15–30 year delays in cancer onset in our

[3] A statistical cancer case refers to expectations. For example, if the risk of contracting cancer sometime during one's life increases for each person by 1 in a million, and the affected population consisted of 1 million people, it is expected that the number of eventual cancer cases observed would increase by 1. However, 1 is only the measure of central tendency in a distribution of effects.

benefits calculations, and both options still yield positive net benefits. The choice of the discount rate or time period before onset does not affect the relative ranking of options 1 and 2.

The range of uncertainty between costs and benefits overlaps, but many of the determinants of the range of uncertainty affect both costs and benefits equally, so low costs are associated with low benefits and high costs are associated with high benefits. The exception to this is the uncertainty in the cancer risk coefficient; since this interval is not probabilistic, FDA cannot estimate a probability that this rule will have negative net or positive net benefits for any of these options. However, FDA does consider our central estimates the most likely outcomes. Also note the potentially large benefits from a reduction in kidney toxicity and cocontaminants that we were not able to quantify, which could also affect the size and range of the net benefits.

Finally, our cost-best analysis reaches a different result than EPA's 2000 radionuclide analysis, which concluded that testing for uranium in water destined for human consumption has negative net quantifiable benefits (65 FR 76708). The reason for the difference between our results and EPA's results is that most of the costs of the EPA rule are applied to water that will not be consumed. People do not drink the vast majority of water treated by municipal facilities. Most of that water is used for cleaning, waste disposal, and outdoor uses. In contrast, almost all bottled water is used for human consumption. In fact, a typical bottled water facility processes as much water for drinking as a much larger municipal water facility. Consequently, fewer bottled water facilities would have to incur compliance costs to afford the same level of protection for water consumed as assumed in the EPA analysis.

B. Initial Small Entity Analysis

Under section 603(a) of the Regulatory Flexibility Act, for any proposed rule for which the agency is required by section 553 of the Administrative Procedure Act or any other law to publish a general notice of proposed rulemaking, the agency is required to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this companion proposed rule is a proposed rule for which a general notice of proposed rulemaking is required, and therefore, is subject to the Regulatory Flexibility Act, the agency will consider any comments it receives on the initial regulatory flexibility analysis in this companion proposed rule when deciding whether to withdraw the direct final rule.

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that this rule would have a significant economic impact on a substantial number of small entities.

FDA feels that the flexibility allowed in source testing requirements under option 2 in the impact analysis is the maximum amount of flexibility possible in this regulation. FDA is not establishing exemptions for final product testing since there is a need to test for naturally occurring uranium, which could be present in all source water.

According to the latest database search across the bottled water industry mentioned above, approximately 72 percent of firms qualify as small by the Small Business Administration (SBA) standard of having less than 500 full-time-equivalent employees. We assume that all SBA small firms operate a single facility for the purposes of this analysis. Since all facilities must adopt uranium testing, between 658 and 1,116 small firm facilities will incur a testing burden. Assuming the same distribution of size among out of compliance plants means that between 6 and 16 small facilities will incur the more costly burden of devoting resources to bring their water into compliance with the uranium standard issued in this rule. Table 6 of this document presents the average and maximum annual costs attributable to this rule for each small firm.

TABLE 6.—ANNUAL AVERAGE AND MAXIMUM COSTS PER FIRM

Category	Average ($)	Maximum ($)
Monitoring	125	179
Compliance	5,246	13,383
Total	5,400	13,600

Most small firms will only incur a $125 (1.19 tests per year at an average cost of $105 per test) uranium testing cost, although a few may incur up to $179 (1.19 tests per year at an average cost of $150 per test) in annual testing costs, which is 0.03 percent of the $580,000 annual revenue of the median small bottled water firm. If a small firm operates more than one facility, testing costs would be multiplied by the number of facilities they operate. However, between 6 and 16 small firms will incur an average of $5,400 in total costs, and may incur as much as $13,600 in total costs if for some reason they need to adopt the most expensive treatment option, although FDA considers this unlikely. The average treatment cost estimates represent .9 percent of median annual small firm sales, but could be as much as 2.3 percent of annual sales. However, 75 percent of the total reduction in cancer incidence of this rule is due to these small firms lowering the amount of uranium in their water, so it is essential that they adopt some sort of treatment technology.

C. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4), requiring cost-benefit and other analyses, in section 1531(a) defines a significant rule as ''a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any 1 year.'' FDA has determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

VII. Paperwork Reduction Act

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule has a preemptive effect on State law. Section 4(a) of the Executive Order requires agencies to ''construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. Section 403A(a)(1) provides that ''no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce-(1) any requirement for a food which is the subject of a standard of identity established under section 401 that is not identical to such

standard of identity or that is not identical to the requirement of section 403(g) * * *.'' FDA has interpreted this provision to apply to standards of quality (21 CFR 100.1(c)(4)). Although this rule has preemptive effect in that it would preclude States from issuing requirements for uranium levels in bottled water that are not identical to the allowable level for uranium as set forth in this rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(c) of the Executive Order further requires that ''any regulatory preemption of State law shall be restricted to the minimum level necessary'' to achieve the regulatory objective. Under section 410 of the act, not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300g-1), FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled water. Further, section 410(b)(3) of the act requires a quality standard for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public health than EPA's treatment techniques required for the same contaminant. On December 7, 2000, EPA issued an NPDWR containing an MCL for uranium (65 FR 76708). FDA has determined that the MCL for uranium that EPA established for public drinking water is appropriate as a standard of quality for bottled water, and is issuing this regulation consistent with section 410 of the act.

Further, section 4(e) of the Executive order provides that ''when an agency proposed to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' Given the statutory framework of section 410 of the act for bottled water, EPA's issuance of an MCL for uranium in public drinking water provided notice of possible FDA action for a standard of quality for uranium in bottled water. FDA did not receive any correspondence from State and local officials regarding a uranium standard for bottled water subsequent to EPA's NPDWR on the MCL for uranium. Moreover, FDA is not aware of any States that have requirements for uranium in bottled water that would be affected by FDA's decision to establish a bottled water quality standard for uranium that is consistent with EPA's standard for public drinking water. In addition, we are providing an opportunity for State and local officials to comment on FDA's standard of quality for uranium in bottled water in the context of this rulemaking. For the reasons set forth previously in this document, the agency believes that it has complied with all of the applicable requirements under the Executive order.

In conclusion, FDA has determined that the preemptive effects of the final rule are consistent with Executive Order 13132.

IX. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

X. Effective Date

The agency intends to make any final rule based on this proposal effective December 8, 2003. The agency will publish a confirmation notice for a final rule in the **Federal Register** no later than 180 days before the effective date. The agency is providing 180 days before the effective date to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule.

XI. References

1. Hamon, J., ''Bottled Water Industry, 2001,'' Special Industries Spotlight, January 2001. Available at *http://www.merger.com*.

2. Industrial Economics, Inc., *Economic Analysis of the Radionuclides National Primary Drinking Water Regulations*. Available from the Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, November, 2000.

3. Rodwan, John G., ''The 2001 Stat: Bottled Water Sales Reach New Heights,'' *Bottled Water Reporter*, p. 14–20, April/May 2002.

4. Eckerman, K., R. Leggett, C. Nelson, J. Pushkin, and A. Richardson, *Cancer Risk Coefficients for Environmental Exposure to Radionuclides*, Federal Guidance Report No. 13, 1999. (EPA 402–R–99–001). Note that FDA used the risk coefficients as adjusted and reported in Ref. 2 of this document in order to be consistent with the EPA radionuclide impact analysis.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 165 be amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–l, 348, 349, 371, 379e.

2. Section 165.110 is amended by adding paragraph (b)(5)(i)(D) and by revising paragraph (b)(5)(ii) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(D) The bottled water shall not contain uranium in excess of 30 micrograms per liter of water.

(ii) Analyses conducted to determine compliance with the requirements of paragraph (b)(5)(i) of this section shall be made in accordance with the methods described in the applicable sections of ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., may be obtained from the American Public Health Association, 1015 15th St. NW., Washington, DC 20005. Copies of the methods incorporated by reference in this paragraph (b)(5)(ii) may also be examined at the Office of the **Federal Register**, 800 North Capital St. NW., suite 700, Washington, DC, or at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD.

(A) Combined radium-226/-228 shall be measured using the following methods:

(*1*) Method 7500–Ra B—''Precipitation Method,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(*2*) Method 7500–Ra D—''Sequential Precipitation Method,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(B) Gross alpha particle radioactivity shall be measured using the following method: Method 7110 C—''Coprecipitation Method for Gross Alpha Radioactivity in Drinking Water,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(C) Beta particle and photon radioactivity shall be measured using the following methods:

(*1*) Method 7500–Sr B—''Precipitation Method,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(*2*) Method 7500–^{3}H B—''Liquid Scintillation Spectrometric Method,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(*3*) Method 7120 B—''Gamma Spectroscopic Method,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(D) Uranium shall be measured using the following methods:

(*1*) Method 7500–U B—''Radiochemical Method,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(*2*) Method 7500–U C—''Isotopic Method,'' which is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

* * * * *

Dated: February 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4972 Filed 2–27–03; 11:42 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 4100

[WO–220–1020–24 1A]

RIN: 1004–AD42

Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking for proposed amendments to the BLM's Grazing Administration Regulations and announcement of public meetings.

SUMMARY: The Bureau of Land Management (BLM) requests comments and suggestions to assist us in amending our regulations governing how the BLM administers livestock grazing on public lands. The current regulations, issued in 1995, require amendment to comply with court decisions, provide greater flexibility to managers and permittees, and improve existing administrative procedures and business practices, and promote conservation of public lands. We encourage the public to participate in planned public meetings and to provide comments and suggestions to help us clearly define needed changes to the Grazing Administration Program.

DATES: You must submit your comments by May 2, 2003. BLM may not necessarily consider or include in the Administrative Record for the proposed rule comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed below (see **ADDRESSES**). See the **SUPPLEMENTARY INFORMATION** section for the dates of the public meetings.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–AD42.

Personal or messenger delivery: 1620 L Street NW., Room 401, Washington, DC 20036.

Direct Internet response: *www.blm.gov/nhp/news/regulatory/index.html* or go to BLM's external Home page at *http://www.blm.gov/nhp/index.htm* and click on the link.

You may also comment via email to *WOComment@blm.gov.* We intend this address for use by those who want to keep their electronic comments confidential and for those who are unable, for whatever reason, to use the Internet site. Please submit email comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: AD42'' and your name and return address in your email message.

You may examine documents pertinent to this proposal at the L Street address. Comments, including names and street addresses of respondents, will be available for public review on the Internet address above and may be published as part of the EIS. Individual respondents may request confidentiality.

FOR FURTHER INFORMATION CONTACT: Kenneth Visser at (202) 452–7743, for information relating to the grazing program or the substance of the regulations to be proposed, or Ted Hudson at (202) 452–5042 or Cynthia Ellis at (202) 452–5012 for information relating to the rulemaking process. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the above individuals.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Description of Information Requested

I. Public Comment Procedures

Your written comments should:

1. Be specific;
2. Explain the reason for your comments and suggestions;
3. Be about the issues outlined in this notice; and,
4. Where possible, reference the specific section or paragraph of existing regulations that you are addressing.

The comments and recommendations that are most useful and likely to

influence decisions on the content of a proposed rule are:

1. Comments and recommendations supported by quantitative information or studies; and

2. Comments that include citations to and analyses of the applicable laws and regulations.

We are particularly interested in receiving comments and suggestions about the topics listed under III. Description of Information Requested.

If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. We will honor such requests to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

We will conduct public scoping meetings on the Environmental Impact Statement associated with this proposed rulemaking. The meetings will be held on the following dates at the specified locations and times:

Location	Date and time	Address of meeting	Contact person
Billings, Montana	March 18, 2003 6–10 p.m.	Holiday Inn Grand Montana, 550 Midland Road, Billings, MT 59101.	Mary Apple (406) 896–5258
Reno, Nevada	March 20, 2003 6–10 p.m.	Reno Sparks Convention Center, 4590 S. Virginia St., Reno, NV 89502.	JoLynn Worley (775) 861–6515
Albuquerque, New Mexico	March 25, 2003 6–10 p.m.	Hilton of Albuquerque, 1901 University Blvd., NE., Albuquerque, NM 87102.	Kitty Mulkey (505) 438–7511
Washington, DC	March 27, 2003 1–5 p.m.	Courtyard By Marriott (General Scott Room), 1600 Rhode Island Ave., NW., Washington, DC 20036.	Tom Gorey (202) 452–5137

The sites for the public meetings are accessible to individuals with physical impairments. If you need a special accommodation to participate in one or all of the meetings (*e.g.*, interpreting service, assistive listening device, or materials in alternative format), please notify the contact person listed in this notice no later than two weeks prior to the scheduled meeting. Although we will attempt to meet all requests received, the requested accommodations may not always be available.

If you plan to present a statement at the meetings, we will ask you to sign in before the meeting starts and identify yourself clearly for the record. Your speaking time at the meeting(s) will be determined before the meeting(s), based upon the number of persons wishing to speak and the approximate time available for the session. You will be provided at least three minutes to speak

If you do not wish to speak at the meetings but you have views, questions, and concerns about regulations for the BLM's Range Management Program, you may submit written statements for inclusion in the public record at the meeting. You may also submit written comments and suggestions regardless of whether you attend or speak at a public meeting. See the **ADDRESSES** section of this notice for where to submit comments.

II. Background

In this issue of the **Federal Register** BLM is also publishing a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) on the changes we are considering making to the regulations governing BLM's Grazing Administration Program. BLM is committed to making the changes to reflect the Secretary's ''4C's'' philosophy of ''consultation, cooperation, and communication all in the service of conservation.'' BLM is issuing this Advance Notice of Proposed Rulemaking and the NOI to give the public and interested parties early information about the proposed action, the potential range of alternatives, and the nature of impact analysis being considered in the EIS. We will hold meetings during which the public will be able to comment on the scope, proposed action, and possible alternatives BLM should consider when drafting the proposed rule. BLM seeks comments on this Advance Notice of Proposed Rulemaking.

Since the first set of grazing regulations was issued after passage of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315a–315r), the regulations have been periodically modified, revised, and updated. The last major revision effort culminated when BLM published and implemented comprehensive changes to the grazing regulations in 1995.

The changes BLM is considering would encourage partnerships in public land stewardship and establish new options for BLM and rangeland users in the administration and management of public lands. Our goals are to:

(1) Enhance community-based conservation and citizen-centered stewardship;

(2) improve BLM business practices; and

(3) provide greater flexibility for the manager and the permittee.

III. Description of Information Requested

BLM is committed to carrying out the Secretary's objectives and the Rangeland Management Program established by the Federal Land Policy Management Act of 1976 (43 CFR 1740), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901–1908), and the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315a–315r). We encourage the public to participate in planned public meetings and to provide comments and suggestions to help us clearly define needed changes in the Grazing Administration Program. We specifically are requesting comments on the topics we are considering for the proposed rule. These include, but are not limited to, the following:

A. Definitions; We are considering revising or creating definitions of the following terms:

Active use
Authorized use
Base property
Grazing lease
Grazing permit
Grazing Preference or Preference
Livestock kind or kind of livestock
Monitoring
Reserve common allotment

B. We are considering changing regulations to clarify current requirements and to allow better rangeland management and permit administration. Changes we are considering include:

• Clarifying the permit renewal performance review requirements when grazing permits are pledged as security for loans.

• Clarifying who is qualified for public lands grazing use and who will receive preference for a grazing permit or lease.

• Clarifying the provisions addressing grazing preference transfers.

• Reinstating an earlier provision that BLM and the permit holder may share title to certain range improvements if the improvement was constructed under a Cooperative Range Improvement Agreement.

• Clarifying that BLM will follow state law with respect to the acquisition of water rights.

• Examining whether BLM should authorize temporarily locked gates on public lands in order to protect private land and improve livestock operations.

• Clarifying which non-permit related violations BLM may take into account in penalizing a permittee.

• Considering ways to streamline the grazing decision appeal process.

• Extending the time period that BLM may approve nonuse of forage from 3 to 5 years for resource improvement, business, or personal needs.

C. We are also considering amendments related to changes in permitted use. Amendments we are considering include:

• Creating provisions re-emphasizing consideration of social, economic, and cultural impact, in addition to the ecological impacts, of Federal actions to ensure compliance with the National Environmental Policy Act.

• Requiring a permittee/lessee to apply to renew a permit or lease.

• What criteria BLM will consider before approving increases in permitted use.

• Considering whether to amend the provision stating when BLM will implement action that changes grazing management after determining that the allotments used by a permittee or lessee are not meeting or significantly progressing toward meeting land health standards.

D. We are considering adding the following new provisions to the regulations.

• Establishing and administering a new concept called ''Reserve Common Allotments'' (RCA). RCAs would be managed as reserve forage areas for use by permittees whose allotments are undergoing restoration treatments and require rest from grazing. RCA forage would be allocated on a temporary non-renewable basis to permittees participating in restoration on their allotments.

• Adding a fee schedule for preference transfers, crossing permits, applications for nonuse, and replacement/supplemental billing under existing service charge authority. We do not intend to address grazing fees in this rulemaking.

E. We also plan to make minor revisions to correct typographical errors and to make technical changes to improve the clarity of the rule. One change we will make is to remove references to ''conservation use'' permits to reflect the decision in *Public Lands Council* v. *Babbitt,* 929 F.Supp. 1436 (D. Wyo. 1996), *rev'd in part and aff'd in part,* 167 F.3d 1287 (10th Cir. 1999), *aff'd,* 529 U.S. 728 (2000).

Additional information about BLM's Rangeland, Soils, Water, and Air Program is available at *http://web.blm.gov/internal/wo-200/wo-220/index.html.*

Dated: January 17, 2003.

Rebecca W. Watson,

Assistant Secretary of the Interior.

[FR Doc. 03–4933 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Notice 6]

RIN 2137–AD54

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a one-day public meeting to address issues raised at a recent workshop jointly organized by the Interstate Natural Gas Association of America (INGAA) Foundation and the American Gas Association (AGA) on the proposed 49 CFR part 192.763, ''Pipeline Integrity Management in High Consequence Areas''. This meeting is intended to give participants a better understanding of the proposed rule. OPS representatives will give an overview of the proposed regulation and will fully discuss identification of high consequence areas and moderate risk areas; confirmatory direct assessment methods; assessment schedules, and criteria for the performance approach to the program. RSPA/OPS is also seeking information on the costs and benefits of implementing the proposed requirements.

ADDRESSES: The meeting is open to all. There is no cost to attend. This meeting will be held on Friday March 14, 2003, from 9 a.m. to 5 p.m. at the Marriott at Metro Center hotel located at 775 12th Street, NW., Washington, DC; Tel: 202–737–2200); fax: 202–347–5886; website: *www.marriott.com.* You may register electronically for this meeting at: *http://primis.rspa.dot.gov/meetings.* Please make your reservations as soon as possible as hotel rooms are limited. For other details on this meeting contact Janice Morgan at 202–366–2392.

You may submit written comments 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–03–14448; Notice 3.

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 comments (or signing the comments, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Jenny Donohue by phone at (202) 366–4046, regarding this document. General information about RSPA/OPS programs may be obtained by accessing RSPA's Internet page at *http://rspa.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:

Background

To better prevent pipeline failures that can imperil the health and safety of nearby residents and cause significant damage to their property, RSPA/OPS is promulgating a series of rules to require pipeline operators to develop integrity management programs. The programs include conducting baseline and periodic assessments of certain pipeline segments. Although the hazardous liquid and natural gas programs are structured somewhat differently to accommodate the differences between the two types of pipeline systems, both integrity management programs are designed to identify the best method(s) for maintaining the structural soundness (*i.e.*, integrity) of pipelines operating across the United States.

On January 9, 2002, RSPA/OPS began the integrity management rulemakings for gas transmission lines by first proposing a definition of high consequence areas (*See* 67 FR 1108). We also described our plan to propose integrity management program requirements for gas transmission pipelines affecting those areas. RSPA/OPS finalized the high consequence area definition on August 6, 2002 (67 FR 50824), and published the proposed rule on integrity management program requirements on January 28, 2003 (68 FR 4278).

This meeting is being held to give participants a better understanding of the proposed rule. OPS representatives will give an overview of the proposed rule and discuss fully the identification and protection of high consequence areas and moderate risk areas; and the methodology of confirmatory direct assessment. OPS will answer any questions related to the proposed rule and will seek additional information from the public about costs and benefits of implementing the proposed rule.

The preliminary agenda for this meeting is as follows:

Pipeline safety legislation—The impact of the recently passed legislation on integrity management program requirements.

Overview of proposed regulation—The intent and structure of the proposed rule.

HCA Identification—The refinement of the definition of high consequence areas and moderate risk areas in the proposed rule.

Risk assessment, plan development, and data integration—Proposed risk assessment, with particular emphasis on confirmatory direct assessment methods, and the proposed plan development process, identification of high consequence areas and moderate risk areas; confirmatory direct assessment methods; assessment schedules, and criteria for the performance approach to the program.

IMP Implementation & Data Integration

Costs and benefits—The draft regulatory evaluation.

Open Forum & Q&A

Issued in Washington, DC, on February 26, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–4919 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 030128024–3024–01; I.D. 121002A]

RIN 0648–AQ63

Fisheries of the United States; National Standard 1

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

ACTION: Advance notice of proposed rulemaking; consideration of revision to national standard 1 guidelines; extension of comment period.

SUMMARY: NMFS extends the public comment period on an advanced notice of proposed rulemaking that announces that the agency is considering revisions to the national standard guidelines for national standard 1 that specify criteria for determining overfishing and establishing rebuilding schedules. Because the scientific community, fisheries managers, the fishing industry, and environmental groups expressed concern about the appropriateness of some aspects of national standard 1 guidelines, particularly in light of new issues arising from rebuilding programs that have been underway for several years, this action solicits public input on the effectiveness and appropriateness of the these guidelines in complying with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comment period is extended from March 17, 2003, to April 16, 2003.

ADDRESSES: Comments may be mailed to Mr. John H. Dunnigan, Director, Office of Sustainable Fisheries, Room 13362, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301–713–1193. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Mark R. Millikin, at 301–713–2341 or via e-mail at *Mark.Millikin@noaa.gov.*

SUPPLEMENTARY INFORMATION: The preamble of the advance notice of proposed rulemaking (ANPR)(68 FR 7492, February 14, 2003) is republished here in its entirety for the convenience of the public. This action extends the public comment period of the ANPR another 30 days, from March 17, 2003, to April 16, 2003.

National standard 1 reads, ''Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.'' In 1996, the Sustainable Fisheries Act (SFA) amended the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*) to, among other things, provide definitions for ''overfishing'' and modify the definition of ''optimum yield.'' The Magnuson-Stevens Act, in section 303(a)(10), now requires each fishery management plan (FMP) to ''specify objective and measurable criteria for identifying when the fishery to which the FMP applies is overfished.'' In addition, section 304(e) specifies requirements for rebuilding overfished fisheries. The revised national standard guidelines, including national standard 1, were proposed at 62 FR 41907, August 4, 1997, and published as final guidelines at 63 FR 24212, May 1, 1998.

As they currently exist, the national standard 1 guidelines provide definitions and require determination, to the extent possible, of maximum sustainable yield (MSY), or an acceptable surrogate; specification of status determination criteria including a maximum fishing mortality threshold and a minimum stock size threshold; ending overfishing and rebuilding overfished stocks; and specification of optimum yield (OY) in fisheries.

In response to the SFA, these national standard guidelines were implemented in 1998, over 5 years ago. Since that time, we have developed new perspectives, new issues, and new problems regarding their application. Concerns that have been identified for possible revision include, but are not limited to, the following:

1. The definition and use of the minimum stock size threshold (MSST) for determining when a stock is

overfished. There has been considerable discussion about the utility of the concept of MSST, the definition of MSST contained in the guidelines, difficulties in estimating the MSST (especially in data-poor situations), and identifying appropriate proxies for MSST.

2. Calculation of rebuilding targets appropriate to the prevailing environmental regime. Currently, the guidelines do not address how rebuilding targets should accommodate changing environmental conditions. Rebuilding rates based upon current stock productivity may be inconsistent with rebuilding targets based upon historical stock productivity when there are persistent, long-term changes in environmental conditions.

3. Calculation of maximum permissible rebuilding times for overfished fisheries. The SFA established a maximum allowable 10–year rebuilding time for a fishery, except where the biology of the fish will not allow it or the fishery is managed under an international agreement. If the minimum time for a fishery to rebuild is 10 years or greater, the maximum allowable rebuilding time under the guidelines becomes the time to rebuild in the absence of any fishing mortality, plus one mean generation time. This has created a discontinuity where the difference in allowable rebuilding times between a stock with a minimum rebuilding time of 9 years and another stock with a minimum rebuilding time of 11 years, may be several decades in the case of long-lived species. This results in the need for much more restrictive management measures in the first case compared to the second, even though there is not much difference between them in terms of rebuilding potential.

4. The definitions of overfishing as they relate to a fishery as a whole or a stock of fish within that fishery. There are currently over 900 fish stocks identified for the purpose of determining their status with regard to overfishing, many of which are caught in small amounts and whose status is unknown. Combining assessments and status determination criteria for assemblages of minor stocks may make more sense biologically and economically than attempting to assess and manage them one by one. Further guidance is needed on the most ecologically sound and economically expedient ways to manage these fisheries.

5. Procedures to follow when rebuilding plans require revision after initiation, especially with regard to modification of the rebuilding time frame. The guidelines do not currently address what to do when observed rebuilding rates are greater or lower than expected or when new assessments change estimates of rebuilding targets or other parameters.

NMFS solicits input from the public regarding: (1) whether or not the national standard 1 guidelines should be revised and (2) if revisions are desired, what parts of the national standard 1 guidelines should be revised, how they should be revised, and why. NMFS will use the information in determining whether to proceed with a revision to the existing guidelines, and if so, the issues to be addressed.

The ANPR was published in the **Federal Register** on February 14, 2003 (68 FR 7492). The comment period for that action was scheduled to end on March 17, 2003. NMFS decided to extend the comment period for the ANPR for another 30 days to give the public additional time to review the national standard guidelines in 50 CFR part 600 as they pertain to national standard 1.

This advance notice of proposed rulemaking has been determined to be significant for the purposes of Executive Order 12866.

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

Dated: February 25, 2003.

Rebecca Lent,

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

[FR Doc. 03–4886 Filed 2–26–03; 2:55 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 020503A]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Scoping Process; Correction

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); notice of scoping meeting; request for comments; correction.

SUMMARY: NMFS published a notification announcing that the Mid-Atlantic and New England Fishery Management Councils (Councils) intended to prepare jointly, in cooperation with NMFS, an EIS in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures for managing the spiny dogfish (*Squalus acanthias*) fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). The Councils are developing Amendment 1 to the Spiny Dogfish Fishery Management Plan (FMP) to address rebuilding targets and timeframes, methods to estimate discard mortality and reduce discarding, the quota allocation scheme, and other potential management measures as well. The notification announced a public process for determining the scope of issues to be addressed and for identifying the significant issues relating to management of spiny dogfish and requested public participation in the process. The intent of this document is to correct the date of the scoping meeting announced in the February 18, 2003, published notification.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, 302–674–2331.

SUPPLEMENTARY INFORMATION: On February 18, 2003, NMFS published the notice of intent to prepare an EIS in the **Federal Register** (68 FR 7749). In addition to issues related to the preparation of the EIS, NMFS announced a scoping meeting to be held on Monday, March 17, 2003, at 7 p.m., at the Sheraton Oceanfront Hotel (36th Street & Atlantic Ave.), in Virginia Beach, VA. This document corrects the date of the scoping meeting from March 17, 2003, to March 18, 2003, at 7 p.m. at the same location.

Need for Correction

As published, the document of February 18, 2003 (68 FR 7740), which was the subject of document FR Doc. 03–3845, is corrected as follows:

1. On page 7749, third column, under **DATES**, third line, remove ''Monday, March 17,'' and add ''Tuesday, March 18,'' in its place.

2. On page 7749, third column, second paragraph, under **ADDRESSES**, second line, remove ''March 17, '' and add ''March 18,'' in its place.

3. On page 7750, second column, under Public Scoping Meeting Schedule, third line down, remove ''March 17'' and insert ''March 18''.

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

Dated: February 24, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4821 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 41

Monday, March 3, 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

Forest Service

Mission Brush, Bonners Ferry Ranger District, Idaho Panhandle National Forests; Boundary County, ID

AGENCY: Forest Service, USDA.

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

SUMMARY: The Bonners Ferry Ranger District of the Idaho Panhandle National Forests is proposing rehabilitation of the vegetation in the Brush Creek and Mission Creek watersheds, identified as the Mission Brush project area. These watersheds are located 14 and 19 miles, respectively, north of Bonners Ferry, Idaho. Priorities are treatment of stands of off-site Ponderosa pine and dry sites, and taking steps to begin restoring the diversity that was found historically in mixed conifer stands. The project, as proposed, will provide additional benefits to the water resources and result in some reduction of fuels adjacent to private property in a portion of the project area. The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of implementing vegetative and aquatic restoration activities on National Forest System lands within the project area.

DATES: Comments, suggestions, or requests to be placed on the project mailing list, should be received on or before April 1, 2003. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in April 2002.

ADDRESSES: Submit written comments and suggestions on the proposal or requests to be placed on the project mailing list to Doug Nishek, Project Team Leader, Bonners Ferry Ranger District, Route 4, Box 4860, Bonners Ferry, Idaho 83805–9764, e-mail address: *dnishek@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Doug Nishek, project leader, Bonners Ferry Ranger District, (208) 267–5561, e-mail address: *dnishek@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The purpose and need for this project is derived from the Land and Resource Management Plan for the Idaho Panhandle National Forests, the Interior Columbia Basin Ecosystem Management Project (ICBEMP), the Northern Region Overview and the Kootenai River basin Geographic Assessment (GA). Findings from these studies document the dense, insect- and disease-prone state of the dry-site ecosystems across the Idaho Panhandle National Forests and the Kootenai River basin. These large-scale analyses describe the changes these ecosystems have undergone over the past century, such as a significant loss in the once-dominant western white pine in northern Idaho. Current conditions are causing concern due to increased wildfire hazard and potential for severe fires. Site-specific information indicates these conditions are present in Mission Creek and Brush Creek watersheds.

Initial assessment identified insect and disease problems placing stands at a high risk of serious losses through tree mortality and the resulting changes in habitat structure. The same is true for stands planted with off-site Ponderosa pine following wildfire in 1945. Lodgepole pine stands are at high risk of mountain pine beetle infestation. Western white pine is no longer a key component of these forests.

Objectives of this project are two-fold, as follows: On dry sites begin restoration of historical vegetative conditions that favored development of large, open-grown stands of ponderosa pine and western larch; and, in the mixed conifer and subalpine forests increase size, species, and age-class diversity through treatments to begin returning western white pine to its historical role and treating lodgepole pine stands at high risk to insects. The management activities would reduce fuel loadings and potential for severe fires on National Forest System lands adjacent to private property in the western portion of the Mission Creek drainage. Water quality and aquatic resources would benefit from reconstruction of portions of roads to reduce the amount of sediment entering streams. There will also be opportunities to improve recreation facilities in the Brush Lake area.

Preliminary issues include forest health, water quality, timber supply and demand, wildlife, fish, and plant species.

The Forest Service will consider a range of alternatives, including the ''no action'' alternative, under which there would be no change from current management of the area. Additional alternatives will represent a range of strategies to accomplish the goals of this project. The Forest Plan provides guidance for management objectives within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. Inland Native Fish Strategy guidelines (USDA Forest Service, 1995) supersede Forest Plan guidelines established for riparian areas.

The first public notice of proposed management activities in this area was made in July 1997 for a project identified as Mission Round Prairie environmental assessment (EA). At that time the Forest Service was assessing the conditions and proposing treatments in a larger area that also included Round Prairie Creek, Gillon Creek and Hellroaring Creek watersheds. The Mission Brush project will analyze management strategies in the watersheds identified as high priority through that initial assessment. Based on scoping and changes in Agency direction the Forest Service believes an EIS is the appropriate level of documentation. Members of the public are encouraged to visit with Forest Service officials during the analysis and prior to the decision. Comments provided by the public and other agencies will be used to develop strategies for management of natural resources in the project area. Comments received during the earlier scoping and analysis for the Mission Round Prairie EA will be considered during the environmental analysis for this EIS and will be a part of the public record. People, organizations and agencies on the Mission Round Prairie mailing list will be included in the Mission Brush EIS mailing list. The Forest Service is also seeking information, comments, and assistance from federal, state and local agencies and other individuals or

organizations that may be interested in or affected by the proposed actions.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in April 2003. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register.** The comment period on the draft environmental impact statement will end 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** It is anticipated that a final environmental impact statement will be published in June, 2003. A Record of Decision will also be published at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation to the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 5129,553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.,* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

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

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

I am the responsible official for this environmental analysis. My address is Idaho Panhandle National Forest, 3815 Schreiber Way, Coeur d'Alene, ID 83814.

Dated: February 24, 2003.

Ranotta McNair,

Forest Supervisor.

[FR Doc. 03–4855 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–121–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–01–A]

Opportunity for Designation in the Grand Forks (ND), Idaho, Lewiston (ID), Minnesota, Ohio Valley (IN), and Utah Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in September and November 2003. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies: Grand Forks Grain Inspection Department, Inc. (Grand Forks); Idaho Grain Inspection Service, Inc. (Idaho); Lewiston Grain Inspection Service, Inc. (Lewiston); Minnesota Department of Agriculture (Minnesota); Ohio Valley Grain Inspection, Inc. (Ohio Valley); and Utah Department of Agriculture and Food (Utah).

DATES: Applications and comments must be postmarked or electronically dated on or before April 1, 2003.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604; FAX 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at Room 1647–S, 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

1. CURRENT DESIGNATIONS BEING ANNOUNCED FOR RENEWAL

Official agency	Main office	Designation start	Designation end
Grand Forks	Grand Forks, ND	10/01/2002	09/30/2003
Idaho	Pocatello, ID	12/01/2000	11/30/2003
Lewiston	Lewiston, ID	12/01/2000	09/30/2003
Minnesota	Saint Paul, MN	01/01/2001	09/30/2003
Ohio Valley	Evansville, IN	11/01/2000	09/30/2003
Utah	Salt Lake City, UT	12/01/2000	09/30/2003

a. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of North Dakota, is assigned to Grand Forks.

Bounded on the North by the North Dakota State line;

Bounded on the East by the North Dakota State line south to State Route 200;

Bounded on the South by State Route 200 west-northwest to the western Traill County line; the western Traill County line; the southern Grand Forks and Nelson County lines; the southern Eddy County line west to U.S. Route 281; U.S. Route 281 north to State Route 15; State Route 15 west to U.S. Route 52; U.S. Route 52 northeast to State Route 3; and

Bounded on the West by State Route 3 north to State Route 60; State Route 60 west-northwest to State Route 5; State Route 5 west to State Route 14; State Route 14 north to the North Dakota State line.

Grand Fork's assigned geographic area does not include the following grain elevators inside Grand Fork's area which have been and will continue to be serviced by the following official agencies: Fessenden Coop Association, Fessenden; and Fessenden Coop Association, Manfred; both in Wells County (located in Grain Inspection, Inc.'s area ; and Harvey Farmers Elevator, Harvey, Wells County (located in Minot Grain Inspection, Inc.'s area. b.

Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Idaho, is assigned to Idaho.

The southern half of the State of Idaho up to the northern boundaries of Adams, Valley, and Lemhi Counties.

c. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Idaho, is assigned to Lewiston.

The northern half of the State of Idaho down to the northern boundaries of Adams, Valley, and Lemhi Counties.

d. Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of Minnesota, except those export port locations within the State, is assigned toMinnesota.

e. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Indiana, Kentucky, and Tennessee, is assigned to Ohio Valley.

Daviess, Dubois, Gibson, Knox (except the area west of U.S. Route 41 (150) from Sullivan County south to U.S. Route 50), Pike, Posey, Vanderburgh, and Warrick Counties, Indiana.

Caldwell, Christian, Crittenden, Henderson, Hopkins (west of State Route 109 south of the Western Kentucky Parkway), Logan, Todd, Union, and Webster (west of Alternate U.S. Route 41 and State Route 814) Counties, Kentucky.

Cheatham, Davidson, and Robertson Counties, Tennessee.

f. Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of Utah, is assigned to Utah.

2. Opportunity for Designation

Interested persons, including Grand Forks, Idaho, Lewiston, Minnesota, Ohio Vally, and Utah, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning October 1, 2003, and ending September 30, 2006. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *www.usda.gov/gipsa/oversight/parovreg.htm.*

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Grand Forks, Idaho, Lewiston, Minnesota, Ohio Vally, and Utah, official agencies. Commenters are encouraged to submit pertinent data concerning the these official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–4872 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02–03–S]

Designation for the Jamestown (ND), Lincoln (NE), Memphis (TN), Omaha (NE), Sioux City (IA), and Tischer (IA) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act): Grain Inspection, Inc. (Jamestown); Lincoln Inspection Service, Inc. (Lincoln); Memphis Grain Inspection Service (Memphis); Omaha Grain Inspection Service, Inc. (Omaha); Sioux City Inspection and Weighing Service Company (Sioux City); and A. V. Tischer and Son, Inc. (Tischer).

EFFECTIVE DATES: April 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and

Departmental Regulation do not apply to this action.

In the September 3, 2002, **Federal Register** (67 FR 56264), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by October 1, 2002.

Jamestown, Lincoln, Memphis, Omaha, Sioux City, and Tischer were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Jamestown, Lincoln, Memphis, Omaha, Sioux City, and Tischer are able to provide official services in the geographic areas specified in the September 3, 2002, **Federal Register**, for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start–end
Jamestown	Jamestown, ND, 701–252–1290	04/01/2003–03/31/2006
Lincoln	Lincoln, NE, 402–435–4386	04/01/2003–03/31/2006
Memphis	Memphis, TN, 901–942–3216, Additional Service Location: North Little Rock, AR.	04/01/2003–03/31/2006
Omaha	Omaha, NE, 402–341–6739	04/01/2003–03/31/2006
Sioux City	Sioux City, IA, 712–255–8073	04/01/2003–03/31/2006
Tischer	Fort Dodge, 515–955–7012	04/01/2003–03/31/2006

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–4873 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of application filing deadline.

SUMMARY: The Rural Utilities Service (RUS) announces its Distance Learning and Telemedicine Program application window for funding during fiscal year (FY) 2003. For FY 2003, $27 million in grants and $300 million in loans will be made available for distance learning and telemedicine projects serving rural America. The funding will be provided in three categories: (1) $17 million will be available for grants; (2) $200 million will be available for loans; and (3) $110 million will be available for combination grants and loans ($100 million in loans paired with $10 million in grants, *i.e.*, $100 loan: $10 grant ratio).

DATES: Applications for grants must be postmarked no later than May 2, 2003. Applications for FY 2003 loans or combination loans and grants may be submitted at anytime up to July 31, 2003, and will be processed on a first-come, first serve basis.

ADDRESSES: Applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Director, Advanced Services Division, Telecommunications Program.''

FOR FURTHER INFORMATION CONTACT: Marilyn J. Morgan, Branch Chief, Distance Learning and Telemedicine Branch, U.S. Department of Agriculture, Rural Utilities Service, STOP 1550, Room 2838, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–1550. Telephone: (202) 720–0413, FAX: (202) 720–1051.

SUPPLEMENTARY INFORMATION: For FY 2003, $17 million in grants, a combination of $10 million in grants paired with $100 million in loans, and $200 million in loans will be made available for distance learning and telemedicine projects. RUS encourages early submission of grant applications to determine whether all required items specified in 7 CFR 1703.125 are clearly in form, identifiable, and complete. RUS will examine, provide comment, and return applications that include items that would disqualify them from further consideration for modification if they are submitted by April 2, 2003. All applications for grants must be postmarked no later than May 2, 2003, to be eligible for FY 2003 grant funding. Each application will be reviewed for completeness in accordance with 7 CFR part 1703, subparts D, E, F, and G. Ineligible applications will be returned within 15 working days of receipt.

Notice is hereby given that under 7 CFR 1703.124, 1703.133, and 1703.143, RUS has determined the maximum amount of an application for a grant that will be considered for funding in FY 2003 as $500,000. The maximum amount for a loan, generally, that will be considered for funding in FY 2003 is $10 million. However, RUS may fund a project greater than $10 million subject to the project's feasibility and the availability of loan funds.

Applications for financial assistance must be submitted in accordance with 7 CFR part 1703, subparts D, E, F, and G, which establish the policies and procedures for submitting an application for financial assistance. These subparts and an application guide to assist in the preparation of applications are available on the Internet at the following address: *http://www.usda.gov/rus/telecom/dlt/dlt.htm.* Application guides may also be requested from RUS by contacting the Distance Learning and Telemedicine Branch, USDA–RUS, Phone: (202) 720–0413.

Dated: February 25, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–4949 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 52–2002]

Foreign-Trade Zone 50—Long Beach, CA; Application for Subzone Status; Amendment of Application—Ricoh Electronics, Inc. (Copiers, Printers, Thermal Paper and Related Products)

Notice is hereby given that the application of the Board of Harbor Commissioners of the City of Long Beach, California, grantee of FTZ 50, requesting special-purpose subzone status for the copier, printer, thermal paper and related products

manufacturing plant of Ricoh Electronics, Inc. (Ricoh), at sites in the Orange County, California, area (67 FR 72641, 12/6/02), has been amended to include additional products in its scope of manufacturing authority under zone procedures and to clarify certain elements of its proposed FTZ inventory management procedures.

The applicant is requesting to add electrical machines having individual functions not specified elsewhere (HTSUS 8543) to its imported parts list; and, photographic film in rolls, sensitized and unexposed (HTSUS 3702); other plastic plates, sheets, film, foil and strips (HTSUS 3921); other office machines (HTSUS 8472); and electrical machines having individual functions not specified elsewhere (HTSUS 8543) to its finished product list.

It also seeks to clarify its proposed FTZ inventory management procedures with respect to its thermal paper products. Master rolls of both thermal tag paper (HTSUS 4811.90.8000) and synthetic thermal paper (HTSUS 4811.51.2050) will be entered into U.S. Customs territory from the proposed subzone, instead of customer specified lengths of thermal tag paper and synthetic thermal paper (HTSUS 4811.90.9000 and HTSUS 4811.51.6000, respectively). The applicant indicates that this would simplify and facilitate FTZ entry procedures for these final products.

The application remains otherwise unchanged.

The comment period is reopened until April 2, 2003.

Dated: February 20, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–4923 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–2002]

Foreign-Trade Zone 26—Atlanta, GA; Application for Subzone Status; Amendment of Application—Ricoh Electronics, Inc. (Copiers, Printers, Thermal Paper and Related Products)

Notice is hereby given that the application of the Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting special-purpose subzone status for the toner cartridges, related toner products, and thermal paper products manufacturing plant of Ricoh Electronics, Inc. (Ricoh) in Lawrenceville, Georgia (67 FR 72642, 12/6/02), has been amended to include additional products in its scope of manufacturing authority under zone procedures and to clarify certain elements of its proposed FTZ inventory management procedures.

The applicant is requesting to add electrical machines having individual functions not specified elsewhere (HTSUS 8543) to its imported parts list; and, photographic film in rolls, sensitized and unexposed (HTSUS 3702); other plastic plates, sheets, film, foil and strips (HTSUS 3921); and electrical machines having individual functions not specified elsewhere (HTSUS 8543) to its finished product list.

It also seeks to clarify its proposed FTZ inventory management procedures with respect to its thermal paper products. Master rolls of both thermal tag paper (HTSUS 4811.90.8000) and synthetic thermal paper (HTSUS 4811.51.2050) will be entered into U.S. Customs territory from the proposed subzone, instead of customer specified lengths of thermal tag paper and synthetic thermal paper (HTSUS 4811.90.9000 and HTSUS 4811.51.6000, respectively). The applicant indicates that this would simplify and facilitate FTZ entry procedures for these final products.

The application remains otherwise unchanged.

The comment period is reopened until April 2, 2003.

Dated: February 20, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–4924 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–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 § 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with § 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 March 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

	Period
Antidumping Duty Proceeding	
Bangladesh: Cotton Shop Towels, A–538–802	3/1/02—2/28/03
Brazil: Certain Hot-Rolled Carbon Steel Flat Products, A–351–828	3/12/02—2/28/03
Canada: Iron Construction Castings, A–122–503	3/1/02—2/28/03
France:	
Brass Sheet & Strip, A–427–602	3/1/02—2/28/03
Stainless Steel Bar, A–427–820	8/2/01—2/28/03
Germany:	
Brass Sheet & Strip, A–428–602	3/1/02—2/28/03
Stainless Steel Bar, A–428–830	8/2/01—2/28/03
India: Sulfanilic Acid, A–533–806	3/1/02—2/28/03
Italy:	
Brass Sheet & Strip, A–475–601	3/1/02—2/28/03

	Period
Stainless Steel Bar, A–475–829	8/2/01—2/28/03
Japan: Stainless Steel Butt-Weld Pipe Fittings, A–588–702	3/1/02—2/28/03
Republic of Korea: Stainless Steel Bar, A–580–847	8/2/01—2/28/03
Spain: Stainless Steel Bar, A–469–805	3/1/02—2/28/03
Taiwan: Light-Walled Welded Rectangular Carbon Steel Tubing, A–583–803	3/1/02—2/28/03
Thailand: Circular Welded Carbon Steel Pipes & Tubes, A–549–502	3/1/02—2/28/03
The People's Republic of China:	
Chloropicrin, A–570–002	3/1/02—2/28/03
Glycine, A–570–836	3/1/02—2/28/03
United Kingdom: Stainless Steel Bar, A–412–822	8/2/01—2/28/03
Countervailing Duty Proceeding	
France: Brass Sheet and Strip, C–427–603	1/1/02—12/31/02
India: Sulfanilic Acid, C–533–807	1/1/02—12/31/02
Iran: In-Shell Pistachios Nuts, C–507–501	1/1/02—12/31/02
Italy: Stainless Steel Bar, C–475–830	6/6/01—12/31/02
Pakistan: Cotton Shop Towels, C–535–001	1/1/02—12/31/02
Turkey: Welded Carbon Steel Pipes and Tubes, C–489–502	1/1/02—12/31/02

Suspension Agreements

None.

In accordance with § 351.213(b) of the regulations, an interested party as defined by § 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with §351.303(f)(1)(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 March 2003. If the Department does not receive, by the last day of March 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: February 25, 2003.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 03–4929 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–847]

Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Determination To Revoke the Order in Part: Certain Cut-to-Length Carbon-Quality Steel Plate Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review and determination to revoke order in part.

SUMMARY: On January 10, 2003, the Department of Commerce (the Department) published a notice of initiation and preliminary results of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain cut-to-length carbon-quality steel plate (CTL plate) products from Japan. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order in Part: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Japan,* 68 FR 1436 (January 10, 2003) (*Initiation and Preliminary Results*). We are now revoking this order, in part, with respect to the particular abrasion-resistant steel products meeting the specifications described below, based on the fact that domestic parties have expressed no interest in the continuation of the order with respect to these particular abrasion-resistant steel products. The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of the abrasion-resistant steel products meeting the specifications indicated below, entered or withdrawn from warehouse, for consumption on or after February 1, 2002, the day after the most recent time period for which the Department has issued assessment instructions to Customs (02/01/2001–01/31/2002).

EFFECTIVE DATE: March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jack K. Dulberger or Mark Manning, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW., Washington, DC 20230; telephone (202) 482–5505 and 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2002, NKK Corporation (NKK) and Mitsubishi International Steel, Inc. (MISI) requested that the Department revoke the antidumping duty order on CTL plate from Japan with respect to two abrasion-resistant steel products produced by NKK: ''NK–EH–360 (NK Everhard 360)'' and ''NK–EH–500 (NK Everhard 500).'' *See* NKK's and MISI's letter to the Secretary, dated November 27, 2002 (*Changed Circumstances Review Request*). Specifically, NKK and MISI requested that the Department revoke the order with respect to imports meeting the following detailed product descriptions: (1) NK–EH–360: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 361 min.; (b) Heat Treatment: Controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.20 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.40 max., Ti: 0.005–0.020, B: 0.004 max; and (2) NK–EH–500: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 477 min.; (b) Heat Treatment: Controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.35 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.80 max., Ti: 0.005–0.020, B: 0.004 max. *See Changed Circumstances Review Request* at 2. The order with regard to imports of other CTL plate from Japan is not affected by this request.

On December 17 and 18, 2002, Bethlehem Steel Corporation, IPSCO Steel Inc., Nucor Corporation, and United States Steel Corporation, petitioners in the antidumping duty investigation of CTL plate from Japan (with the exception of Nucor Corporation), stated that they do not object to the exclusion of these two NKK products from the scope of the order. *See* Memorandum to the File from Jack Dulberger, Financial Analyst, ''Telephone Discussions With Legal Counsel For Petitioners Regarding Continued No Interest,'' dated December 19, 2002, which is on file in Import Administration's Central Records Unit, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room B–099, Washington, DC 20230. Subsequently, as noted above, we published the *Initiation and Preliminary Results* and gave interested parties an opportunity to comment on the Department's preliminary results of review. We received no comments from interested parties.

New Scope Based on This Changed Circumstances Review

The products covered by this antidumping duty order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of these orders are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of these orders are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these orders unless otherwise specifically excluded. The following products are specifically excluded from these orders: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels, *i.e.*, USS AR 400, USS AR 500, NK–EH–360 (NK Everhard 360), NK–EH–500 (NK Everhard 500). (NK–EH–360 has the following specifications: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 361 min.; (b) Heat Treatment: controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.20 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.40 max., Ti: 0.005–0.020, B: 0.004 max. NK–EH–500 has the following specifications: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 477 min.; (b) Heat Treatment: Controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.35 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.80 max., Ti: 0.005–0.020, B: 0.004 max); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these orders is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by these orders is dispositive.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning abrasion-resistant steel products (*i.e.*, NK–EH–360 and NK–EH–500), meeting the specifications described above, constitutes changed circumstances sufficient to warrant partial revocation of this order. Also, no party commented

on the *Initiation and Preliminary Results.* Therefore, the Department is partially revoking the order on CTL plate from Japan with regard to abrasion-resistant steel products (*i.e.*, NK–EH–360 and NK–EH–500) which meet the specifications detailed above, in accordance with sections 751(b) and (d) and 782(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(d)(2002).

The Department will instruct Customs to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of abrasion-resistant steel products (*i.e.*, NK–EH–360 and NK–EH–500) meeting the specifications indicated above, entered or withdrawn from warehouse, for consumption on or after February 1, 2002, the day after the most recent period for which the Department has issued assessment instructions to Customs (02/01/2001–01/31/2002). The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of abrasion-resistant steel products (*i.e.*, NK–EH–360 and NK–EH–500) meeting the specifications indicated above, entered or withdrawn from warehouse, for consumption on or after February 1, 2002, in accordance with section 778 of the Act.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216(e) and 351.222(g) of the Department's regulations.

Dated: February 21, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–4926 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jon Freed, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 2002, the Department of Commerce (''Department'') published a notice of opportunity to request an administrative review of the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings from Taiwan for the period June 1, 2001, through May 31, 2002. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 38640 (June 5, 2002). On June 25, 2002, Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc. (''petitioners'') requested an antidumping duty administrative review for the following companies: Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen''), Liang Feng Stainless Steel Fitting Co., Ltd. (''Liang Feng''), and Tru-Flow Industrial Co., Ltd. (''Tru-Flow'') for the period June 1, 2001, through May 31, 2002. On June 28, 2002, Ta Chen requested an administrative review of its sales to the United States during the period of review (''POR''). On July 24, 2002, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period June 1, 2001, through May 31, 2002. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 67 FR 48435 (July 24, 2002). The preliminary results are currently due no later than March 2, 2003.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), states that the administering authority shall make a preliminary determination within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under paragraph (1) is requested. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245 day period to 365 days. Completion of the preliminary results within the 245 day period is impracticable for the following reasons: (1) this review involves certain complex Constructed Export Price (''CEP'') adjustments including, but not limited to CEP profit and CEP offset; (2) this review involves complex warehouse expenses in the United States including, but not limited to inland freight and inventory; (3) this review involves complex cost issues with respect to subcontractors' costs of production.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the due date for the preliminary results by 90 days until June 2, 2003, in accordance with section 751 (a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: February 24, 2003.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–4925 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–818]

Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Tom Futtner, AD/CVD

Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0651, and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that urea ammonium nitrate solutions (UANS) from the Russian Federation (Russia) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended, (the Act). The estimated margins of sales at LTFV are shown in the *Final Determination of Investigation* section of this notice.

Case History

On October 3, 2002, the Department of Commerce (the Department) published the preliminary determination of sales at LTFV in the antidumping duty investigation of UANS from Russia. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from the Russian Federation,* 67 FR 62008 (October 3, 2002) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

During October 2002, the Department conducted a verification of JSC Nevinnomysskij Azot's (Nevinka's) sales and factors of production (FOP) information. *See* Memorandum from Paige Rivas to the File, ''Verification of Sales and Factors of Production Information Reported by Nevinnomysskij Azot,'' dated December 11, 2002.

On November 1, 2002, the petitioner [1] filed a request for a public hearing in this investigation. However, no hearing was held in this investigation because the petitioner withdrew its request for a hearing.

On November 7, 2002, the Department published a postponement of the final determination of sales at LTFV in the antidumping duty investigation of UANS from Russia. *See Postponement of the Final Determinations in the Less-Than-Fair-Value Investigations of Urea Ammonium Nitrate Solutions From Belarus, the Russian Federation, and Ukraine,* 67 FR 67823 (November 7, 2002).

The petitioner, Nevinka, and JR Simplot filed surrogate value information and data on November 26, 2002.

Parties filed case and rebuttal briefs on January 7 and January 14, 2002, respectively.

Continuation of Investigation

On February 19, 2003, the Department signed a suspension agreement with Nevinka, JSC Kuybyshevazot/Togliatti, and S.P. Novolon/Novomoskovsk. On February 20, 2003, we received a request from the petitioner requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. If the International Trade Commission (ITC) determines that material injury exists, the Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections 734b(1) and (c) of the Act, as appropriate and (3) the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms.

Scope of the Investigation

For purposes of this investigation, the product covered is all mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution, regardless of nitrogen content by weight, and regardless of the presence of additives, such as corrosion inhibitors. The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3102.80.00.00. Although the HTSUS item number is provided for convenience and U.S. Customs Service (the Customs Service) purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 2001, through March 31, 2002.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Memorandum from Bernard T. Carreau to Faryar Shirzad, ''Issues and Decision Memorandum for the Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from the Russian Federation,'' dated concurrently with this notice (*Decision Memorandum*), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Non-Market Economy

The Department has treated Russia as a nonmarket economy (NME) country in previous antidumping investigations (*see e.g., Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From the Russian Federation,* 67 FR 35490 (May 20, 2002); *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347, (September 27, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 65 FR 5510 (February 4, 2000)). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked. On June 6, 2002, the Department revoked Russia's NME status effective April 1, 2002. Because the POI for this investigation precedes the effective date of the market economy determination, this final determination is based on information contained in the NME questionnaire responses submitted by the respondent. Therefore, pursuant to section 771(18)(C) of the Act, the Department has continued to treat Russia as an NME country for the purposes of this investigation.

Separate Rates

In our *Preliminary Determination,* we found that the only responding company, Nevinka, met the criteria for the application of separate, company-specific antidumping duty rates. We have not received any other information since the preliminary determination which would warrant reconsideration of our separate rates determination with respect to this company. For a complete discussion of the Department's determination that Nevinka is entitled to a separate rate, see the *Preliminary Determination.*

The Russia-Wide Rate

In the *Preliminary Determination,* we found that the use of a Russia-wide rate was appropriate for other exporters in

[1] The petitioner in this investigation is the Nitrogen Solutions Fair Trade Committee. Its members consist of CF Industries, Inc., Mississippi Chemical Corporation, and Terra Industries Inc.

Russia based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Russian government. Because we have received no comments regarding our decision to apply the Russia-wide rate to all entries of the merchandise under investigation except for entries from Nevinka, we have continued to apply this rate in the final determination. We also determined that, pursuant to section 776(a) of the Act, the Department is required to base the margin for the Russia-wide entity on the facts available, because information necessary to calculate this margin is not available on the record. Further, we determined, pursuant to section 776(b) of the Act, that because the Russia-wide entity had failed to act to the best of its ability by not responding to the Department's requests for information, it was appropriate to use an adverse inference in selecting the facts available. The Russia-wide rate applies to all entries of the merchandise under investigation except for entries from Nevinka.

When analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioner relied in calculating the estimated dumping margin and determined that the margin in the petition was appropriately calculated and supported by adequate evidence, in accordance with the statutory requirements for initiation. In order to corroborate the petition margin for purposes of using it as adverse facts available, we examined the price and cost information provided in the petition in the context of our preliminary determination. For further details, see Memorandum from Paige Rivas to Holly A. Kuga, ''Corroboration of Secondary Information,'' dated September 26, 2002. We received no comments on this decision and continue to find in this final determination that the rate contained in the petition, as recalculated, has probative value.

Since the preliminary determination, we have revised several surrogate values. In order to take into account these values, we have recalculated the petition margin using, where possible, the revised surrogate values. As a result of this recalculation, the Russia-wide rate is, for the final determination, 239.14 percent. *See* Memorandum from Paige Rivas to the File, ''Corroboration of Secondary Information,'' dated February 21, 2003.

Surrogate Country

For purposes of the final determination, we continue to find that Egypt remains the appropriate surrogate country for Russia. For further discussion and analysis regarding the surrogate country selection for Russia, see the *Preliminary Determination.*

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the *Preliminary Determination* as a result of verification, see the *Changes Since the Preliminary Determination* section below.

Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made adjustments to the calculation methodologies used in the *Preliminary Determination.* These adjustments are listed below and discussed in detail in the (1) *Decision Memorandum,* (2) Memorandum from the Team to the File, ''Final Factors of Production Valuation Memorandum,'' dated February 21, 2003, (Factors Memorandum) and (3) Memorandum from the Team to the File, ''Calculation Memorandum for the Final Determination,'' dated February 21, 2003 (Calculation Memorandum).

1. We accepted minor corrections to the FOP database presented at verification. For our final calculations, we used the updated consumption rates submitted by Nevinka at verification. *See* Calculation Memorandum.

2. We calculated a surrogate value for water using the water consumption rate for residential use for Egypt found on the Department's Trade Information Center web page (*http://www.trade.gov/td/tic*), rather than including water in overhead as we did in the preliminary determination. *See* Comment 5 of the *Decision Memorandum.*

3. We calculated a surrogate value for steam energy by converting the energy content for steam, which is measured in gigacalories, to kilowatt hours using the electricity surrogate value calculated in the *Preliminary Determination,* rather than including it in overhead as was done in the *Preliminary Determination. See* Comment 5 of the *Decision Memorandum.*

4. In determining U.S. price, we calculated the market economy freight expenses for inland freight for shipments of UANS to the port of export. *See* Calculation Memorandum.

5. We revised the surrogate value for labor and are using the 2000 wage rate for Russia, as corrected on the Department's website in February 2003. *See* Factors Memorandum.

6. We revised our calculation of freight costs for the FOP to include the revised distances identified during verification. *See* Calculation Memorandum.

7. We revised our calculation of the net U.S. price to not include foreign inland freight for observations 7, 8, and 9. *See* Comment 4 of the *Decision Memorandum.*

8. We revised our calculation of the net U.S. price to include billing adjustments, where appropriate. *See* Comment 2 of the *Decision Memorandum.*

9. We revised our calculation of surrogate financial ratios. *See* Comment 6 of the *Decision Memorandum.*

Suspension of Liquidation

On February 19, 2003, the Department signed a suspension agreement with Nevinka. Pursuant to that suspension agreement, we have instructed Customs to terminate the suspension of liquidation of all entries of UANS from Russia. Any cash deposits for entries of UANS from Russia shall be refunded and any bonds shall be released. On February 20, 2003, we received a request from the petitioner that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following weighted-average dumping margins:

Manufacturer/exporter	Weighted-average margin (percent)
JSC Nevinnomysskij Azot	106.98
Russia-Wide Rate	239.14

The Russia-wide rate applies to all entries of the subject merchandise except for entries from Nevinka.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the Agreement will have no force or effect, and the investigation shall be terminated. *See*

section 734(f)(3)(A) of the Act. If the ITC determines that such injury does exist, the Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections (d) and (c)(l) of the Act, and (3) the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* section 734(f)(3)(B) of the Act. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to 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 is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: February 21, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment 1: Whether the Department Should Continue to Value Natural Gas Using the Price from Gas Producers to the Egyptian Government.

Comment 2: Whether the Department Should Continue to Deny Billing Adjustments.

Comment 3: Whether the Department Should Consider Observation 16 to be Within the POI.

Comment 4: Whether the Department Should Reflect in its Final Determination that Nevinka Did Not Pay Foreign Inland Freight Charges for Observations 7 through 9.

Comment 5: Whether the Department Should Continue to Treat Catalysts, Water, and Water-based Inputs as Overhead Items.

Comment 6: Whether the Department Should Calculate its Surrogate Financial Ratios Based Upon One Egyptian Producer.

[FR Doc. 03–4927 Filed 2–28–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Suspension of Antidumping Duty Investigation: Urea Ammonium Nitrate Solutions From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Thomas F. Futtner, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0651, and (202) 482–3814, respectively.

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving urea ammonium nitrate solutions (UANS) from the Russian Federation (Russia). The basis for this action is a suspension agreement (the Agreement) between the Department, JSC Nevinnomysskij Azot (Nevinka), JSC Kuybyshevazot/Togliatti, and S.P. Novolon/Novomoskovsk, which together account for substantially all imports of UANS from Russia. In the Agreement, the signatory companies have agreed to cease exports of UANS from Russia to the United States until July 1, 2003, and, following that period, to revise prices to ensure that such exports are sold at or above an agreed reference price.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 2002, the Department initiated antidumping duty investigations to determine whether imports of UANS from Lithuania, Belarus, Russia, and Ukraine are being, or are likely to be, sold in the United States at less than fair value (LTFV). *See Initiation of Antidumping Investigations: Urea Ammonium Nitrate Solutions from Belarus, Lithuania, the Russian Federation, and Ukraine,* 67 FR 35492 (May 20, 2002). On June 4, 2002, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of UANS from Belarus, Russia and Ukraine. *See Urea Ammonium Nitrate Solution from Belarus, Lithuania, the Russian Federation and Ukraine,* 67 FR 39439 (June 7, 2002). On October 3, 2002, the Department published its preliminary determination that UANS is being, or is likely to be, sold in the United States at LTFV, as provided in section 733 of the Act (67 FR 62008). *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from the Russian Federation,* 67 FR 62008 (October 3, 2002) (*Preliminary Determination*). The Department and Nevinka initialed a proposed agreement suspending this investigation on January 17, 2003, at which time we invited interested parties to provide written comments on the agreement. We received comments from Agrium US, Inc. on February 5, 2003, the Nitrogen Solutions Fair Trade Committee (the petitioner), Nevinka, the Committee For Competitive Fertilizer Markets, and J.R. Simplot, on February 10, 2003. We have taken these comments into account in the final version of the suspension agreement.

The Department, Nevinka, JSC Kuybyshevazot/Togliatti, and S.P. Novolon/Novomoskovsk signed the final suspension agreement on February 19, 2003.

Accordingly the Department has suspended the investigation pursuant to sections 734(b)(1) and (c) of the Act. Pursuant to section 734(g) of the Act, parties have 20 days from the date of publication of this notice to request a continuation of the investigation.

Scope of Investigation

For a complete description of the scope of the investigation, *see Preliminary Determination.*

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. Based on our review of these comments, we have made changes to the originally proposed agreement. In accordance with section 734(c)(l) of the Act, we have determined that extraordinary circumstances are present in this case. *See* Memorandum from Bernard Carreau to Faryar Shirzad, ''Existence of Extraordinary Circumstances: Agreement Suspending the Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from the Russian Federation.''

In accordance with section 734(c)(l)(A) and (B) of the Act, we have determined that the Agreement provides that the subject merchandise will be sold at or above the established reference price and, for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the

weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all LTFV entries of the producer/exporter examined during the course of the investigation. We have determined that the Agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise and prevent the suppression or undercutting of price levels of UANS by imports of that merchandise from Russia. *See* Memorandum from Bernard Carreau to Faryar Shirzad, ''The Prevention of Price Suppression or Undercutting of Price Levels in the Suspension Agreement On UANS from the Russian Federation.''

In addition, in accordance with section 734(c)(1) of the Act, we have determined that the signatory producers/exporters collectively are the producers and exporters in Russia which, during the antidumping duty investigation of the merchandise subject to the Agreement, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States. *See Id.*

Moreover, in accordance with section 734(d) of the Act, we have determined that the agreement is in the public interest, and that the agreement can be monitored effectively. See Memorandum to Faryar Shirzad from Jeffrey May, ''Public Interest Assessment of the Agreement Suspending the Antidumping Duty Investigation of UANS from the Russian Federation.'' We find, therefore, that the criteria for suspension of an investigation pursuant to sections 734(b)(1), (c), and (d) of the Act have been met. The terms and conditions of this agreement, signed February 19, 2003, are set forth in Annex 1 to this notice.

International Trade Commission

In accordance with section 733(f) of the Act, the Department has notified the ITC of the Agreement.

Suspension of Liquidation

Pursuant to section 734(f)(2)(B) of the Act, the suspension of liquidation of all entries of UANS from Russia entered, or withdrawn from warehouse, for consumption, directed in our *Preliminary Determination,* shall continue in effect, subject to subsection 734(h)(3). This suspension of liquidation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published unless a review petition is filed under section 734(h)(1) of the Act.

Notwithstanding the Agreement, the Department will continue the investigation if it receives such a request within 20 days after the date of publication of this notice in the **Federal Register**, in accordance with section 734(g) of the Act.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: February 19, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Annex 1—Agreement Suspending the Antidumping Investigation on Urea Ammonium Nitrate Solutions From the Russian Federation

Pursuant to section 734(b)(1) and (c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(b)(1) and (c)) (the Act), and section 208 of part 351 of Title 19 of the Code of Federal Regulations (the Regulations) (2002), the U.S. Department of Commerce (the Department or DOC) and the signatory producers/exporters of Urea Ammonium Nitrate Solutions (''UANS'') from the Russian Federation (the Signatories) agree as follows:

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. *Agreement*—For purposes of this Agreement, means this UANS suspension agreement pursuant to sections 734(b)(1) and (c) of the Act.

B. *UANS*—means the urea ammonium nitrate solutions from the Russian Federation and referred to as the ''subject merchandise'' of the suspended investigation.

C. *Effective Date*—means the date on which this Agreement is signed by the Department and producers/exporters from the Russian Federation representing substantially all of the imports of UANS into the United States.

D. *Date of Sale*—means the date on which price and quantity become firm, *e.g.*, the date the contract is signed or the specification date if the price and quantity become firm on that date.

E. *Party to the Proceeding*—means any interested party, as provided for in section 771(9) of the Act, that actively participated in the antidumping investigation, through written submission of factual information or written argument, or a signatory to this Agreement.

F. *Producer/Exporter*—means: (1) A foreign manufacturer or producer of UANS; (2) a foreign producer or reseller that also exports UANS; and (3) an affiliated person by whom or for whose account UANS is imported into the United States, as defined in section 771(33) of the Act. U.S. imports of UANS produced by any producer in the Russian Federation will be attributed to that producer for purposes of this Agreement, regardless of whether first shipped to the United States by another exporter in the Russian Federation or in another country.

G. *Quarter*—means the relevant quarter calendar year, consistent with the following schedule:

First Quarter—January 1–March 31;

Second Quarter—April 1–June 30;

Third Quarter—July 1–September 30; and

Fourth Quarter—October 1–December 31.

H. *Reference Price*—means the minium F.O.B. Russian port of export price calculated weekly by DOC for sales of UANS for export to the United States, as described in Section VI.

I. *Floor Price*—means the fixed price, as designated in Section VI, below which the Reference Price may not fall.

J. *Current Market Price*—means the U.S. domestic price calculated weekly by DOC as described in Section VI.

K. *Moratorium Period*—means the period defined in section IV of this Agreement.

L. *Violation*—means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that is inconsequential, inadvertent, or does not substantially frustrate the purposes of this Agreement.

M. *Indirect Exports*—means exports of UANS from Russia to the United States through one or more third countries, whether or not such exports are further processed, provided that the further processing does not result in a substantial transformation or a change in the country of origin, or through arrangements such as swaps, exchanges, or displacements.

N. *United States*—means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.

O. *U.S. Purchaser*—means the first purchaser in the United States that is not affiliated with the Russian producer or exporter and all subsequent purchasers, from trading companies to consumers.

P. *Selling Agent*—means an importer, agent, broker, distributor, or any other entity involved in the transaction between the Signatory and the first unaffiliated U.S. customer.

II. Suspension of Investigation

On the Effective Date, the Department will suspend its antidumping investigation of UANS from the Russian Federation initiated on May 9, 2002 (67 FR 35492, May 20, 2002), in accordance with section 734(b)(1) and (c) of the Act and 19 CFR 351.208 (2002).

The Department determines that extraordinary circumstances are present in this case, that this Agreement will eliminate completely the injurious effect of exports to the United States of UANS from the Russian Federation, and that this Agreement will prevent suppression or undercutting of price levels of domestic products by imports of that merchandise. The Department also determines that this Agreement is in the public interest, and that effective monitoring of the Agreement by the United States is practicable.

The Signatories collectively are the producers and exporters in the Russian Federation that, during the antidumping duty investigation of UANS from the Russian Federation, accounted for substantially all of the subject merchandise exported from the Russian Federation to the United States, as defined in section 351.208(c) of the Regulations. The Department may at any time during the operation of the Agreement require additional producers/exporters to sign the Agreement in order to ensure that not less than substantially all sales of UANS from the Russian Federation to the United States are covered by the Agreement.

III. Contingency

Continued application of the Suspension Agreement shall be dependent upon all of the signatory Russian producers and exporters of UANS reaching an agreement, by March 3, 2003, with the Russian Federation Ministry of Economic Development and Trade MEDT, whereby MEDT and the signatories agree to establish an Export Certification Program and to abide by each of the conditions outlined in the Appendix to the letter dated February 19, 2003, from Maxim Medvedkov, Deputy Minister of MEDT, to Faryar Shirzad, Assistant Secretary of Commerce for Import Administration. A copy of this Agreement (''the Russian Agreement'') shall be placed on the record of this Suspension Agreement at that time. Should this contingency not be met by this date, this Suspension Agreement shall lapse and the provisions of section 734(i) of the Act shall apply.

IV. Moratorium Period

As of the Effective Date, each Signatory Producer/Exporter agrees, pursuant to section 734(b)(1) of the Act, to cease exports of UANS to the United States during the period ending on June 30, 2003.

V. Reference Price Period

Each Signatory agrees that, following the Moratorium Period, *i.e.*, beginning July 1, 2003, and in order to satisfy the requirements of section 734(c)(1)(B) of the Act, for each entry of UANS subject to this Agreement, the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 per cent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries examined during the investigation.

VI. Reference Price Methodology

A. The Reference Price will be based on a Current Market Price, adjusted to reflect an F.O.B. Russian Federation port of export price. In addition, there will be a Floor Price below which the Reference Price shall not fall. The Reference Price will be determined on a weekly basis.

B. The Department will issue the first Reference Price under this Agreement seven days before the termination of the Moratorium Period, utilizing the calculation methodology in section VI.C. below. This first Reference Price will be applicable to the week after the end of the Moratorium Period.

C. The Current Market Price will be determined as follows:

1. The Department will calculate an average of the weekly Northeast and Southeast F.O.B. from Green Markets and the Atlantic Coast region of Fertilizer Week price ranges from publicly available information.

2. The Department will calculate a simple average of the four most recent weekly averages derived in subsection 1 above. This four week average (converted from a short ton basis to a metric ton basis) will be the Current Market Price.

3. After consultations, the Department and the Signatories to the Agreement, should they agree that the currently used sources for the valuation of the Current Market Price for UANS are no longer appropriate, may agree to select an alternative source. The Department will give parties at least 30 days notice before choosing another source(s) for the purposes of Current Market Price valuation.

4. To express the Current Market Price on an F.O.B. Russian Federation port of export basis, an amount for costs associated with delivering the merchandise from the Russian Federation to the United States shall be deducted from the Current Market Price calculated in section C.2. This amount will be $36 per metric ton. Except when section C.3 applies, the result of this calculation shall be the Reference Price. After consultations, the Department and the signatories to the Agreement, should they agree that the amount for costs associated with delivering the merchandise from the Russian Federation to the United States are no longer appropriate, may revise this amount. The Department will give parties at least 30 days notice prior to any change becoming effective.

D. The Floor Price is the price below which the UANS subject to this Agreement may not be sold. The Floor Price will be $85 F.O.B. Russian Federation port. The Reference Price shall be not less than the Floor Price.

E. Reference Prices are F.O.B. Russian Federation port of export. If the sale for export is on terms other than F.O.B. Russian Federation port of export, the Signatories to this Agreement shall ensure that the F.O.B. Russian Federation port of export price is not lower than the Reference Price, by adjusting the relevant costs to ensure compliance with the Reference Price requirements.

VII. Reporting Requirements

A. Each Signatory will supply to the Department 30 days after the end of each Quarter all information that the Department determines is necessary to ensure that the Signatory is in full compliance with the terms of this Agreement. Such information shall include, but not be limited to, complete price information on each sale of UANS directly or indirectly to unaffiliated purchasers in the United States, including information supporting any relevant adjustments to the price under section 772 of the Act.

B. The Department may reject any information submitted under this Agreement that is untimely or any information which it is unable to verify to its satisfaction.

VIII. Disclosure

The Department may make available to representatives of each domestic Party to the Proceeding, under administrative protective orders drawn in accordance with section 777 of the Act and section 351.305 of the Regulations, business proprietary information submitted to the Department for each Quarter, as well as

the results and methodology of its calculation of Reference Prices.

IX. Monitoring

A. The Department will monitor entries of UANS from the Russian Federation to ensure compliance with this Agreement. Among other means, the Department will review publicly-available data and other official import data, including, as appropriate, records maintained by the U.S. Customs Service, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

B. The Department may require, and each Signatory agrees to provide, confirmation, through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established reference price. The Department may require that such documentation be provided, and be subject to verification, within 30 days of the sale.

C. The Department may require, and each Signatory agrees to report, on computer disk in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to this Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

D. Each Signatory agrees to permit review and on-site inspection of all information deemed necessary by the Department to verify the reported information.

X. Expedited Reviews

A. If a surge, as defined in paragraph B, in U.S. imports of UANS from the Russian Federation occurs, any party to the proceeding may request that the Department conduct a review pursuant to section 751(b) of the Act to determine whether the Suspension Agreement continues to meet the requirements of section 734(c)(1)(A) of the Act. If a surge has occurred, and the Department receives an appropriately documented request, the Department will regard the surge as good cause to conduct a changed circumstances review and shall conduct such a review and complete it within 45 days of initiation.

B. For purposes of section X.A., a surge in U.S. imports of UANS from the Russian Federation shall be considered to have occurred whenever imports of such UANS exceed the following amounts in metric tons. These annual levels will be divided evenly into four quarterly amounts, and a surge will be considered to have occurred if, in any one calendar quarter, the level of imports exceeds one-quarter of those annual amounts.

Moratorium to June 30, 2003	July–Dec. 2003	2004	2005	2006	2007
	60,000 MT	150,000 MT	200,000 MT	250,000 MT	300,000 MT

XI. Anticircumvention

A. The Signatories will not circumvent this Agreement. Together with each sales report provided pursuant to section VII.A, each Signatory will certify to the Department in writing that the sales reported therein include all sales by that signatory directly or indirectly to unaffiliated purchasers in the United States or for delivery to the United States, and that the Signatory did not make any other such sales pursuant to any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap, exchange, or other arrangement in circumvention of this Agreement.

B. The signatories to this Agreement will not engage in any of the following activities:

1. Exchange (''swap'') subject merchandise for non-subject merchandise to be entered into the United States in place of the subject merchandise, thereby evading the requirements of this Agreement. Swaps include but are not limited to the following different types of swaps:

a. Ownership Swaps—involve the exchange of ownership of UANS without physical transfer. These may include exchange of ownership of UANS in different countries, so that the parties obtain ownership of products located in different countries, or exchange of ownership of UANS produced in different countries, so that the parties obtain ownership of products of different national origin.

b. Flag Swaps—involve the exchange of indicia of national origin of UANS, without any exchange of ownership.

c. Displacement Swaps—involve the sale or delivery of UANS from the Russian Federation to an intermediary country (or countries) which, regardless of the sequence of events, results in the ultimate sale or delivery into the United States of displaced UANS, where the exporter in the Russian Federation knew or had reason to know that the export sale would have that result.

2. Transship subject merchandise to the United States through third countries inconsistent with the terms of this Agreement.

C. To help prevent circumvention of this Agreement, Signatories agree to take the following steps:

1. Establish contracts that incorporate the terms of this Agreement and obligate purchasers, including customers in and outside the United States (i) to only use, resell, or enter into any other arrangements pursuant to terms that prohibit circumvention of this Agreement, (ii) not to engage in any of the activities listed in section XI.B, (iii) to include the same requirement in any subsequent contracts for the sale or transfer of such UANS, (iv) to provide to the Department all requested information, including subsequent arrangements entered into for the sale, transfer, exchange, or loan to the United States of UANS, and (v) to comply with requests for verification. Signatories shall refuse to enter into contracts with parties unwilling to comply with the terms of this Agreement. Signatories must ensure that their customers of any nationality will not engage in activities to circumvent this Agreement.

2. Require any Selling Agents to establish a contract with third parties to ensure that their sales of subject merchandise are consistent with the requirements of this Agreement. These contracts must also require the Selling Agent to maintain documentation demonstrating that sales of subject merchandise are made consistent with this Agreement and authorize the Department to verify the Selling Agent's records.

D. At any time and without prior notice, the Department may conduct verifications of Importers or Selling Agents to determine whether they are selling subject merchandise in accordance with this Agreement.

E. The Department shall investigate any allegations of circumvention brought to its attention.

XII. Consultations

A. The Department and any Signatory may request consultations at any time regarding the implementation, operation (including any changes in the relationship of the reference price to

market prices), and/or enforcement of this Agreement.

B. If the Department requests consultations with any Signatory concerning potential noncompliance with, or Violation of, this Agreement, it may simultaneously request that Signatory to provide the Department with all information relating to the allegation, including all sales information pertaining to covered and non-covered merchandise manufactured or sold by the Signatory. The Signatory will provide the requested information to the Department within 15 days of the Department's request. Any Party to the Proceeding may submit comments on the information submitted by the Signatory within 10 days after the information is received by the Department. The consultations shall be held within 45 days after the Department's request for consultations or for relevant information, unless the Department and the Signatory agree on a later date.

XIII. Termination

Any Signatory may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 90 days after such notice is received by the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

XIV. Violations

A. In reviewing the operation of this Agreement for the purpose of determining whether this Agreement has been violated or no longer meets the requirements of section 734(d)(1) of the Act, the Department will consider imports of UANS into the United States from all sources, and factors including, but not limited to, the volume of trade, patterns of trade, and whether any reseller's export price is being complied with and is satisfying the conditions under section 734 of the Act.

B. If the Department determines that this Agreement is being or has been violated or no longer meets the requirements of section 734(c) or (d) of the Act, the Department shall take whatever action it deems appropriate under section 734(i) of the Act and the Regulations.

C. In the event that the Department resumes the original investigation, it will conduct the resumed investigation on the basis of the original administrative record and the statutes, regulations, policies, and practices in effect on the Effective Date.

XV. Other Provision

By entering into this Agreement, the Signatories do not admit that any sales of UANS have been made at less than fair value.

XVI. Duration

This Agreement will remain in force until the underlying antidumping proceeding is terminated in accordance with U.S. law, or until it is terminated pursuant to section XIII or XIV of this Agreement.

XVII. Effective Date

The effective date of this Agreement is February 19, 2003.

Signed on the 19th day of February, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Walter J. Spak,

White & Case, Counsel to JSC Nevinnomysskij Azot, Counsel to JSC Kuibyshevazot/Togliatti, Counsel to S.P. Novolon/Novomoskovsk.

[FR Doc. 03–4928 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–007.

Applicant: U.S. Department of Agriculture, Agricultural Research Service, Pacific West Area, 800 Buchanan Street, Albany, CA 94710.

Instrument: Electron Microscope, Model Tecnai G² 12 TWIN, G² Upgrade, and Accessories.

Manufacturer: FEI Company, The Netherlands.

Intended Use: The instrument is intended to be used to study plant, insect and microbial viruses, and bacterial cells. Objectives to be pursued include:

(1) Verification or validation of the structural integrity of purified plant, insect and microbial viruses;

(2) Characterization of the structural properties of viruses *in situ* and *in vitro* and bacterial cells; and

(3) Characterization of the interaction(s) between bacterial cells and insect vector host tissues *in insecta*, and bacterial cells and plant host tissues *in planta*.

Application accepted by Commissioner of Customs: February 7, 2003.

Docket Number: 03–008.

Applicant: The Rockefeller University, 12230 York Avenue, New York, NY 10021.

Instrument: Electron Microscope, Model Tecnai G² 12 BioTWIN.

Manufacturer: FEI Company, The Netherlands.

Intended Use: The instrument is intended to be used to explore the mechanisms governing development and differentiation in epidermis and hair of mammalian skin and to understand how these processes go awry in human genetic skin diseases.

Application accepted by Commissioner of Customs: February 12, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–4931 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The University of Texas at Austin; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–050.

Applicant: The University of Texas at Austin, Austin, TX 78712.

Instrument: ''Helimak'' Custom Magnetized Plasma Turbulence Apparatus.

Manufacturer: Academia Sinica Institute of Plasma Physics, Peoples Republic of China.

Intended Use: See notice at 68 FR 742, January 7, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) A magnetized plasma embedded in a 0.1 T field with a temperature of approximately 10 eV and a density in the range of 10^{17} m^{-3} and (2) an externally applied and controlled sheared flow. The U.S. Department of Energy, Princeton Plasma Physics Laboratory advised February 13, 2003 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–4930 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021127289–3042–02 I.D. 091002E]

RIN 0648–ZB34

Financial Assistance for Research and Development Projects in the Gulf of Mexico and off the U.S. South Atlantic Coastal States; Cooperative Research Program (CRP); Revision

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

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes this notice to revise an action entitled ''Notice of Solicitation for Applications'' to extend the due date for Applications.

ADDRESSES: You can obtain an application package from, and send your completed applications to: Ellie Francisco Roche, Chief, State/Federal Liaison Office, Southeast Regional Office, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702. You can also obtain the application package from the SERO homepage at: *http://caldera.sero.nmfs.gov/grants/programs/*. You must submit one igned original and two copies of the completed application (including supporting information). We will accept neither facsimile applications, nor electronically forwarded applications.

FOR FURTHER INFORMATION CONTACT: Ellie Francisco Roche, Chief, State/Federal Liaison Office, (727)570–5324.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NMFS) published a notice soliciting applications for financial assistance in the **Federal Register** of December 17, 2002 (67 FR 77235), entitled ''Notice of Solicitation for Applications.'' Page 77235 of that **Federal Register** notice is revised. The **DATES** section should be revised to read as follows:

''**DATES:** We must receive your application by close of business (5 p.m. eastern standard time) on March 5, 2003]. Applications received after that time will not be considered for funding. Applications received from February 19, 2003 through that date will be treated as having been received in a timely manner.''

You should consult the December 17, 2002, notice for all of the other requirements for submitting an application.

Dated: February 25, 2003.

Rebecca Lent,

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

[FR Doc. 03–4817 Filed 2–25–03; 3:58 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020213030–3031–02; I.D. No. 010903C]

Announcement of Funding Opportunity to Submit Proposals for the Monitoring and Event Response for Harmful Algal Blooms (MERHAB) Program FY2004

AGENCY: National Centers for Coastal Ocean Sciences/Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (NCCOS/CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of funding availability for financial assistance for project grants and cooperative agreements.

SUMMARY: The purpose of this document is to advise the public that NCCOS/CSCOR/COP is soliciting proposals for two types of projects: targeted research and regional intensive monitoring. It is anticipated that projects funded under this announcement will have a February 1, 2004, start date.

NCCOS/CSCOR/COP is soliciting targeted research proposals for 1 to 3 years of research and development of tools, approaches and technologies that could be included as routine components of existing Harmful Algal Bloom (HAB) monitoring programs. NCCOS/CSCOR/COP is also soliciting proposals from regional multi-investigator partnerships of 1 to 5 years for intensive monitoring of HABs that build the capacity of existing local, state, tribal, or regional coastal monitoring programs to provide early warning of HAB events to coastal communities and increase regional ability to rapidly respond to HAB events. Funding is contingent upon the availability of Fiscal Year 2004 Federal appropriations. It is anticipated that final recommendations for funding under this announcement will be made in early Fiscal Year 2004.

DATES: The deadline for receipt of proposals at the NCCOS/CSCOR/COP office is 3 p.m.,local time, June 3, 2003. (Note that late-arriving applications provided to a delivery service on or before June 3, 2003, with delivery guaranteed before 3 p.m.,local time, on June 3, 2003, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed below guaranteed by the specified closing date and time and, in any event, the proposals are received in the NCCOS/CSCOR/COP office by 3 p.m. local time, no later than 2 business days following the closing date.)

ADDRESSES: Submit the original and 15 copies of your proposal to (MERHAB03) Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (N/SCI2), National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC4, 8th Floor Station 8243, Silver Spring, MD 20910, attn. MERHAB 2004.

NOAA and Standard Form Applications with instructions are accessible on the following CSCOR/COP Internet site: *http://www.cop.noaa.gov* under the COP Grants Information Section, Part D, Application Forms for Initial Proposal Submission.

Forms may be viewed and, in most cases, filled in by computer. All forms must be printed, completed, and mailed to NCCOS/CSCOR/COP with original signatures. If you are unable to access this information, you may call COP at

301–713–3338 to leave a mailing request.

FOR FURTHER INFORMATION CONTACT:

Technical Information. Marc Suddleson, MERHAB 2004 Program Manager, NCCOS/CSCOR/COP, 301–713–3338/ext 162, Internet: *marc.suddleson@noaa.gov*

Business Management Information. Leslie McDonald, NCCOS/CSCOR/COP Grants Administrator, 301–713–3338/ext 155, Internet: *Leslie.McDonald@noaa.gov*

SUPPLEMENTARY INFORMATION:

Electronic Access

The following web sites furnish supplementary informationfrom reports dealing with harmful algal blooms: Boesch *et.al*, Feb 1997, *Harmful Algal Blooms in Coastal Waters: Options for Prevention, Control and Mitigation*, Silver Spring, MD at *http://www.cop.noaa.gov/pubs/das/das10.html*; and Anderson *et.al.*, Sept 2000, *Estimated Annual Economic Impact from Harmful Algal Blooms (HABs) in the U.S. WHOI* at *http://www.redtide.whoi.edu/hab/pertinentinfo/Economics_Report.pdf.*

Information on the Harmful Algal Bloom and Hypoxia Research and Control Act and the 2000 National Assessment of HABs in U.S. Waters, National Science and Technology Council Committee on Environment and Natural Resources (CENR), Washington, DC, can be located at *http://www.habhrca.noaa.gov.*

Details about ongoing MERHAB projects currently funded by the NCCOS/CSCOR/COP MERHAB Program are found at *http://www.cop.noaa.gov/Fact_Sheets/MERHAB.htm.* Hard copies of these resources can be obtained from the CSCOR/COP office.

Background

Program Description

For complete program description and other requirements for NCCOS/CSCOR/COP, see the General Grant Administration Terms and Conditions for the Coastal Ocean Program annual notification in the **Federal Register** November 8, 2002 (67 FR 68103), and at the CSCOR/COP home page.

In spite of a growing list of affected resources and coastal communities, our ability to prevent, control, and mitigate the impacts of HABs remains limited. Acting on the findings of a 1996 NOAA and DOI Report, Harmful Algal Blooms in Coastal Waters: Options for Prevention, Control and Mitigation, the research agenda of the Ecology and Oceanography of Harmful Algal Bloom (ECOHAB) program for the past five years has focused on building a scientific understanding about the cause and behavior of HABs. ECOHAB continues to support research that develops understandings of the linkages between the biology, ecology, physiology, and behavior of harmful species and the physics, chemistry, bathymetry, and meteorology of the surrounding environment. ECOHAB research is developing the capabilities to forecast bloom landfall, evaluate toxicity, and provide mitigation strategies that might ameliorate the impact of blooms along U.S. coasts. ECOHAB is also producing new state-of-the art HAB technologies, such as detection assays and molecular probes.

With the maturation of ECOHAB and other HAB research programs, more effort is needed to adapt their research products into regionally and locally tested tools that can be used to prevent, control, or mitigate the impact of HABs. The 1996 NOAA and Department of Interior (DOI) Report noted that knowledge about the basic information on the causes and behavior of HABs would ultimately lead to the development of prevention, control, and mitigation (PCM) strategies. The plan called for Federal and state agencies with responsibilities for resource management, environmental protection, and public health to support PCM research.

While prevention of HABs is the preferred management option, effort to enhance the current abilities to reduce the incidence and extent of harmful algal blooms (before they begin) requires additional research and face legislative hurdles. For example, more research is needed to determine whether a cause-and-effect relationship exists between increased pollution and nutrient loading and an incidence of some HAB species (e.g., Pfiesteria, Pseudo-nitzchia, cyanobacteria). Further, a national regulatory strategy to effectively control polluted run off and nutrient loading is under development; but more research is required to educate decision makers.

Efforts to control HABs are also being explored, but these, too, face serious scientific and policy hurdles. Attempts to use chemicals to directly control HAB cells encounter many logistical problems and environmental objections. Chemicals are likely to be nonspecific, indiscriminately targeting all co-occurring algae and other organisms along with the target algal species. Chemical application and other options, such as flocculants or biological controls need additional research to determine their wider impacts to the coastal ecosystem.

Strategies to mitigate or minimize human health risks, ecosystem damage, fisheries losses, and declines in tourism due to algal blooms are currently the best option for coastal management of the HAB problem. Many different types of actions can be taken to mitigate the impact of HABs, including forecasting bloom development and movement, monitoring HAB cells and toxins, and responding rapidly to HAB events.

Monitoring combined with rapid response to HAB events has been identified as the most effective way to mitigate the impact of HABs (CENR 2000). A number of coastal states have existing monitoring programs designed to prevent human illness from shellfish poisoning syndromes. State shellfish monitoring programs detect toxins in different fisheries species either to provide advance warning of outbreaks or to delineate areas that require harvest restrictions. Fewer coastal states monitor the environment for HAB blooms and forecast their development and movement. However, states with environmental monitoring programs for plankton and fish in coastal estuaries and bays are often able to provide early warning of blooms and help focus shellfish toxicity testing efforts.

Some states supplement their HAB monitoring activities with rapid response teams that are deployed to assess suspected HAB events. HABs have the potential to develop rapidly, and often the observable event may be short-lived. Rapid response is essential to ensure that the appropriate sampling is done to determine whether a HAB event is in progress. A few regions have also have established communication networks to distribute information about outbreaks to researchers, managers, and the public. Providing rapid and accurate information is critical to assess the risks to resources and human health and to avoid public misconceptions about the safety of coastal resources. Such misconceptions have caused severe economic impacts to regions not directly affected by HAB events. A study completed by Woods Hole Oceanographic Institute in September 2000 calculated the total estimated annual cost from HABs on public health, commercial fisheries, recreation and tourism, and monitoring and management in the United States to be $49 million. This estimate was noted by the authors to be highly conservative and sensitive to single events that equal or exceed the total estimated economic impact.

Most coastal communities experiencing HABs are not covered by regular public or private monitoring programs for HABs, and many do not

receive adequate information about outbreaks. State monitoring programs have not kept pace with the expansion of the HABs problem. Tight state budgets and the need to monitor for more toxins in more organisms over larger areas have left many monitoring programs underfunded. Further, support of state monitoring efforts through the Federal Clean Water Program has not specifically addressed the need for increased HAB monitoring. The problem is exacerbated by managers' inability to quantify the benefits to human health, commercial fisheries, recreation and tourism of controlling HABs and to compare these to the costs of mitigation strategies.

NCCOS/CSCOR/COP Program Interest

Through the MERHAB program, NCCOS/CSCOR/COP intends to build capabilities of local, state, tribal, and private sector for regular and intensive measurement of HAB parameters. This will make existing monitoring programs more efficient while providing better coverage in time and space. MERHAB will enable rigorous field testing of state-of-the-art technology through targeted projects and will incorporate the new methods of detecting and tracking HABs into existing monitoring programs through regional, intensive monitoring projects. MERHAB will also develop event-response capabilities within affected regions to ensure trained and equipped personnel are able to mobilize quickly, conduct appropriate sampling and testing, and communicate effectively during HAB events.

With faster, less expensive, and more reliable detection methods for HAB cells and toxins, and stronger mechanisms in place to respond to outbreaks, programs will be better able to mitigate the impact of HABs on vital resources and will protect public health. As a result, managers will be able to better address the expanding HAB problems facing their coastal regions and, therefore, they will be better positioned to request long-term support from Federal and state agencies or from other funding entities.

MERHAB Goal

The primary goal of the MERHAB program is to incorporate products generated from past or ongoing HAB research programs into operational components of existing monitoring programs in HAB-impacted coastal regions. MERHAB is not intended to provide long-term support for routine monitoring efforts.

A. MERHAB-Targeted Research Project

(1) Objectives:

(a) Develop a technology that will enhance HAB monitoring activities in U.S. coastal waters; and (b) incorporate that technology into existing HAB monitoring programs.

(2) Characteristics:

(a) Should rigorously field-test new technologies to detect algal species, toxin, or toxicity and/or monitor the environmental conditions that support HABs. New technologies may include, but are not limited to, rapid field assays for shellfish, improved diagnostic techniques for in situ detection of HAB cells, and remote sensing technology to help target sampling efforts; (b) may be led either by an individual or by small investigative team; and (c) must address specified research needs of the HAB community.

Investigators should include in their work plans efforts to build support for the incorporation of technology into one or more existing state or regional HAB monitoring programs. (See Part II: Further Supplementary Information Section (11) ''Project Funding Priorities.'')

B. MERHAB-regional, Intensive Monitoring Projects

(1) Objectives:

(a) Develop new or increase existing regional capabilities for HAB monitoring; (b) incorporate new tools for HAB measurement into existing monitoring efforts;(c) include local, state, regional, Federal, or non-governmental entities as active partners in identifying environmental measurements and their importance to managing coastal resources and protecting human health (i.e. generating public advisories) in the area; (d) determine and work to secure long-term local, state, regional, or other funding that will support enhancements in HAB monitoring that result from MERHAB project funding; and (e) develop local and/or regional capabilities to respond to HAB events.

(2) Characteristics:

(a) Include a suite of annual studies and involve a multi-disciplinary, collaborative team of investigators. The team should represent groups with strong interests in improved HAB monitoring, including, but not limited to, the natural and social science research community, existing monitoring programs, communities dependent upon affected resources, business and industry associations, and non-profit organizations; (b) provide evidence that local, state, tribal, regional, and Federal representatives were consulted in the development of the proposal to ensure appropriate economic, regulatory, and management issues are addressed; (c) include a plan for continued consultation with these representatives to facilitate the incorporation of research results into existing monitoring programs and to identify means to continue HAB monitoring efforts after MERHAB project funding has ended; and (d) form a management team with a designated chairperson serving as the main point of contact with the MERHAB Program Manager.

In similar NCCOS/CSCOR/COP research programs i.e. ECOHAB, management teams provide strong leadership and solid partnerships among principal investigators and collaborators. Teams serve to interpret results collected from the expanded suite of pilot studies, permitting acceptance or rejection of the approaches, techniques, or tools explored during each annual budget period. MERHAB management teams will also analyze results for application under local conditions and assess effectiveness under specific constraints so that application to other coastal systems or species may be determined.

Shared Research Project Characteristics

The following characteristics are shared by both MERHAB-targeted projects and MERHAB-regional, intensive monitoring projects.

(1) Project results will be distributed to stakeholders via scientific, peer-reviewed articles, synthesis documents, briefings, electronic web sites, and any other means defined by the proposers.

(2) Project proposals should clearly identify a timetable of accomplishments and major program elements that will lead to specific interim and final assessments of applicability and effectiveness of a number of monitoring approaches.

Continuation of funding will be contingent upon the availability of funds from Congress, satisfactory performance, and is at the sole discretion of the agency; and determination by the awarding agency that the selected project is on course to provide both interim and final products that will improve HAB monitoring capabilities in the local or national coastal environment impacted by HABs.

Expected Products and Outcomes

A. MERHAB-Targeted Projects

(1) Development and testing of new HAB monitoring tools;

(2) Demonstration of effective application of technology in an existing monitoring program; and

(3) Comprehensive data analysis and integration that advances the state of

science and management (i.e. technical reports, peer-reviewed publications, databases, numerical and conceptual models, etc.).

B. MERHAB-regional, Intensive Monitoring Projects

(1) Include regional stakeholder input and participation through means that may include, but are not limited to, annual workshops, management and technical advisory committees that involve a broad spectrum of regional interests and training in use of new technology;

(2) Provide recommendations to management of the parameters to be measured in a region and the types of instruments that should be developed or adapted into existing monitoring programs;

(3) Deploy new HAB monitoring tools in existing monitoring programs;

(4) Conduct comprehensive data analysis and integration that advances the state of science and management. (i.e. technical reports, peer-reviewed publications, data bases, numerical and conceptual models; regional case studies with explicit applications to important management issues; risk analysis of management scenarios; regional economic valuation of direct and indirect costs associated with HAB events; and region-specific management recommendations based on study results);

(5) Accept commitments from one or more local, state, tribal, regional, or Federal organizations for continued, long-term support of expanding HAB monitoring capabilities;

(6) Develop real-time, scientific response capability during HAB outbreaks for the region that includes, but is not limited to, the use of local experts, establishing local academic-government- NGO-private partnerships for providing immediate analytical and sampling capacities, and expanding local abilities for transferring samples to analytical services outside the region; and

(7) Conduct outreach to improve awareness of HAB outbreaks and their environmental and societal costs, and to mitigate their impact on vital natural resources, public health and local/regional economies.

Part I: Schedule and Proposal Submission

This document requests full proposals only. The provisions for proposal preparation provided here are mandatory. Proposals received after the published deadline (refer to DATES) or proposals that deviate from the prescribed format will be returned to the sender without further consideration. Information regarding this announcement, additional background information, and required Federal forms are available on the CSCOR/COP home page.

Full Proposals

Applications submitted in response to this announcement require an original proposal and 15 proposal copies at time of submission. This includes color or high-resolution graphics, unusually sized materials, or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for the number of proposal copies provide for a timely review process. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

All recipients must follow the instructions in the preparation of the NCCOS/CSCOR/COP application forms included in *Part II: Further Supplementary Information, (10) Application forms and kit.*

For clarity in the submission of proposals, the following definitions are provided for recipient use: (1) Funding and/or Budget Period—The period of time when Federal funding is available for obligation by the recipient. The funding period must always be specified in multi-year awards, using fixed year funds. This term may also be used to mean ''budget period'' A budget period is typically 12 months. (2) Award and/or Project Period—The period established in the award document during which Federal sponsorship begins and ends. The term ''award period'' is also referred to as project period in 15 CFR 14.2(cc) Each proposal must also include the following nine elements or it will be returned to sender without further consideration:

(1) *Standard Form 424.* At time of proposal submission, all applicants anticipating direct funding shall submit the Standard Form, SF–424, ''Application for Federal Assistance,'' to indicate the total amount of funding proposed for the whole project period. This form is to be the cover page for the original proposal and all requested copies. Multi-institutional proposals must include signed SF–424 forms from all institutions requesting funding.

(2) *Signed Summary title page.* The title page should be signed by the Principal Investigator (PI). The Summary title page identifies the project's title, starting with the acronym: MERHAB 2004, a short title (less than 50 characters), and the PI's name and affiliation, complete address, phone, FAX and E-mail information. The requested budget for each fiscal year should be included on the Summary title page. Multi-institution proposals must also identify the lead investigator from each fiscal year for each institution and the requested funding for each fiscal year for each institution on the title page, but no signatures are required on the title page from the additional institutions. Lead investigator and separate budget information is not requested on the title page for institutions that are proposed to receive funds through a subcontract to the lead institution; however, the COP Summary Proposal Budget Form and accompanying budget justification must be submitted for each subcontractor. For further details on budget information, please see Section (7) Budget of this Part.

(3) *One-page abstract/project summary.* The Project Summary (Abstract) Form, which is to be submitted at time of application, shall include an introduction of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. The prescribed NCCOS/CSCOR/COP format for the Project Summary Form can be found on the CSCOR/COP Internet site under the Grants Information section, Part D.

The summary should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost, and budget period. It should be written in the third person. The summary is used to help compare proposals quickly and allows the respondents to summarize these key points in their own words.

(4) *Project description.* The description of the proposed project must be complete and divided into annual increments of work that include: identification of the problem, scientific objectives, proposed methodology, relevance to the MERHAB 2004 program goals, and its scientific priorities. For MERHAB-Targeted project proposals, the project description (including relevant results from prior support) should not exceed 15 pages. For MERHAB-regional, intensive monitoring project proposals, the project description (including relevant results from prior support) should not exceed 20 pages. Both page limits are inclusive of figures, other visual materials, and letters of endorsement, but are exclusive of references, a milestone chart, and letters of collaboration from unfunded collaborators.

This section should clearly identify project management with a description

of the functions of each PI within a team. It should provide a full scientific justification for the research, rather than simply reiterating justifications presented in this document. It should also include:

(a) The objective for the period of proposed work and its expected significance;

(b) The relation to the present state of knowledge in the field and relation to previous work and work in progress by the proposing principal investigator(s);

(c) A discussion of how the proposed project lends value to the program goals;

(d) Potential coordination with other investigators.

(5) *References cited.* Reference information is required. Each reference must include the names of all authors in the same sequence they appear in the publications, the article title, volume number, page numbers, and year of publications. While there is no established page limitation, this section should include bibliographic citations only and should not be used to provide parenthetical information outside the 15–page MERHAB-targeted project or the 20–page MERHAB-regional project descriptions.

(6) *Milestone chart.* Provide time lines of major tasks covering the duration of the proposed project.

(7) *Budget.* At time of proposal submission, all applicants are required to submit a COP Summary Proposal Budget Form for each fiscal year increment. Multi-institution proposals must include a COP Summary Proposal Budget Form for each institution, and multi-investigator proposals using a lead investigator with a subcontract's approach must submit a COP Summary Proposal Budget Form for each subcontractor.

Each subcontract or subgrant should be listed as a separate item. Describe products/services to be obtained and indicate the applicability or necessity of each to the project. Provide separate budgets for each subgrant or contract regardless of the dollar value and indicate the basis for the cost estimates. List all subgrant or contract costs under line item number 5—Subcontracts on the COP Summary Proposal Budget Form.

The use of this budget form will provide for a detailed annual budget and for the level of detail required by the NCCOS/CSCOR/COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form is compatible with forms in use by other agencies that participate in joint projects with NCCOS/CSCOR/COP and can be found on the CSCOR/COP home page under Grants Information section, Part D.

All applications must include a budget narrative and a justification to support all proposed budget categories. The SF–424A, Budget Information (Non-Construction) Form, will be requested only from those applicants subsequently recommended for award. See references to single year or multi year awards under Part II: Further Supplementary Information, (10) Application Forms and Kits regarding submission of the SF–424A.

Ship time needs should be clearly identified in the proposed budget. The investigator is responsible for requesting ship time and for meeting all requirements to ensure the availability of requested ship time. Copies of relevant ship time request forms should be included with the proposal.

(8) *Biographical sketch.* All principal and co-investigators must provide summaries of up to 2 pages that include the following:

(a) A listing of professional and academic essentials and mailing address;

(b) A list of up to five publications most closely related to the proposed project and five other significant publications. Additional lists of publications, lectures, and the rest should not be included;

(c) A list of all persons (including their organizational affiliation) in alphabetical order, with whom the investigator has collaborated on a project or publication within the last 48 months, including collaborators on the proposal and persons listed in the publications. If no collaborators exist, this should be so indicated;

(d) A list of persons (including their organizational affiliation) with whom the individual has had an association like thesis advisor or postdoctoral scholar sponsor;

(e) A list of the names and institutions of the individual's own graduate and postgraduate advisors.

The material presented in (c, d, and e) is used to assist in identifying potential conflicts or bias in the selection of reviewers.

(9) *Current and pending support.* Describe all current and pending financial/funding support for all principal and co-investigators, including subsequent funding in the case of continuing grants. All current support from all sources (e.g., Federal, state or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the principal investigator or co-investigators should be included, even if they receive no salary support from the projects. The total award amount for the entire award period covered (including indirect costs) should be shown as well as the number of person-months per year to be devoted to the project, regardless of source of support.

(10) *Proposal format and assembly.* The original proposal should be clamped in the upper left-hand corner, but left unbound. The 15 additional copies can be stapled in the upper left-hand corner or bound on the left edge. The page margin must be one inch (2.5 cm) at the top, bottom, left, and right, and the typeface standard 12–point size must be clear and easily legible. Proposals should be single spaced.

Part II: Further Supplementary Information

(1) *Program authorities.* For a list of all program authorities for the NCCOS/CSCOR/COP, see General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** November 8, 2002 (67 FR 68103) and at the CSCOR/COP home page. Specific authority cited for this announcement is 33 U.S.C. 1442 and Public Law 105–383, title VI, Nov. 13, 1998.

(2) *Catalog of Federal Domestic Assistance (CFDA) number.* The CFDA number for the Coastal Ocean Program is 11.478.

(3) *Program description.* For complete NCCOS/CSCOR/COP program descriptions, see General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** November 8, 2002 (67 FR 68103).

(4) *Funding availability.* Funding is contingent upon availability of Federal appropriations. It is anticipated that three to five MERHAB-Targeted research projects will be funded at approximately $100,000 per year for up to 3 years and that two to three MERHAB-regional, intensive monitoring proposals will be funded at approximately $600,000 per year for up to 5 years. Support in out years after FY 2004 is contingent upon the availability of funds.

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. Continuation of an award to increase funding or extend the period of performance is based on satisfactory performance and is at the total discretion of the funding agency. Priority for these funds will be given to proposals that promote balanced

coverage of the science objectives stated under this announcement.

Publication of this document does not obligate the CSCOR/COP to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

(5) *Matching requirements.* None.

(6) *Type of funding instrument.* They are project grants and cooperative agreements.

(a) Research Project Grants: A research project grant is one in which substantial programmatic involvement by NOAA is not anticipated by the recipient during the project period. Applicants for grants must demonstrate an ability to conduct the proposed research with minimal assistance, other than financial support, from NOAA.

(b) Cooperative Agreements: A cooperative agreement implies that NOAA will assist recipients in conducting the proposed research. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with NOAA. A cooperative agreement is appropriate when substantial NOAA involvement is anticipated. This means that the recipient can expect substantial agency collaboration, participation, or intervention in project performance. Substantial involvement exists when: responsibility for the management, control, direction, or performance of the project is shared by the assisting agency and the recipient; or the assisting agency has the right to intervene (including interruption or modification) in the conduct or performance of project activities.

(c) Determination of which instrument to use: Applicants must specify the type of award for which they are applying, either a grant or a cooperative agreement. The funding agency will review the applications in accordance with the evaluation criteria. Before issuing awards, NOAA will determine whether a grant or cooperative agreement is the appropriate instrument based upon the need for substantial NOAA involvement in the project.

(d) In an effort to maximize the use of limited resources, applications from non-Federal, non-NOAA Federal and NOAA Federal applicants will be competed against each other. Research proposals selected for funding from non-Federal researchers will be funded through a project grant or cooperative agreement.

Research proposals selected for funding from non-NOAA Federal applicants will be funded through an interagency transfer, provided legal authority exists for the Federal applicant to receive funds from another agency. PLEASE NOTE: 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 the applicants, the Economy Act (31 U.S.C. section 1535) is not an appropriate basis. Support may be solely through COP or partnered with other Federal offices and agencies.

Proposals deemed acceptable from NOAA Federal researchers will be funded through an intraagency transfer.

(7) *Eligibility criteria.* For complete eligibility criteria for the NCCOS/CSCOR/COP, see the General Grant Administration Terms and Conditions for the Coastal Ocean Program annual document in the **Federal Register** November 8, 2002 (67 FR 68103), and the CSCOR/COP home page. Eligible applicants are institutions of higher education, other non-profits, state, local, Indian Tribal Governments, and Federal agencies that possess the statutory authority to receive financial assistance.

(i) Researchers must be employees of an eligible institution listed above; and proposals must be submitted through that institution. Non-federal researchers should comply with their institutional requirements for proposal submission.

(ii) Non-NOAA Federal applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research.

(iii) NCCOS/CSCOR/COP will accept proposals that include foreign researchers as collaborators with a researcher, who has met the above stated eligibility requirements; and who also is an employee of an eligible institution listed above. (iv) Non-federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

(8) *Project/Award period.* Full proposals for targeted projects can cover a project/award period of up to 3 years, and full proposals for regional, intensive monitoring projects can cover a project/award period of up to 5 years. Multi-year awards may be funded incrementally on an annual basis, but, once awarded, those awards will not compete for funding in subsequent years. (See section (10) Application Forms and Kit for directions on submission of Federal forms for multi year award funding for those applicants subsequently recommended for award.) Each annual award shall require an Implementation Plan and project description that can be easily divided into annual increments of meaningful work representing solid accomplishments (if prospective funding is not made available, or is discontinued).

(9) *Indirect costs.* Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of: (a) the line item amount for the Federal share of indirect costs contained in the approved budget of the award; or (b) the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

(l0) Application forms and kit. For complete information on application forms for the NCCOS/CSCOR/COP, see General Grant Administration Terms and Conditions for the Coastal Ocean Program document in the **Federal Register** November 8, 2002 (67 FR 68103), at the CSCOR/COP home page and the information given under *Required Elements*, paragraph (7) Budget. The following is a description of Multi-Year Awards for those applicants subsequently recommended for award. This information can also be found on the COP web site under Grants Information. Multi-Year Awards: Multi Year Awards are awards which have an award/project period of more than 12 months of activity. Multi Year Awards are partially funded when the awards are approved, and are subsequently funded in increments. One of the purposes of Multi Year Awards is to reduce the administrative burden on both the applicant and the operating unit. For example, with proper planning, one application can suffice for the entire multi year award period. Funding for each year's activity is contingent upon the availability of funds from Congress, satisfactory performance, and is at the sole discretion of the agency. Multi-year funding is appropriate for projects to be funded for 2 to 5 years. Once approved, full applications are not required for the continuations into the out years.

(11) *Project funding priorities.* For description of project funding priorities,

see the annual General Grant Administration Terms and Conditions for the Coastal Ocean Program document in the **Federal Register** November 8, 2002 (67 FR 68103), and the CSCOR/COP home page.

(12) *Evaluation criteria.* For complete information on evaluation criteria, see the annual General Grant Administration Terms and Condition for the Coastal Ocean Program document in the **Federal Register** November 8, 2002 (67 FR 68103), and the CSCOR/COP home page.

(13) *Selection procedures.* For complete information on selection procedures, see the annual General Grant Administration Terms and Conditions for the Coastal Ocean Program document in the **Federal Register** November 8, 2002 (67 FR 68103), and the CSCOR/COP home page. All proposals received under this specific document will be evaluated and ranked individually in accordance with the assigned weights of the above evaluation criteria by independent peer mail review and/or panel review. No consensus advice will be given by the independent peer mail review or the review panel.

(14) Other requirements.

(a) For a complete description of other requirements, see the annual General Grant Administration Terms and Conditions for the Coastal Ocean Program document in the **Federal Register** November 8, 2002 (67 FR 68103) and the CSCOR/COP home page. NOAA has specific requirements that environmental data be submitted to the National Oceanographic Data Center (see section 16, Data Archiving).

(b) The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

(c) Please note that NOAA is developing a policy on internal overhead charges; NOAA scientists considering submission of proposals should contact the appropriate CSCOR/COP Program Manager for the latest information.

(15) *Intergovernmental review.* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' It has been determined that this notice is not significant for purposes of Executive Order 12866. Pursuant to 5 U.S.C. 553(a) (2), an opportunity for public notice and comment is not required for this notice relating to grants, benefits and contracts. Because this notice is exempt from the notice and comment provisions of the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required, and none has been prepared. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

(16) *Data archiving.* Any data collected in projects supported by NCCOS/CSCOR/COP must be delivered to a National Data Center (NDC), such as the National Oceanographic Data Center (NODC), in a format to be determined by the institution, the NODC, and Program Officer. It is the responsibility of the funded institution for the delivery of these data; the DOC will not provide additional support for delivery beyond the award. Additionally, all biological cultures established, molecular probes developed, genetic sequences identified, mathematical models constructed, or other resulting information products established through support provided by NCCOS/CSCOR/COP are encouraged to be made available to the general research community at no or a modest handling charge (to be determined by the institution, Program Officer, and DOC). For more details, refer to NCCOS/CSCOR/COP data policy posted at the CSCOR/COP home page.

(17) *Collection of information requirements.* This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

The following requirements have been approved by OMB under control number 0648–0384; a Summary Proposal Budget Form (30 minutes per response), a Project Summary Form (30 minutes per response), a standardized format for the annual Performance Report (5 hours per response), a standardized format for the Final Report (10 hours per response), and the submission of up to 20 copies of proposals (10 minutes per response). The response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these requirements and the burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to *leslie.mcdonald@noaa.gov*. Copies of these forms and formats can be found on the CSCOR/COP home page under Grants Information sections, Parts D and F.

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 requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: February 24, 2003.

Ted I. Lillestolen,

Associate Deputy Assistant Administrator, National Oceanic and Atmospheric Administration, National Ocean Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012903A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting Oil and Gas Exploration Activities in the Gulf of Mexico

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

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

SUMMARY: NMFS has received a request from the U.S. Minerals Management Service (MMS) of the Department of the Interior, for authorization to harass small numbers of marine mammals, principally the sperm whale, incidental to conducting seismic surveys in the Gulf of Mexico (GOM). As a result of that request, NMFS is considering whether to propose regulations that would govern the incidental taking of small numbers of marine mammals under Letters of Authorization (LOAs) issued to members of the seismic industry that might have interactions with sperm whales. In order to promulgate regulations and issue LOAs, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the preliminary application and suggestions on the content of the regulations.

DATES: Comments and information must be postmarked no later than April 2, 2003.

ADDRESSES: Comments should be addressed to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application and a list of references used in this document may be obtained by writing to this address, or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). A copy of the MMS draft Programmatic Environmental Assessment (Draft PEA) is available by writing to: Minerals Management Service, Public Information Office, 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)(MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' The MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On December 20, 2002, MMS petitioned NMFS, as a precautionary measure, for rulemaking under section 101(a)(5)(A) of the MMPA to authorize any potential take of sperm whales (*Physeter macrocephalus*) incidental to conducting seismic surveys during oil and gas exploration activities in the GOM (MMS, 2002a). MMS has preliminarily determined that the taking will involve only small numbers of sperm whales; have no more than a negligible impact on the species and stocks of affected marine mammals; and not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses. It should be noted that MMS expects to update its petition for regulations to include the incidental take of other species of marine mammals, such as dolphins, beaked whales, and Bryde's whales (*Balaenoptera edeni*), based upon information currently being assessed under the National Environmental Policy Act (NEPA). The NEPA document will be submitted to NMFS prior to its determination on whether or not to proceed with this rulemaking. If NMFS decides to proceed with rulemaking, that document will expand the description of seismic airgun operations and on the analysis of impacts on marine mammals by seismic airgun arrays.

Description of the Specified Activity

Marine geophysical seismic surveys are conducted to obtain information on surface and near-surface geology and on subsurface geological formations. Typical seismic surveying operations tow an array of airguns (the seismic sound source) and a streamer (signal receiver cable) behind the vessel, 5–10 m (16.4–32.8 ft) below the sea surface. The airgun array produces a burst of underwater sound by releasing compressed air into the water column that creates an acoustic energy pulse. The release of compressed air every several seconds creates a regular series of strong acoustic impulses separated by silent periods lasting 7–16 seconds, depending on survey type and depth to the target formations. Airgun arrays are designed to focus the sound energy downward. Acoustic (sound) signals are reflected off the subsurface sedimentary layers and recorded near the water surface by hydrophones spaced within the streamer cables. These streamer cables are often 3 mi (4.8 km) or greater in length. Vessel speed is typically 4.5–6 knots (about 4–8 mph) with gear deployed.

The 3–D (3–Dimensional) seismic surveying enables a more accurate assessment of potential hydrocarbon reservoirs to optimally locate exploration and development wells, and minimize the number of wells required to develop a field. State-of-the-art interactive computer mapping systems can handle much denser data coverage than the older 2–D seismic surveys. Multiple-source and multiple-streamer technologies are used for 3–D seismic surveys. A typical 3–D survey might employ a dual array of 18 guns per array. Each array might emit a 3,000 cubic-inch burst of compressed air at 2,000 kilojoule (kJ) of acoustic energy for each burst. The streamer array might consist of 6–8 parallel cables, each 6–8 km (3.7–5 mi) long, spaced 75 m (246 ft) apart. A series of 3–D surveys collected over time (4–D seismic survey) is used for reservoir monitoring and management (the movement of oil, gas, and water in the reservoirs can be observed over time).

For management purposes, MMS has divided the Northern GOM into three planning areas: Eastern, Central and Western. In general, Federal waters offshore Florida and Alabama are in the Eastern Planning Area, Federal waters offshore Mississippi and Louisiana are in the Central Planning Area, and Federal waters offshore Texas are in the Western Planning Area. For seismic exploration, about 1300 blocks in the Western and Central Planning Areas have not yet been surveyed with 3–D seismic techniques (R. Brinkman, MMS GOM Region, pers comm, 2002). It is assumed that a lower level of new seismic survey activity will occur in the Eastern Planning Area relative to the other two areas (i.e. the vast majority of survey activities are expected in the Central and Western Planning Areas). Industry interest in the Eastern GOM has historically been limited to the westernmost portions of the planning area and is usually defined by MMS' 5–Year Leasing Plan (MMS, 2002a).

The different types of seismic survey activity in the northern GOM can occur on any day of a given year during the scope of the petition (5 years). Seismic surveys may span one day, weeks, or months. MMS (2002b) provides detailed characteristics of the different types of operations and equipment applicable to seismic surveys employed in the region. That information will be used by NMFS during this rulemaking.

Seismic surveys may be conducted in any Federal waters of the GOM. Tables provided in the MMS application (MMS, 2002a) project the anticipated surveys for vertical seismic profiling, deep seismic, and high resolution

seismic operations in the GOM over the next 5 years.

Description of Marine Mammals Affected by the Activity

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. General information on these species can be found in NMFS Stock Assessment Reports (Waring, 2001, 2002). These documents are available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html/ Stock Assessment Reports*.

Any of these 29 marine mammal species may be exposed to acoustic energies introduced into Federal waters by seismic survey operations. At this time, the MMS is requesting authorization of take for only GOM sperm whales under this petition; therefore, the remainder of this section addresses this species only. Additional information on sperm whales in the GOM is available in NMFS (2002a), which is available for viewing or downloading at: *http://www.nmfs.noaa.gov/prot__res/overview/publicat.html/ section*.

Sperm whales are the most abundant large cetacean in the GOM, and are the most important Gulf cetacean in terms of collective biomass. The GOM sperm whales are comprised of mostly female and juvenile animals, although a few large bulls have been sighted in the northern Gulf. Some large males have been observed in the Gulf in recent summer surveys, particularly in the DeSoto Canyon region. Calves are frequently sighted. The GOM sperm whale abundance has recently been estimated by NMFS at 1,213 (CV 0.35) whales with a minimum population estimate of 911 whales. The presence of cow/calf pairs indicates that the northern GOM is a biologically important nursery area for sperm whales. Based on seasonal aerial surveys, sperm whales are present in the northern GOM in all seasons, but sightings in the northern GOM are more common during the summer months. Based on recent survey efforts, areas of concentration appear to be off the Mississippi River Delta, off Southern Florida, and off South Texas.

Sperm whales have been observed throughout the GOM from the upper continental slope near the 100–m (328.1–ft) isobath to the seaward extent of the U.S. Exclusive Economic Zone (EEZ) and beyond. It should be noted that both the apparent seasonality and the areas of concentration could be affected by, or the result of, geographic and seasonal patterns of existing surveys and, as such, should be considered tentative findings.

Potential Effects of Seismic Activities on Marine Mammals

The Federal waters of the GOM are inhabited by a diverse assemblage of marine mammal species, including the sperm whale. Seismic surveys are conducted in these waters, and acoustic energies introduced into Gulf waters may adversely impact marine mammals in the vicinity of the activity. The potential adverse impacts to Gulf sperm whales are detailed in NMFS (2002a). Additional information describing potential impacts is documented in MMS (2002b). Because loud underwater noise has the potential to harass, injure, and possibly cause the mortality of marine mammals, MMS is seeking an authorization, under the MMPA, for the harassment, injury, and/or mortality of sperm whales in GOM that may occur as a result of seismic surveys as described in this document and in MMS (2002a and 2002b). While the serious injury or mortality of sperm whales or other marine mammals is believed to be unlikely, especially due to the implementation of effective mitigation measures to protect marine mammals (see Mitigation), MMS has requested authorization for takings by incidental mortality at least until additional impact assessments are completed under NEPA and any rulemaking. This authorization is being sought by the MMS on the behalf of the offshore oil and gas industry and seismic contractors operating within the GOM.

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson et al., 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a cetacean may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a cetacean to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might (in turn) have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Sperm whales spend large amounts of time at depth and use low frequency sound to communicate and navigate. Therefore, they are considered sensitive to the marine acoustic environment and may respond to sound emissions in many ways. Reactions to acoustic emissions may include, but are not limited to, cessation of vocalizations, disruption of feeding and dive behaviors, and physical avoidance. Seismic operations can introduce noise into the sea that may cause temporary or permanent hearing impairment in marine mammals if the noise is strong enough and/or if the animal is in close proximity to the sound source when transmitting. Such impairment could have the potential to diminish the individual's chance for survival. Tolerance of noise is often demonstrated, but this does not prove that the animals are unaffected by noise; adverse levels of noise might interrupt or decrease feeding activity, social interactions, or parenting (e.g. nursing calves, if the interruption is extended). Therefore, behavioral responses causing adverse effect to individuals and cow/

calf pairs, reproduction, feeding or temporary or permanent threshold shifts due to seismic activity may negatively impact GOM sperm whales if disruptions are extended. There are no documented data on auditory-induced physical effects of underwater seismic noise on sperm whales. There is observational evidence that sperm whales may be temporarily displaced to areas near those where seismic operations are underway. However, while MMS believes that sperm whales apparently are not being displaced from the northern Gulf due to seismic surveys, NMFS notes that no data have been provided to support this statement. Nonetheless, it is unknown whether their site fidelity reflects low sensitivity to seismic noise or a high motivation to remain in the area in spite of this noise. Details of such emissions and potential impacts to sperm whales are characterized in NMFS (2002a) and MMS (2002b).

NMFS anticipates an unspecified number of sperm whales within Federal waters of the GOM may be adversely affected by seismic activities, especially in known areas of concentration (primarily off the Mississippi River delta) where cow/calf pairs are frequently sighted (NMFS, 2002a). At this time, there are insufficient data regarding the demography of the Gulf sperm whale stock to estimate the number of takes of sperm whales by age, sex, and reproductive condition. Most animals potentially exposed to seismic noise are expected to be adult females and immature animals, including young calves. It is understood that all animals comprising the Gulf stock (1,213 sperm whales) may be exposed to seismic noise during their lifetimes, and repeated exposure is anticipated, particularly in light of the facts that (a) sperm whales are wide-ranging animals, and (b) acoustic energy may travel great distances, depending on a suite of variables. At present, the means to accurately estimate the anticipated number of exposures for Level A or B Harassment takes of sperm whales as a result of seismic activity are not available.

In the absence of species-specific data on auditory impacts for sperm whales, a received sound pressure level of 180 dB re 1 μPa (rms) or greater will be used as an indication of potential concern about temporary and/or permanent hearing impairment (Level A Harassment, as used by NMFS in previous rulemakings).

While a spreading loss equation of 20 log R is recommended by Richardson et al. (1995) for calculating underwater transmission loss in deep water, MMS believes a spreading loss equation of 15 log R is more appropriate for shallow water such as the GOM. Using a spreading equation (15log(R)), the 180–dB re 1 μPa (rms) isopleth in surface and near-surface waters occurs at 295 m (968 ft) from a standard airgun array. Similarly, the 180 dB re 1 μPa (rms) isopleth vertically below the seismic source is calculated to be 6,310 m (3.92 mi). By means of a Gulf-wide Notice to Lessees (NTL) for all seismic activities (30 CFR 250.103, August 22, 2002), MMS has implemented a 500–m (1,640–ft) impact zone to minimize possible effects to sperm whales. For typical 2–D and 3–D towed array seismic surveys with estimated source levels of 257 dB re 1 μPa (-3 dB rms conversion), a 500–m (1,640–ft) impact zone for a 180 dB isopleth equates to an estimated source level of approximately 232 dB. According to NMFS (2002a), at source levels of 257 dB (rms), the 20 Log(R) model and associated calculation above produce received levels of 203 dB re 1 μPa at 500 m (1,640 ft) from the source in subsurface waters (a conservative estimate) and 183 dB in surface waters due to the array effect. Presently, the impact zone of 500 m (1,640 ft) closely approximates the received dB levels in surface waters, but may not accurately reflect the 180 dB isopleth and associated impact zone beneath an array. These disparities between dB measurements for surface and sub-surface waters indicate the need for better data to effectively formulate models that can be used to better calculate an impact zone for sperm whales.

In the absence of good sound scientific information for sperm whales in the GOM, a received sound pressure level of 160 dB re 1 μPa (rms) will be used in this application as the default indicator of, or for, potential concern to disturb a sperm whale in the wild by causing disruption of behavioral patterns, including but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B Harassment, as used previously by NMFS for impulse noise). Using a spherical spreading equation (15log(R), -20 dB for the array effect, and -3 dB for zero-to-peak to RMS conversion), the 160 dB re 1 μPa (rms) isopleth in surface and near-surface waters occurs at 6,309 m (3.92 mi) from the seismic airgun source. Similarly, the 160 dB re 1 μPa (rms) isopleth below the seismic source is calculated to extend to the sea floor.

Given that (a) the Level B Harassment impact zone ranges between 6,309 m (3.92 mi) and depth below the vessel (3.92 mi and greater), (b) the Level A Harassment (injury) or mortality impact zone ranges between 295 m (968 ft) and 6,309 m (3.92 mi), (c) seismic survey operations may be conducted over broad swaths of the Gulf, (d) sperm whales are wide-ranging and inhabit oceanic waters of the northern Gulf, (e) animals may or may not avoid seismic noise sources, and (f) sperm whales may potentially be repeatedly exposed to seismic noise introduced into the GOM, MMS expects that an unspecified number of sperm whales (chiefly adult females and immature animals) may be exposed to levels of 160 dB or greater if they do not avoid exposure by moving away from the noise source. The MMS anticipates new information in the near future from which it will calculate anticipated take numbers for seismic activity. These numbers will be included in MMS' NEPA document and provided to NMFS for rulemaking needs.

NMFS has been determined (NMFS, 2002a) that ramp-up procedures and visual monitoring of an impact zone coupled with passive acoustic monitoring systems will more effectively minimize possible adverse effects to sperm whales than ramp-up and visual observations alone, as currently required by MMS' NTL No. 2002–G07 and Addendum 1. Conservative estimates should be used to calculate impact zones for sperm whales without the array effect until more appropriate models can be formulated from field measurements that effectively minimize the risk of threshold shift to sperm whales. The use of mitigation measures such as visual and acoustic monitoring of adjacent waters (e.g. delineated by the 160 or 180 dB re 1 μPa (rms) isopleths), shut-downs, or ramping up seismic airguns are presumably effective techniques that may reduce the potential number of sperm whales taken by harassment as a result of seismic surveys. It is assumed that the likelihood of impacts will be reduced relative to the scope of mitigation measures employed by seismic operators. For example, it is presumed that some animals may experience Level A Harassment if only visual monitoring is employed, and animals do not actively avoid noise or are missed during visual monitoring. Similarly, fewer animals will experience Level A Harassment if visual and effective acoustics monitoring are conducted in conjunction with shut-downs and ramping up. An acoustic model that incorporates acoustic noise propagation, environmental variables, and ecological and behavioral variables known for marine mammals (e.g. sperm whales) would be necessary for the MMS to quantify the anticipated takes

of sperm whales attributable to seismic operations in the GOM; the MMS presently does not have access to such a model.

There is a reasonable potential that seismic surveys are exposing sperm whales to noise levels that may cause behavioral disturbance. The most probable disturbance is avoidance (moving away) from an actively-transmitting seismic vessel. The degree of displacement, length of time involved, and types of normal activities interrupted would influence the significance of this disturbance. Less likely, but possible, is that sperm whales will remain within acoustic exposure levels that will cause temporary hearing impairment or permanent hearing damage. This outcome would require whales to lack the ability to detect harmful sound intensities, ''ignore'' the signal in favor of other behavior such as feeding, or be in close proximity to a sudden start-up of the airguns. The GOM environment is deep, open waters. Short of a physically impaired whale or a whale being caught between two seismic sources, no physical constraints exist in the GOM that would ''trap'' a whale near a seismic sound source.

The area of most concern is the area of apparent concentration of whales located on the continental slope offshore of the Mississippi River mouth (and extending east to the DeSoto Canyon area in the Eastern Planning Area), where a year-round population of sperm whales has been documented. Although sperm whales apparently are not being displaced from this area due to seismic surveys, it is unknown whether their site fidelity reflects low sensitivity to seismic noise or a high motivation to remain in the area in spite of this noise. Because there is some evidence of sperm whale responses to low frequency noise, including possibly leaving an area where seismic surveys are occurring, it is reasonable to presume that these animals are being exposed to adverse noise levels (i.e., noise levels that would cause behavior modification, such as avoidance or displacement) in a preferred habitat. Minor behavioral changes typically do not adversely affect either the individual or the population. To date, there is no evidence that behavioral changes prompted by seismic noise are of sufficient magnitude to have meaningful effects on this population in that no large-scale displacement or voids in sperm whale occurrence relative to seismic activities have been observed. The present state of knowledge indicates sperm whales may react to seismic activity, but results are not consistent. Studies are underway to precisely determine the behavioral responses of Gulf sperm whales to airguns. Current mitigation procedures include ramp-up, visual monitoring and shut-down of seismic operations if sperm whales are within the 500–m (1,640–ft) impact zone. These measures are expected to significantly reduce the potential for noise impacts to sperm whales. However, because the potential for acoustic impact by oil and gas seismic surveys cannot be completely eliminated, nor are potential impacts clearly documented or understood at this time, a precautionary approach taken by MMS is to keep any impacts at an insignificant level. Therefore, MMS has preliminarily determined that while impacts on sperm whales are still somewhat speculative, and the potential for harm to the species or stock is unlikely, impacts to the species or stock will not be more than ''negligible.''

Research

A major field study of GOM sperm whales and other cetaceans, sponsored by MMS, in cooperation and with support from the GOM seismic industry (the Sperm Whale Seismic Study (SWSS)), has been completed. Major accomplishments included tagging a number of sperm whales with data-reporting satellite tags, and field testing a passive acoustic listening system for its ability to detect and locate sperm whales, relative to effectiveness of visual marine mammal observers. Although formal reports on findings have not yet been published, MMS has determined that the passive acoustic monitoring system was far superior to visual observers, as it could detect cetaceans underwater and at distances or in sea states where visual observations are not reliable.

In 1999, MMS hosted a workshop to identify protected species concerns in the GOM. The expert panel concluded possible acoustic impacts from anthropogenic sources were a valid concern and that information for the marine environment in the GOM was extremely limited. Recommendations to MMS included initiation of research on acoustic effects on marine mammals. Seismic exploration (i.e., airgun arrays) was identified as the sound source of primary concern. The MMS, with cooperative funding from the Office of Naval Research (ONR), immediately modified the existing research to develop and test research methods to address this topic. The pilot study successfully developed a multi-disciplinary approach and new technology to conduct research. In FY 2002, MMS and ONR initiated a 3–year study, the SWSS, managed by Texas A&M Research Foundation, to establish habitat use and normal behavior of sperm whales in the GOM, evaluate physical oceanographic correlates to whale locations and movements, obtain DNA profiling of GOM whales, and investigate seasonal movements and breeding behavior. In addition to addressing many aspects of sperm whale biology, the study will look at both short-term behavioral resonses to seismc airguns and any longer-term displacement using two types of whale tags. The offshore industry contributed use of a seismic vessel and acoustic array in FY 2002 to support this research. In FY 2003, MMS/ONR will obtain additional support from the National Science Foundation and the oil industry to expand the efforts so far described and also to begin investigating effects on sperm whale prey (squid). Embedded in SWSS are efforts to improve underwater detection (range, bearing, depth estimates) for sperm whales using passive acoustics. The immediate intent is to study sperm whale locations near seismic vessels and for effective tagging efforts. A spin-off of this work will be the means to detect and estimate relative locations to sperm whales using acoustics. Applications for using this technology for mitigation monitoring are being explored by MMS.

If NMFS proceeds with rulemaking, it intends to monitor the results of this research during the rule's effectiveness period to ensure that the determinations made during the rulemaking are correct. As appropriate, research results may lead to amendments to LOAs and/or rulemaking to ensure that marine mammals are protected to the greatest extent practicable.

Mitigation

In response to NMFS' question regarding the availability and feasibility (economic and technological) of equipment, methods and manner of conducting oil and gas seismic surveys to effect the least practicable adverse impact on potentially affected marine mammals, MMS noted that current mitigation measures for the oil and gas seismic industry in the GOM include: ramp-up, visual monitoring, establishment of an impact zone (currently 500 m (1,640–ft) around the sound source), and mandatory ''shut-down'' to avoid injury to whales in or about to enter the impact zone. Each of these helps insure the least practicable adverse impact to the sperm whales. Ramp-up, or soft start, requires seismic operators to start firing the acoustic array with one gun and gradually over

time add more guns until the array is fully operational. This allows whales in the area to move away from the sound source before discomfort or injury might result. Visual observers monitor the area around the sound source for 30 minutes prior to ramp-up and throughout seismic operations. Any time a sperm whale enters or surfaces within 500 m (1,640 ft) of the sound source, seismic operations are immediately ceased in order to minimize as much as possible the exposure of the whales to potentially damaging levels of sound.

MMS notes that an expanded seismic observer program is currently in development that will require trained observers on all seismic vessels. MMS expects to issue updated guidelines for the seismic observer program in early 2003 and an enhanced monitoring and reporting will also be put in place later in 2003. However, in the interim period before this rulemaking is complete, MMS will enforce the mitigation measures outlined in this section to ensure the protections required by the ESA and MMPA. As these mitigation measures would be the subject of any rulemaking under the MMS application, these measures may be adopted or amended according to this action.

Monitoring

Currently, monitoring and reporting requirements for the offshore seismic industry are set forth by MMS in MMS NTL No. 2002–G07 and 2002–G07. At this time, MMS is proposing to continue this monitoring program until an enhanced monitoring program can be designed.

Visual observers must monitor waters (with the assistance of binoculars) for sperm whales within and adjacent to the exclusion zone for 30 minutes prior to initiating the airgun ramp-up procedures. Observers must monitor the exclusion zone and adjacent waters during seismic operations, unless atmospheric conditions reduce visibility to zero or during hours of darkness (i.e., night). When sperm whales are observed entering or within the exclusion zone, observers must call for the shut down of the airgun array; seismic operators must shut down the seismic array when instructed by an observer. Ramp-up (see MMS NTL No. 2002–G07 for specified procedure) and seismic activities may be reinitiated only when the observer has: (a) determined that the sperm whale(s) has departed the exclusion zone, and (b) visually monitored the exclusion zone for at least 30 minutes since the last sperm whale sighting within the exclusion zone.

Reporting

The MMS proposes that when sperm whales are sighted prior to or during a seismic survey operation, observers must document the information listed below. This information must be reported to MMS within 8 days of the sighting by email. The following observations are to be included in the reports: (1) The date, time, and location (latitude/longitude) of each observation; (2) the number of sperm whales sighted; (3) whether or not a sperm whale entered the exclusion zone warranting a shut-down; (4) how long the shut-down occurred (i.e., how long the sperm whale was in the exclusion zone); and (5) the name and contact information for the person submitting the report. These observations and reporting requirements will identify all observed taking by harassment within the exclusion zone from seismic operations in the GOM.

NEPA

In February, 2002, MMS completed a draft PEA that is available upon written request (see ADDRESSES). That draft NEPA document has undergone extensive review by MMS and other Federal agencies, and by state, non-governmental, and interested private sector parties. This draft PEA, along with a document reviewing the public comments, was provided to NMFS to support the information contained in MMS' application and has been determined by NMFS to be sufficient for use at this stage of rulemaking. Based in part on public comments, a final PEA is being substantially revised by MMS, and is expected to be available for release prior to NMFS' issuance of a proposed rule on the MMS application. A copy of the final PEA will be available at that time.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. Consultation will be concluded prior to promulgation of a final rule.

Information Solicited

As this document is being published in conformance with NMFS regulations implementing the small take program (50 CFR 216.104(b)(1)(ii)), NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations to allow the taking. As required by 50 CFR 216.105, NMFS will consider this information in developing proposed regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be provided with a 45–day period within which to submit comments on the proposed rule.

Dated: February 25, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–4896 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Science Advisory Board; Open Meeting

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, DOC.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday, March 18, 2003, from 10 a.m. to 5:30 p.m.; and Wednesday, March 19, 2003, from 8 a.m. to 5:15 p.m. These times and the agenda topics described below may be subject to change. Refer to the web page listed below for the most up-to-date meeting agenda.

Place: The meeting will be held both days at the Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC.

Status: The meeting will be open to public participation with two 30-minute time periods set aside for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by March 7, 2003, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after March 7, 2003,

will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters To Be Considered: The meeting will include the following topics: (1) The final report of the SAB Review Panel regarding NOAA Social Science Research, (2) the NOAA Climate Change Science Plan, (3) the NOAA Earth Observing Summit, (4) FY 2004 budget requests, (5) the U.S. Commission on Ocean Policy, (6) Pew Oceans Commission reports, (7) SONAR and marine mammals, (8) Stellar sea lions, (9) National Polar-orbiting Operational Environmental Satellite Systems, and (10) public statements.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–0163, E-mail: *Michael.Uhart@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: February 25, 2003.

Louisa Koch,

Acting Assistant Administrator, OAR.

[FR Doc. 03–4823 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012803B]

Endangered Species; Permits 1316

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

ACTION: Issuance of permit modification

SUMMARY: Notice is hereby given that Dr. Jeff Schmid, The Conservancy of Southwest Florida, 1450 Merrihue Drive, Naples, FL 34102, has been issued a modification to scientific research permit No. 1316.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Carrie Hubard, (301)713–2289).

SUPPLEMENTARY INFORMATION: On August 28, 2002, notice was published in the **Federal Register** (67 FR 55201) that an amendment of Permit No. 1316 issued January 8, 2002 (67 FR 38648), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Modification no. 2 to permit no. 1316 allows the Holder to take up to 30 Kemp's ridley sea turtles for purposes of scientific research.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 24, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–4820 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the African Growth and Opportunity Act (AGOA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA)

February 26, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that lastol elastic yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and the CBTPA.

SUMMARY: On February 21, 2003, the Chairman of CITA received a petition from the Dow Chemical Company alleging that lastol elastic yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that apparel from such yarns or from U.S.-formed fabrics containing such yarns be eligible for preferential treatment under the AGOA and the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such yarns can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by March 18, 2003 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, United States Department of Commerce, 14th and Constitution Avenue, NW. Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the CBTPA, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001.

Background

The AGOA and the CBTPA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The AGOA and the CBTPA also provide for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more AGOA or CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA or the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On February 21, 2003, the Chairman of CITA received a petition from the Dow Chemical Company alleging that lastol elastic yarn, which is a crosslinked, heat resistant elastic yarn having elevated temperature elasticity comprising a cured, irradiated or crosslinked ethylene polymer, classified

under items 5402.49.9005 and 5404.10.8005 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests quota- and duty-free treatment under the AGOA and the CBTPA for apparel articles that are both cut (or knit-to-shape) and sewn in one or more AGOA or CBTPA beneficiary countries from such yarns or from U.S.-formed fabrics containing such yarns.

Essential characteristics of the yarn in question are:

1. Created from a synthetic polymer, with low but significant crystallinity, composed of at least 99 percent by weight of ethylene and at least one other olefin unit.
2. Heat resistance to temperatures up to and greater than 220 degrees Celsius.
3. Exhibits substantial elasticity.
4. Chemical resistance to the most stringent chemicals used in textile processing today.

CITA is soliciting public comments regarding this request, particularly with respect to whether these yarns can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other yarns that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for these yarns for purposes of the intended use. Comments must be received no later than March 18, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that these yarns can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarns stating that it produces the yarns that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–4957 Filed 2–26–03; 4:39 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Purchasing Land and Establishing a Naval Special Warfare Riverine and Jungle Training Range in the Easement Buffer of the National Aeronautical and Space Administration's John C. Stennis Space Center, Hancock County, MS, and to Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, and the regulations implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the Department of Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of purchasing 5,200 acres of privately owned property located within the northwestern acoustic buffer zone at the National Aeronautical and Space Administration's John C. Stennis Space Center (Stennis Space Center) in Hancock County, Mississippi, and using the acquired acreage as a Naval Special Warfare Riverine and Jungle Training Range. Live-fire training on the range would use small arms Short Range Training Ammunition (SRTA) that has a plastic, non-lead, non-explosive projectile, and a limited flight profile.

DATES AND ADDRESSES: Public scoping meetings will be held in Hancock County, MS and St. Tammany Parish, LA to receive oral and written comments on environmental concerns that should be addressed in the EIS. Public scoping open houses will be held on Tuesday, March 18, 2003, from 4 p.m. to 7 p.m. at Hancock High School, 7084 Stennis Airport Dr., Kiln, MS and Thursday, March 20, 2003, from 4 p.m. to 7 p.m. at Slidell City Auditorium, 2056 2nd St., Slidell, LA.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Davis, Southern Division, Naval Facilities Engineering Command, PO Box 190010, North Charleston, SC 29419–9010, telephone (843) 820–5589, facsimile (843) 820–7472.

SUPPLEMENTARY INFORMATION: The proposed action will provide Special Operations Forces with reliable and priority access to a training range characterized by a permanent riverine and jungle environment and where live-fire exercises using SRTA can be conducted adjacent to the Stennis Space Center. Establishment of this range would meet the need of Special Operations Forces to train under realistic combat scenarios, thereby increasing their readiness to support national defense objectives and reducing combat casualties. It would also provide a range where Special Operations Forces could deploy the maritime unmanned aerial vehicle and conduct exercises using helicopters, boats, and vehicles.

Alternatives to be considered in the EIS address the type and tempo of training to be conducted on the range. The basic range alternative includes small arms training with SRTA along the reaches of the Pearl and Mikes River. Enhanced training alternatives will also be analyzed, which will also provide for the additional use of maritime unmanned aerial vehicles and helicopter insertions and extractions at variable tempos (tentatively either 36 or 60 events annually). A discussion of preliminary range locations will be included and the alternative of no action will also be addressed. In addition, the EIS may also consider other alternatives should they be defined during the public scoping process and meet established training criteria.

The EIS will evaluate the environmental effects associated with identified alternatives. Issues to be addressed will include, but not be limited to: Geology; biotic communities, including threatened and endangered species; water resources; noise; air quality; non-military land uses and access; cultural resources; transportation and waterway navigation; and water and land contaminants. The analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts. No decision will be made to implement any alternative until the NEPA process is completed.

The Navy is initiating the scoping process to identify community concerns and local issues that should be addressed in the EIS. Federal, state, and local agencies, and interested persons are encouraged to provide oral and/or written comments to the Navy to identify specific issues or topics of

environmental concern that should be addressed in the EIS. Written comments must be postmarked by April 21, 2003, and should be mailed to: Special Warfare Training Range EIS, c/o Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, South Carolina 29419–9010, Attn: Code ES12/RD (Richard A. Davis), telephone (843) 820–5589, facsimile (843) 820–7472, e-mail: *DavisRA@efdsouth.navfac.navy.mil.*

Dated: February 25, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–4871 Filed 2–28–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors (BOA) to the President, U.S. Naval War College (NWC)

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The BOA to the President, U.S. NWC, will meet to discuss educational, doctrinal, and research policies and programs at the NWC. The meetings will be open to the public.

DATES: The meetings will be held on Thursday, March 20, 2003, from 8 a.m. to 4 p.m. and on Friday, March 21, 2003, from 8 a.m. to 4 p.m.

ADDRESSES: The meetings will be held in Conolly Hall, U.S. NWC, 686 Cushing Road, Newport, RI.

FOR FURTHER INFORMATION CONTACT: Mr. Richard R. Menard, Office of the Provost, U.S. NWC, 686 Cushing Road, Newport, RI 02841–1207, telephone number (401) 841–3589.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of the Board of Advisors meeting is to elicit advice on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs and plans of the College since the last meeting of the BOA on 15 and 16 August 2000.

Dated: February 26, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corp, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–4980 Filed 2–28–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[Number DE–PS36–03GO93007]

DOE Expression of Program Interest Regarding Hydrogen Production and Delivery Research

AGENCY: Golden Field Office, U.S. Department of Energy (DOE).

ACTION: Issuance of Expression of Program Interest (EOPI).

SUMMARY: The U.S. Department of Energy (DOE) Office of Hydrogen, Fuel Cells, and Infrastructure Technologies, as part of the President's FreedomCAR and Fuel Initiative, is requesting information through this Expression of Program Interest (EOPI) from interested parties regarding topics for research and development in the hydrogen production and delivery technologies areas. DOE may use this information in preparation of a solicitation and is seeking input from the hydrogen community to ensure topics covered in the solicitation encompass promising technology areas.

DATES: The EOPI is currently open and will close on March 14, 2003. It is anticipated that a solicitation will be issued later in Fiscal Year (FY) 2003.

ADDRESSES: To obtain a copy of the EOPI, interested parties should access the DOE Golden Field Office Web site at *http://www.golden.doe.gov/businessopportunities.html*, click on ''Solicitations'', and then access the solicitation link. The link will provide direct access to the EOPI (listed as DE–PS36–03GO93007) on the DOE Industry Interactive Procurement System (IIPS) Web site. Instructions for using the IIPS Web site are provided at *http://www.golden.doe.gov/businessopportunities.html*.

The EOPI can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing for existing business opportunities and then browsing ''Opportunities by Program Office'' for those actions issued by the Golden Field Office. DOE will not issue paper copies of the EOPI.

Any future solicitation resulting from this EOPI will be assigned the same Number (DE–PS36–03GO93007) and will be accessible via the Golden Field Office Web site or IIPS Web site as described above.

FOR FURTHER INFORMATION CONTACT: The EOPI submissions and any questions should be sent via e-mail to: *hydrogen_interest@nrel.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) Office of Hydrogen, Fuel Cells, and Infrastructure Technologies, as part of the President's FreedomCAR and Fuel Initiative, is requesting information from interested parties regarding topics for research and development in the hydrogen production and delivery technologies areas. DOE is preparing to issue a solicitation and is seeking input from the hydrogen community to ensure topics covered in the solicitation encompass promising technology areas. A framework for submissions is provided in the EOPI, including objective, types information to be submitted, format requirements, and eligibility. Please note that submissions to DOE under this EOPI are provided for information only and will not result in any type of award or financial assistance from DOE to the submitter. Also, DOE will not reimburse any costs associated with submissions under this EOPI.

It is anticipated that a solicitation will be issued later in FY 2003, with DOE financial assistance awards made in FY 2004. A separate announcement will be made by DOE for the issuance of the solicitation.

Issued in Golden, Colorado, on February 19, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–4864 Filed 2–28–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Number DE–PS36–03GO93004]

Inventions and Innovation Program

AGENCY: Golden Field Office, Department of Energy (DOE).

ACTION: Notice of solicitation for financial assistance applications.

SUMMARY: The Department of Energy's Office of Energy Efficiency and Renewable Energy (EERE), Weatherization and Intergovernmental Program, is funding a competitive grant program entitled the Inventions and Innovation (I&I) Program. The goals of the I&I Program are to improve energy efficiency through the promotion of innovative ideas and inventions that have a significant, potential energy impact and a potential, future commercial market. The following EERE offices and programs are of particular

interest to I&I: Biomass Program; Building Technologies Program; Distributed Energy & Electric Reliability Program; Federal Energy Management Program; FreedomCAR & Vehicle Technologies Program; Geothermal Technologies Program; Hydrogen, Fuel Cells & Infrastructure Technologies Program; Industrial Technologies Program; Solar Energy Technology Program; Weatherization & Intergovernmental Program; and Wind & Hydropower Technologies Program.

DATES: DOE issued the solicitation on February 13, 2003. The deadline for receipt of applications will be 3 p.m. Mountain Time on April 12, 2003.

ADDRESSES: All Golden Field Office (GO) solicitations will be posted on the Industry Interactive Procurement System (IIPS) Web site at *http://e-center.doe.gov*; however, you may access them, along with IIPS instructions, through links on the GO Web site at: *http://www.golden.doe.gov/businessopportunities.html* by clicking on ''Solicitations.'' IIPS provides the medium for disseminating solicitations, receiving financial assistance applications, and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. Individuals who have the authority to enter their company into a legally binding contract/agreement and intend to submit proposals/applications via the IIPS system must register and receive confirmation that they are registered prior to being able to submit an application on the IIPS system. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or call the help desk at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Margo Gorin, Contract Specialist, at *go_I&I@nrel.gov*.

SUPPLEMENTARY INFORMATION: *Solicitation Specifications:* Eligibility requirements include the following:

(1) Individuals that are U.S. citizens, either native-born or naturalized; (2) Small businesses (as defined by the Small Business Administration) that are incorporated and operating in the U.S. and that conduct at least 50% of the effort; or (3) Institutions of higher learning located in the U.S.—eligible to apply only under Category 1. Individual inventors and very small businesses (15 or fewer employees) are especially encouraged to participate. More than one application may be submitted by an applicant for different innovations. However, funding will be limited to one award per applicant, per cycle. Also more than one organization may be involved in an application as long as the lead organization and lead financial assistance management responsibilities are defined. The Catalog of Federal Domestic Assistance number assigned to the I&I Program is 81.036. Cost sharing by applicants and/or cooperating participants is not required but highly encouraged. In addition to direct financial contributions, cost sharing can include beneficial services or items such as manpower, equipment, consultants, and computer time that are allowable in accordance with applicable cost principles.

The Golden Field Office has been assigned the responsibility of issuing the solicitation and administering the awards. Ideas that have a significant energy savings impact and future commercial market potential are chosen for financial support through the competitive solicitation process. The I&I Program will provide financial assistance of up to $75,000 for Category 1 and up to $250,000 for Category 2 to applications that fall within the ''conceptual'' and ''developmental'' stages of development, respectively. To be considered for a Category 2 award, a bench-scale model and/or other preliminary investigations must be complete. Each award may cover a project period of up to one year for Category 1 and up to two years for Category 2.

A selection of former projects funded by the I&I Program that have reached commercial markets include the following:

- *Meta-Lax Stress Relief Equipment* offers distinct advantages over conventional heat treatment methods. It uses less energy, is portable, can handle any size metal part, and treats metal stress in hours versus days.
- *Aero Cylinder Technology* replaces conventional cylinders by combining air spring bellows into assemblies for use on machines (such as punch presses) to control motion and large masses. The air springs act as counter balancers and press cushioners to eliminate alignment problems. This proper alignment reduces downtime and compressed air losses, resulting in significant energy savings.
- *Electro-Optic Inspection of Heat Exchangers* is a laser-based, nondestructive evaluation system for inspecting heat exchanger tubing for internal corrosion, erosion, scale buildup, and deformation. Benefits to petrochemical, pulp and paper, and power-generation plants include reduced downtime and increased efficiency.
- *Hydrodynamic Multi-Deflection Pad Bearings* optimize bearing operation in high-speed, combined heat and power turbines, high-load electric motors or gear boxes, air or gas compressors, and air conditioning refrigeration equipment. Energy loss due to friction is reduced up to forty-percent by using fluids as a wedge between pads and moving parts.

Availability of Funds for FY 2003: DOE is announcing the availability of up to $1.2 million in agreement funds for Fiscal Year 2003. The awards will be made through a competitive solicitation. DOE reserves the right to fund in whole or in part any, all, or none of the proposals submitted in response to this notice.

Issued in Golden, Colorado, on February 13, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance, Golden Field Office.

[FR Doc. 03–4865 Filed 2–28–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–221–001]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

February 24, 2003.

Take notice that on February 19, 2003, High Island Offshore System, L.L.C. (HIOS) tendered for filing an explanation concerning the revised tariff sheets filed in this docket on December 31, 2002, as required by the Commission's Order of January 30, 2003 in this docket.

HIOS states that such revised tariff sheets were primarily the result of the elimination of Rate Schedules T and I, as well as necessary ministerial and conforming changes related to the elimination of those schedules.

HIOS states that a full copy of its filing is being served on all jurisdictional customers, applicable state commissions and interested parties that have requested service.

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: March 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4847 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–258–001]

Iroquois Gas Transmission System, L.P.; Notice of Tariff Filing

February 24, 2003.

Take notice that on February 20, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) informed the Commission that the following tariff sheets tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, on February 14, 2003, are proposed to have an effective date of April 1, 2003:

Tenth Revised Sheet No. 4A
Eighth Revised Sheet No. 58
Eighth Revised Sheet No. 59
First Revised Sheet No. 60E
Fifth Revised Sheet No. 67
Original Sheet No. 4B
First Revised Sheet No. 58A
Original Sheet No. 60D.01
Third Revised Sheet No. 66A

Iroquois states that the proposed effective date originally proposed in the February 14, 2003 filing was March 14, 2003. However, by a letter dated February 20, 2003, Iroquois advised the Commission that it had determined that it will not be able to commence the new service until April 1, 2003, and therefore the proposed effective date of the tariff sheets is April 1, 2003. Iroquois respectfully requests any necessary waivers of the Commission's regulations to permit the filing to become effective as proposed.

Iroquois states that the purpose of the tariff changes is to implement a new Extended Receipt and Extended Delivery Point Service, which would extend, on a secondary basis, a shipper's existing firm transportation path to downstream or upstream zones.

Iroquois states that copies of this amended filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the 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: March 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4848 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–52–000]

The Mission Group, on Behalf of Its Public Utility Subsidiaries; Notice of Filing

February 24, 2003.

Take notice that on February 5, 2003, The Mission Group (Applicant), acting on behalf of its public utility subsidiaries, filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a transfer of indirect control of jurisdictional facilities, arising from the proposed reincorporation of the Applicant under the laws of the State of Delaware. Applicant states that the proposed transaction brings it within the same corporate governance regime as its principal subsidiaries, Edison Mission Energy and Mission Energy Holding Company, and will have no effect on competition, rates, or regulation and is consistent with the public interest.

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 field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4845 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–51–000]

Natural Gas Pipeline Company of America; Notice of Application

February 24, 2003.

Take notice that on February 13, 2003, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket

No. CP03–51–000 an application, pursuant to section 7(c) of the Natural Gas Act (NGA) and subpart A of part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations. Natural requests a certificate of public convenience and necessity authorizing the construction and operation of six (6) new injection/withdrawal wells (I/W) and, appurtenant facilities, and the conversion of three (3) observation wells to I/W wells at Natural's Sayre Storage Field (Sayre) located in Beckham County, Oklahoma , all as more fully set forth in its petition which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's 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 last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Any questions concerning Natural's application should be directed to Floyd Hofstetter, Vice President, Storage Operations, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148 at (630) 691–3660.

Natural states that these additional facilities are necessary to maintain Sayre's current level of service to the interstate market and will offset reduced deliverability resulting from a reduction of cushion inventory by Oklahoma Natural Gas Storage Company. Natural notes that the current certificated maximum capacity is 90.4 Bcf and the certificated maximum daily withdrawal is 400 MMcf, however, Natural is not requesting an increase in the maximum inventory or in the peak day withdrawal. Natural states that the cost of the project is approximately $2.8 million and Natural requests rolled-in rate treatment for the new facilities.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (19 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to the project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commissions' final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. The preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper.*See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: March 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4844 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–078]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

February 24, 2003.

Take notice that on February 20, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Original Sheet No. 26D.01, to be effective January 1, 2003.

Natural states that the filing is submitted pursuant to the Commission's order issued January 30, 2003, in Docket No. RP99–176–075, which conditionally accepted Sheet No. 26D.01.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to 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: March 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4850 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–259–000]

Questar Pipeline Company; Notice of Tariff Filing

February 24, 2003.

Take notice that on February 20, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff, to be effective March 22, 2003.

Second Revised Sheet No. 4
Twenty-Eighth Revised Sheet No. 5
Fifteenth Revised Sheet No. 5A
Fifteenth Revised Sheet No. 6
Tenth Revised Sheet No. 6A
Third Revised Sheet No. 11
Fifth Revised Sheet No. 56A
Sixth Revised Sheet No. 58
Tenth Revised Sheet No. 59
Seventh Revised Sheet No. 60B
Sixth Revised Sheet No. 62
Sixth Revised Sheet No. 63
First Revised Sheet No. 67A
Eighth Revised Sheet No. 68
Second Revised Sheet No. 69
Original Sheet No. 69A
Ninth Revised Sheet No. 75
Second Revised Sheet No. 99I
Seventh Revised Sheet No. 163
First Revised Sheet No. 179H
First Revised Sheet No. 185A
First Revised Sheet No. 185B
Third Revised Sheet No. 187
Fourth Revised Sheet No. 193
Second Revised Sheet No. 194
Third Revised Sheet No. 196
Third Revised Sheet No. 197

Questar states that its filing proposes a ''cleanup'' of specific aspects of its tariff language, including the removal of tariff language affected by the Commission's announcement of the removal of the waiver of the rate ceiling on short-term capacity-release transactions that expired September 30, 2002, pursuant to 18 CFR 284.8(i).

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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 385.314 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. 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.

Comment Date: March 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4849 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–50–000]

Tennessee Gas Pipeline Company; Notice of Application

Dated: February 24, 2003.

On February 11, 2003, Tennessee Gas Pipeline Company (Tennessee), 9 East Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP03–50–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon in place the Yalobusha pipeline segment 800–2 located in Grenada County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Tennessee states that in l963 it constructed a secondary river crossing of the Yalobusha River in Grenada County, Mississippi, pursuant to authorization granted in Docket No. CP63–48–000 and this segment known as the Yalobusha pipeline segment 800–2 is thirty inches in diameter and is approximately 1,000 feet in length. Tennessee further states that: (1) The Yalobusha pipeline segment 800–2 was constructed to minimize service interruption while the existing crossing, Line 800–1, was lowered; (2) to safely lower Line 800–1, Tennessee first constructed the new crossing and then temporarily removed Line 800–1 from service; and (3) subsequent to lowering Line 800–1, Tennessee redirected the flow of gas from the Yalobusha pipeline segment 800–2 back to Line 800–1.

Tennessee indicates that it does not currently rely on the Yalobusha pipeline segment 800–2 to provide service to any customers. In addition, Tennessee states that it plans to perform maintenance on the Line 800–1 segment in 2003 to make it piggable. Because of its infrequent use, maintenance issues, and redundant nature, Tennessee states that it proposes to abandon the Yalobusha pipeline segment 800–2 when Tennessee is in Grenada County, Mississippi, performing maintenance on Line 800–1 to make it piggable. Additionally, Tennessee states that the abandonment of the line will not significantly affect its capacity. According to Tennessee, the results of the abandonment of Yalobusha pipeline segment 800–2 will be a 0.060% reduction in capacity and that the cost associated with the proposed abandonment is $262,000.

Any questions concerning this application may be directed to Jacques Hodges, Attorney, Tennessee Gas Pipeline Company, 9 East Greenway Plaza, Houston, Texas 77046, at (832)

676–5509 or fax (832) 676–2251 or Veronica Hill, Certificates & Regulatory Compliance, at (832) 676–3295 or fax (832) 676–2231.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued. *Comment Date:* March 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4843 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–51–000]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell, Westar Energy, Inc.; Order Conditionally Granting Authorization To Issue Long-Term Unsecured Debt and Announcing New Policy on Conditioning Securities Authorizations

Issued: February 21, 2003.

1. In this order, the Commission will grant Westar Energy, Inc.'s (Westar, formerly Western Resources, Inc.) request to issue long-term, unsecured debt, but will do so conditionally with restrictions on this authorization. In addition, the Commission intends that all future issuances of secured and unsecured debt authorized by the Commission will be similarly conditioned. This order benefits customers by ensuring that the authorization of a public utility to issue securities accords with the requirements of section 204 of the Federal Power Act (FPA).[1]

Background

2. On September 6, 2002, Westar submitted an application pursuant to section 204(a) of the FPA [2] seeking authorization to issue long-term, unsecured debt in an amount not to exceed $650 million at any one time. Westar also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2 (2002).

3. On November 1, 2002, the Director of the Office of Markets, Tariffs, and Rates' Division of Tariffs and Market Development-Central requested additional information from Westar. Westar filed its response on November 15, 2002 (Westar Response). Westar, among other things, provided details related to its existing soon-to-mature debt securities,[3] its proposed debt issuance and why it believes the proposed issuance of the long-term, unsecured debt is in the public interest.

Notice, Interventions and Motions

4. Notices of the application and the data request response were published in the **Federal Register**, 67 FR 59058 (2002) and 67 FR 70725 (2002), respectively. The Kansas Commission filed a notice of intervention and comments on October 2, 2002. MBIA Insurance Company (MBIA) submitted timely motions to intervene and comments on October 3, 2002, and December 11, 2002.

5. The Kansas Commission states that the Commission should view Westar's application in the context of concerns about the capital structure and debt obligations of Westar and its affiliates.[4] The Kansas Commission also states that the Commission should not construe its filing as a request to deny Westar financing. However, the Kansas Commission emphasizes that its decision not to protest is based and conditioned upon Westar's declarations that the proceeds will be used solely to retire existing debt and that any debt issued will be ''unsecured.''[5]

6. MBIA insures approximately $500 million of bonds secured by the first mortgage pledge of Westar and its subsidiary, Kansas Gas and Electric Company, and closely tracks Westar's financial health. MBIA states that it has become alarmed at what it views as recent indications regarding troubling financial and management issues with Westar,[6] and that Westar's application contains scant information on how Westar's proposed issuance will relate to Westar's strained financial status. MBIA encourages the Commission to exercise appropriate due diligence to ensure that the standards of section 204 are met and that the issuance of the securities will not lead to further deterioration.[7]

7. On October 18, 2002, Westar submitted an answer in response to the Kansas Commission's and MBIA's comments.

8. On November 26, 2002, the Kansas Commission filed a motion to lodge its Order No. 51, requiring financial and corporate restructuring by Westar. This order requires Westar to obtain Kansas Commission approval before the issuance of any debt, to structurally separate its utility subsidiaries from its non-utility businesses and to reverse certain accounting transactions among its affiliates. Order No. 51 also provides

[1] 16 U.S.C. 824c (2000).

[2] 16 U.S.C. 824c(a) (2000).

[3] Westar's pre-existing debt issuances were authorized by either this Commission or the Kansas Corporation Commission (Kansas Commission) with no conditions imposed on how much of the borrowings could be used for non-utility businesses or the amount of Westar's assets that could be used to secure the debt.

[4] *See* Kansas Commission Notice of Intervention at 2.

[5] Id. at 3–4.

[6] MBIA notes: (1) An anticipated Kansas Commission order requiring a comprehensive restructuring, (2) reports of grand jury investigations of company executives and (3) Westar's efforts in seeking an exemption from limitations imposed by the Investment Company Act of 1940.

[7] *See* Motion to Intervene at 1–2.

that Westar should take steps to reduce its debt, utilizing available cash flow from electric operations to reduce non-utility debt secured by utility assets. The Kansas Commission states that Westar should consider the sale of subsidiaries Protection One, Inc. and ONEOK, Inc. stock, and a reduction of dividends.[8]

9. On January 6, 2003, the Kansas Commission filed a motion to lodge its Order

No. 55, clarifying Order No. 51. Among other things, Order No. 55 clarifies Westar's financial and corporate restructuring requirements; establishes an August 1, 2003, restructuring deadline; requires monthly progress reports on Westar's debt reduction; affirms that Westar must reduce secured utility debt by $100 million per year from cash flow; affirms that the appropriate amount of debt after the restructuring is $1.47 billion; and affirms the Kansas Commission's authority to require Kansas Commission approval before the issuance of any additional debt.[9]

Discussion

Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2002), the notice of intervention and timely, unopposed motion to intervene serve to make the parties that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213, prohibits answers to protests unless otherwise permitted by the decisional authority. We do not find that good cause exists to allow Westar's answer, as it does not provide additional information assisting us in the decision-making process.

11. Rule 212(a)(2) of the Commission's Rules of Practice and Procedure allows motions to be filed by participants who have filed timely, interventions that have not been denied.[10] Accordingly, the Commission accepts, and the Commission will grant, the Kansas Commission's motions to lodge Order Nos. 51 and 55.

Westar's Conditional Securities Authorization

12. Section 204(a) of the FPA provides that requests for authority to issue securities or to assume liabilities shall be granted if the Commission finds that the issuance:

(a) is for some lawful object, within the corporate purposes of the applicant, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes.[11]

13. The Commission concludes that Westar's requested authorization, as conditioned below, meets the standards of section 204.

14. The Commission finds that the proposed issuance of long-term, unsecured debt is for a lawful object within Westar's corporate purposes and is necessary, appropriate and consistent with Westar's performance as a public utility. Westar states it will issue the proposed debt in the second quarter of 2003 and use the proceeds to refinance debt that effectively matures in August 2003 by virtue of a put/call agreement.[12] Westar also states it is refinancing the unsecured debt in order to meet the requirements of a bank credit agreement requiring the debt to be retired 60 days prior to maturity and that without the ability to refinance Westar could potentially face a liquidity crisis.[13] Refinancing or retiring debt is a lawful object and is routinely practiced in the electric industry. The Commission further finds that the authorization, as conditioned below, is necessary and appropriate, giving Westar, a non-investment grade issuer,[14] the flexibility necessary to refinance its debt securities with the most favorable terms.

15. In reviewing filings under section 204, the Commission evaluates a utility's financial viability based on a review of the financial statements submitted in the application and the utility's interest coverage ratio. An interest coverage ratio is a measure of the utility's ability to meet future debt and interest payments.[15] Westar's pro forma interest coverage ratio is less than what the Commission would typically prefer due in large part to approximately $657 million of non-cash charges from its non-utility subsidiaries that negatively impacted Westar's financial statements. However, Westar has a bank covenant requirement in place, similar to the Commission's interest coverage ratio, whereby Westar must attain a minimum ratio of consolidated earnings before interest, taxes, depreciation, and amortization to consolidated interest expense of 2.0 to 1.0. Westar's ratios on an actual and pro forma basis are 2.7 to 1.0 and 2.5 to 1.0, respectively, and as these ratios show, Westar meets the bank covenant requirement both before and after the proposed financing.[16]

16. In evaluating Westar's financial viability, the Commission also reviewed Westar's debt maturities and cash flow projections over the next five years. While Westar's debt maturities between October 2002 and December 2007 total more than $2.7 billion, Westar projects it will be able to meet these obligations as they come due.[17] Westar also projected a free cash flow remaining after the payment of interest and dividends in excess of $115 million for each of the next four years [18] and states it will be used to further reduce company debt.[19]

17. The Commission has considered all the above information concerning Westar's financial viability.[20] While we recognize that Westar's financial condition has deteriorated, in large part due to its non-utility business activities, without the proposed authorization to refinance soon-to-mature debt Westar could face a liquidity crisis, ultimately harming the public interest.

18. We also note that authorization can be granted only if doing so will be consistent with Westar providing public utility service and will not impair its ability to provide such service. We believe that with the conditions ordered below we can make this finding.

19. Therefore, the Commission will conditionally authorize Westar's request to issue long-term, unsecured debt in an amount not to exceed $650 million, subject to the following conditions.[21]

[8] *See* Motion to Lodge Order No. 51 at 1–2.

[9] *See* Motion to Lodge Order No. 55 at 2–3.

[10] *See* 18 CFR 385.212 (2002).

[11] 16 U.S.C. 824c(a) (2000).

[12] *See* Application at 2–3; Westar Response 7.

[13] *See* Westar Response 7.

[14] *See* Westar Response 7. Independent credit agencies, such as Standard and Poor's and Moody's Investors Services, rated Westar's unsecured debt securities as BB- and Ba2, respectively, with negative outlooks. *See* Application at 2.

[15] The interest coverage ratio is a calculation of income before interest and taxes divided by total interest expense.

[16] *See* Westar Response 6.

[17] *See* Westar Response 12.

[18] Westar calculates free cash flow by adding depreciation and amortization to net income, then subtracting capital expenditures and stock dividends.

[19] *See* Westar Response 12.

[20] The Division of Regulatory Audits in the Commission's Office of the Executive Director performed an audit and found that since 1995 Westar has issued substantial amounts of new debt and used the proceeds to finance non-utility business ventures and to cover operating losses incurred by non-utility businesses. The audit report identifies the following adverse consequences: The credit rating for Westar securities is ''junk status;'' Westar debt is more costly and more difficult to obtain on economically favorable terms; Westar's ratepayers are at risk for paying the increased cost of debt if Westar cannot generate enough cash flow from utility operations to cover the increased debt costs; and Westar will be left with a disproportionate amount of debt if it ''spins off'' some or all of its non-utility businesses.

[21] The scope of the Commission's jurisdiction over securities issuances is limited. For example,

Continued

First, the proceeds of the debt must be used solely for the purpose of retiring outstanding indebtedness, including accrued and unpaid interest due at maturity. Second, Westar is required to file quarterly informational status reports detailing its financial condition and debt-reduction efforts within 30 days of the end of each calendar quarter. Third, Westar must file a Report of Securities Issued within 30 days after the sale or placement of the long-term, unsecured debt, as stated in the Commission's regulations.[22] Finally, Westar must also abide by the following restrictions on secured and unsecured debt.

20. The Commission will impose four additional restrictions and it is the Commission's intention that these restrictions will be applied to all future public utility issuances of secured and unsecured debt authorized by this Commission.[23] First, public utilities seeking authorization to issue debt that is secured (*i.e.*, backed) by utility assets must use the proceeds of the debt for utility purposes only. Second, with respect to such utility asset-secured debt issuances, if any utility assets that secure such debt issuances are divested or ''spun off,'' the debt must ''follow'' the asset and be divested or ''spun off'' as well.

21. Third, if assets financed with unsecured debt are divested or ''spun off,'' the associated unsecured debt must follow those assets. Specifically, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt likewise must ''follow'' the non-utility assets and if the non-utility assets are divested or ''spun off'' then a proportionate share of debt must ''follow'' the associated non-utility assets by being divested or ''spun off'' as well. Last, with respect to unsecured debt used for utility purposes, if utility assets financed by unsecured debt are divested or ''spun off'' to another entity, then a proportionate share of the debt also must be divested or ''spun off''.

22. These restrictions should prevent public utilities from borrowing substantial amounts of monies and using the proceeds to finance non-utility businesses. These restrictions thus should ensure that future issuances of debt are compatible with the public interest, will not impair a public utility's ability to perform in the future and provide appropriate ratepayer protection.[24]

Information To Be filed in Future Section 204 Applications

23. Part 34 of the Commission's regulations sets out the filing requirements for public utilities seeking Commission authorization of the issuance of securities or the assumption of liabilities.[25] In order for the Commission to determine if a security issuance is in the public interest, an application for authority to issue securities must contain, among other things, certain corporate information, a statement as to whether or not any state regulatory body requires an application for authorization to issue the securities, a summary of any rate changes that may apply during or after the period of the issuances, along with accompanying exhibits.[26]

24. The Commission takes this opportunity to remind public utilities that they must include in their applications all information required in part 34 of the Commission's regulations. Specifically, public utilities must include information on the amount, type, maturity date and whether any of the proposed debt issuances will be secured or unsecured. Public utilities also must provide a detailed explanation of the purpose for the requested securities and state if the issuance will be used for utility or non-utility purposes. Public utilities must explain how the proposed issuance meets the standards of section 204(a), rather than merely making a declaration that it does so. Finally, the board of directors' resolutions must include a discussion of the type, amount, and purpose of the proposed issuance and the financial statements should be calculated on both an actual and pro forma basis.

25. We also remind public utilities that section 204 gives the Commission the authority to issue supplemental orders, and modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any security or the associated proceeds may be applied.[27] Westar as well as other public utilities are hereby put on notice that the Commission plans to review the required filings and reports, and may issue supplemental orders as necessary.

26. Finally, while state regulatory authorities may not have approval over a public utility's request for authority to issue securities or assume liabilities filed with the Commission pursuant to section 204 of the FPA, we recognize such matters can have a significant impact on the applicant's ability to perform its public utility obligations at the retail level. Thus, the Commission would find the views of the state commissions with retail rate jurisdiction over section 204 applicants helpful and we encourage those commissions to file comments in section 204 proceedings.

The Commission orders:

(A) Westar is hereby conditionally authorized to issue long-term, unsecured debt in an amount not to exceed $650 million at any one time, under the terms and conditions and for the purposes specified in the application and this order, subject to the conditions discussed in the body of this order.

(B) Westar's requested waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2 is hereby granted.

(C) This authorization is effective as of the date of this order and terminates two years thereafter.

(D) The authorization granted in Ordering Paragraph (A) above is without prejudice to the authority of the Commission with respect to rates, services, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may come before the Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

(F) The Secretary is hereby directed to publish this order in the **Federal Register**.

section 204 of the FPA does not apply to a public utility organized and operating in a state where its securities issuances are regulated by a state commission. *See*, 16 U.S.C. 824c(f) (2000). The Kansas Commission follows a similar statute whereby it must authorize the issuance of long-term securities unless the issuance requires a registration statement to be filed with the Securities and Exchange Commission or the public utility obtains authorization from another state or federal agency. *See* K.S.A. § 66–125 (2001). As directed in Order Nos. 51 and 55, for all future securities authorizations Westar must receive Kansas Commission approval before the issuance of any future debt. Thus, as long as Westar complies with this requirement it will not need our approval prior to such issuance. Westar should, however, file with us an informational copy of any future securities issuance applications that are subject to approval by the Kansas Commission.

[22] *See* 18 CFR 34.10, 131.43 (2002).

[23] MBIA recently testified at the Commission's January 16, 2003, technical conference on capital availability for energy markets, citing concerns that holding companies use assets of regulated utilities to keep shaky unregulated ventures afloat. MBIA requested that the Commission take a more active role in analyzing proposed securities issuances and use its section 204 authority to rigorously evaluate how debt will be used. *See* 16 U.S.C. 824c(a) (2000).

[24] These restrictions are also consistent with the audit report discussed above. *See supra* note 20.

[25] *See* 18 CFR part 34 (2002).

[26] *Id.* at §§ 34.3 through 34.9.

[27] *See* 16 U.S.C. 824c(b) (2000).

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4835 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–156–003, et al.]

TRANSLink Development Company, LLC, et al.; Electric Rate and Corporate Filings

February 24, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. TRANSLink Development Company, LLC

[Docket Nos. EC01–156–003, ER01–3154–003 and ER03–83–002]

Take notice that on February 19, 2003, TRANSLink Development Company, LLC (TRANSLink) tendered for filing with the Federal Energy Regulatory Commission (Commission), for its review and approval, a compliance filing in the aforementioned dockets.

The compliance filing responds to Commission Orders regarding the rates and terms of service that TRANSLink will provide to customers after joining the Midwest ISO as an independent transmission company, thereby expanding the scope of the Midwest ISO regional transmission organization to include the transmission systems of the TRANSLink Participants, including both jurisdictional utilities and municipal and cooperative public power systems.

TRANSLink states that this compliance filing has been served on the parties for the service lists in Docket Nos. EC01–156, ER01–3154, and ER03–83, to the state regulatory authorities in each of the states in which any of the jurisdictional TRANSLink Participants provides electric service to consumers or operates transmission facilities, and to all customers taking service under an open transmission tariff of one of the TRANSLink Participants that will be superseded by the TRANSLink Rate Schedule.

Comment Date: March 12, 2003.

2. PJM Interconnection, L.L.C.

[Docket No. ER03–85–001]

Take notice that on February 19, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing Original Sheet No. 96GGGG to PJM's Open Access Transmission Tariff, Fifth Revised Volume No. 1. PJM states that it submits this revised tariff sheet to comply with the Commission's order of December 12, 2002 in this proceeding. PJM proposes to make the subject tariff sheet effective on November 1, 2002, consistent with the effective date of the remainder of PJM's tariff revisions accepted in this docket and subject to the outcome of the Commission's final rule in Docket No. RM02–1–000.

PJM states that copies of this filing were served upon the official service list for Docket Nos. ER02–1333 and ER03–85, all members of PJM, and the state electric utility regulatory commissions within the PJM region.

Comment Date: March 12, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–86–002]

Take notice that on February 19, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to certain provisions of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's December 19, 2002, Order in this docket. The Midwest ISO has requested an effective date of February 20, 2003.

The Midwest ISO states that it has served a copy of this filing electronically upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been posted electronically on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: March 12, 2003.

4. Unitil Energy Systems, Inc.

[Docket No. ER03–140–001]

Take notice that on February 20, 2003, Unitil Energy Systems, Inc., submitted a corrected Table of Contents to the Open Access Transmission Tariff dated November 1, 2002.

Comment Date: March 13, 2003.

5. Entergy Mississippi, Inc.

[Docket No. ER03–171–002]

Take notice that on February 19, 2003, Entergy Mississippi, Inc., (Entergy) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's order issued January 31, 2003, 102 FERC 61,105, directing Entergy to file an agreement for the lease of Silver Creek Substation (the lease agreement) or submit an explanation identifying why such a filing is not necessary. Entergy submitted its explanation as to why the submittal of the lease agreement is not required by either section 203 or section 205 of the Federal Power Act.

Comment Date: March 12, 2003.

6. Ameren Services Company

[Docket No. ER03–460–001]

Take notice that on February 19, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Service between ASC and Cinergy Services, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Cinergy Services, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: March 12, 2003.

7. Ameren Services Company

[Docket No. ER03–491–001]

Take notice that on February 19, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Service between ASC and Westar Energy, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Westar Energy, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: March 12, 2003.

8. Public Service Company of New Mexico

[Docket No. ER03–542–000]

Take notice that on February 19, 2003, Public Service Company of New Mexico (PNM) tendered for filing a Revised Funding Agreement (designated as First Revised Service Agreement No. 198 under PNM Electric Tariff, Second Revised Volume No. 4) that modifies certain provisions of the original Funding Agreement for the design, engineering and construction services associated with the facilities necessary to interconnect the FPL Energy New Mexico Wind, LLC (FPLE) proposed 204 MW name plate capacity wind farm generation project in eastern New Mexico to PNM's transmission system.

PNM states that copies of the filing have been sent to FPLE, the New Mexico Public Regulation Commission, and the New Mexico Attorney General.

Comment Date: March 12, 2003.

9. Wisconsin Electric Power Company

[Docket No. ER03–543–000]

Take notice that on February 19, 2003, Wisconsin Electric Power Company (Wisconsin Electric) filed with the Federal Energy Regulatory Commission (Commission), a notice of cancellation of First Revised Service Agreement No. 25 under FERC Electric Tariff, Third Revised Volume No. 1. Wisconsin Electric is requesting the cancellation be effective June 1, 2003.

Wisconsin Electric states that copies of the filing have been served on Badger Power Marketing Authority of Wisconsin, Inc., and the Public Service Commission of Wisconsin.

Comment Date: March 12, 2003.

10. Southern Company Services, Inc.

[Docket No. ER03–544–000]

Take notice that on February 19, 2003, Southern Company Services, Inc. (SCS), acting on behalf of itself, Alabama Power Company, and Mississippi Power Company, filed a notice of termination notifying the Commission that the Long-Term Transmission Service Agreement between Entergy Power, Inc. and Alabama Power Company, Mississippi Power Company, and Southern Company Services, Inc., designated SCSI Rate Schedule No. 78, effective on April 27, 1992, and filed with the Federal Energy Regulatory Commission by Southern Company Services, Inc., terminated by its own terms.

Comment Date: March 12, 2003.

11. PacifiCorp

[Docket No. ER03–545–000]

Take notice that on February 20, 2003, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission), unexecuted Umbrella Service Agreements with Conoco Inc., J. Aron & Company, Reliant Energy, Portland General Electric, Pinnacle West, Sempra Energy Trading Corp., UBS Warburg Energy and Williams Energy Marketing & Trading Company under PacifiCorp's market based rate tariff, FERC Electric Tariff, Third Revised Volume No. 12.

PacifiCorp states that copies of this filing were supplied to the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment Date: March 13, 2003.

12. Public Service Electric and Gas Company, and PSEG Energy Resources & Trade LLC

[Docket No. ER03–546–000]

Take notice that on February 20, 2003, Public Service Electric and Gas Company (PSE&G) and PSEG Energy Resources & Trade LLC (PSEG ER&T), filed with the Federal Energy Regulatory Commission (Commission) a request for waiver of the Commission's rules and their market-based rate tariffs and codes of affiliate conduct to the extent necessary to permit PSEG ER&T to participate in the auction for Basic Generation Service (BGS), as approved by the New Jersey Board of Public Utilities, and provide BGS within the service territory of its affiliate PSE&G.

Comment Date: March 13, 2003.

13. Southwest Power Pool, Inc.

[Docket No. ER03–547–000]

Take notice that on February 20, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing an executed agreement between SPP and the SPP Transmission Owners that addresses the relief of capacity restraints at the LaCygne to Stillwell 345 kV Transmission Line (the Circuit). SPP seeks an effective date of February 21, 2003, for this agreement and seeks waiver of the requirements of section 35.13(c)-(h) of the Commission regulations.

The SPP Transmission Owners were served with a copy of this filing.

Comment Date: March 13, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4948 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

February 24, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40

CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket no.	Date filed	Presenter or requester
Prohibited:		
1. RP01–620–000	2–12–03	Ibtissam Chang
2. EC03–20–000/001/002	2–19–03	Ronald L. Leibow
Exempt:		
1. ER02–2330–001/002	2–7–03	Richard A. Montuori
2. ER02–2330–001/002	2–10–03	Robby Robertson
3. ER02–2330–001/002	2–10–03	Deborah B.Goldberg
4. ER02–2330–001/002	2–10–03	William J. Mauro, Jr
5. ER02–2330–001/002	2–10–03	Mark J. Purple
6. ER02–2330–001/002	2–10–03	Benjamin E. Puritz
7. Project No. 2069–007	2–12–03	Nan Allen
8. Project No. 2493–006	2–12–03	D. Robert Lohn
9. CP02–396–000	2–12–03	Trevor Loveday
10. Project No. 2726–012	2–13–03	John Blair/Jennifer Hill
11. CP02–396–000	2–20–03	Joanne Wachholder
12. Project No. 637–000	2–20–03	John T. Gangemi

Magalie R. Salas,

Secretary.

[FR Doc. 03–4846 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0016; FRL–7456–7]

Agency Information Collection Activities: Submission for OMB Review and Approval; Comment Request; NSPS Subpart Da—Standards of Performance for Electric Utility Steam Generating Units, ICR No. 1053.07, OMB Number 2060–0023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart Da—Standards of Performance for Electric Utility Steam Generating Units, OMB Control Number 2060–0023, EPA ICR No. 1053.07. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Comments must be submitted on or before April 2, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 564–7054; fax number (202) 564–0050; email address *chadwick.dan@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0016, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov* or by mail to EPA Docket Center, Environmental Protection Agency, Mail code: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May

31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS Subpart Da—Standards of Performance for Electric Utility Steam Generating Units (OMB Control Number 2060–0023, EPA ICR No. 1053.07). This is a request to renew an existing approved collection that is scheduled to expire on February 28, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Owners or operators of electric utility steam generating units subject to NSPS Subpart Da must make one-time notification of construction/reconstruction, anticipated and actual startup, initial performance test, physical or operational changes, and demonstration of a continuous monitoring system. They must also submit a report on initial performance test results, monitoring results, and excess emissions. Records must be maintained of startups, shutdowns, malfunctions, periods when the continuous monitoring system is inoperative, and of various fuel combustion and pollutant emission parameters.

The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. The monitoring and excess emissions reports are used for problem identification, as a check on source operation and maintenance, and for compliance determination. The information collected from recordkeeping and reporting requirements are used for targeting inspections, and for other uses in compliance and enforcement programs.

Responses to these information collections are deemed to be mandatory, per section 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 4000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 85 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of electric utility steam generating units subject to Subpart Da.

Estimated Number of Respondents: 655.

Frequency of Response: Semiannually, quarterly.

Estimated Total Annual Hour Burden: 33,553.

Estimated Total Annual Cost: $19,490,000, includes $2,200,000 annualized capital and $9,660,000 O&M costs.

Changes in the Estimates: There is an increase of 104,947 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the size of the regulated universe.

Dated: February 19, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–4913 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0022; FRL–7456–8]

Agency Information Collection Activities: Submission of EPA ICR No. 1893.03 (OMB No. 2060–0430) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: Federal Emission Guidelines For Existing Municipal Solid Waste Landfills (Small) (40 CFR part 62, subpart GGG) (OMB Control Number 2060–0430; EPA ICR No. 1893.03). The ICR which is abstracted below, describes the nature of the information collection and its expected burden and cost.

DATES: Additional comments may be submitted on or before April 2, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For questions about this ICR, contact Sharie Centilla, Office of Enforcement and Compliance/Office of Compliance, mail code 2224A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; phone number: (202) 564–0697; fax number: (202) 564–0009; e-mail address: *centilla.sharie@epa.gov.* Refer to EPA ICR Number 1893.03.

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 7, 2002 (67 FR 67830) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0022, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and

the telephone number for the ECDIC Docket is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to ECDIC at *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, mail code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure otherwise is restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to http://www.epa.gov./edocket.

Title: Federal Emission Guidelines For Existing Municipal Solid Waste Landfills (Small) (40 CFR part 62, subpart GGG) (OMB Control Number 2060–0430, EPA ICR Number 1893.03). This is a request to renew an existing approved collection that is scheduled to expire on February 28, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The Environmental Protection Agency (EPA) is charged under section 111 of the Clean Air Act, as amended, to collect data. The information will be used by Agency enforcement personnel to (1) identify existing sources subject to these standards; (2) ensure that Best Demonstrated Technology is being properly applied; and (3) ensure that the emission control devise is being properly operated and maintained on a continuous basis. In addition, records and reports are necessary to enable the EPA to identify landfills that may not be in compliance with these standards. Based on reported information, the EPA can decide which landfills should be inspected and what records or processes should be inspected at the landfill. The records that landfills maintain would indicate to the EPA whether the personnel are operating and maintaining control equipment properly. The type of data required is principally emissions data and would not be confidential. If any information is submitted to the EPA for which a claim of confidentiality is made, the information would be safeguarded according to the Agency policies set forth in 40 CFR, chapter 1, part 2, subpart B.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on November 7, 2002. No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 12 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 173.

Estimated Number of Respondents: 173.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 11,678.

Estimated Total Annual Cost: $659,428 includes $242,000 for Operating and Maintenance costs.

There is a decrease of 3,432 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to recalculations, correction of high estimates of affected landfills, and no new respondents.

Dated: February 21, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–4914 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7457–1]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held March 18–20, 2003, at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: Tuesday, March 18 the Science/Regulatory Work Group will meet; plenary sessions will take place Wednesday, March 19 and Thursday March 20.

ADDRESSES: Hotel Washington, 515 15th Street, NW., Washington, DC.

AGENDA ITEMS: The meetings of the CHPAC are open to the public. The Science/Regulatory Work Group will meet Tuesday, March 18 from 9 a.m. to 5 p.m. The plenary CHPAC will meet on Wednesday, March 19 from 9 a.m. to 5 p.m., with a public comment period at 4:45 p.m., and on Thursday, March 20 from 9 a.m. to 12 p.m.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting.

Agenda items include highlights of the Office of Children's Health Protection (OCHP) activities and reports from the Science and Regulatory Work Group. Other potential agenda items include an EPA briefing on Information Quality Guidelines and an informational panel on human milk contamination.

FOR FURTHER INFORMATION CONTACT: Contact Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2188, *rodman.joanne@epa.gov.*

Dated: February 26, 2003.

Elizabeth Blackburn,

Acting Designated Federal Official.

[FR Doc. 03–4915 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7457–2]

Notice of Availability and Opportunity To Provide Comment on the Draft Final Guidelines for Carcinogen Risk Assessment and the Draft Supplemental Guidance for Assessing Cancer Susceptibility From Early-Life Exposure to Carcinogens

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: EPA is today announcing the availability of, and opportunity to comment on, the Draft Final Guidelines for Carcinogen Risk Assessment and the draft Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens.

In 1996, EPA published for public comment proposed revisions to EPA's 1986 Guidelines for Carcinogen Risk Assessment. Since the 1996 proposal, the Agency has benefitted from extensive public comment and scientific peer review, including three reviews by EPA's Science Advisory Board (SAB). The major issues currently being considered by EPA as it proceeds to issue final Guidelines are identified in the Supplementary Information section of this notice. As announced in November 2001, the July 1999 draft revised Guidelines will continue to serve as EPA's interim guidance to EPA risk assessors preparing cancer risk assessments until final Guidelines are issued.

The Draft Final Guidelines issued today for comment explicitly call for consideration of possible sensitive subpopulations and/or lifestages (such as childhood). Therefore, concurrent with release of the Draft Final Guidelines, EPA is also requesting public comment on draft supplemental guidance describing possible approaches that could be used to assess risks resulting from early life exposure to potential carcinogens. This draft supplemental guidance will be peer reviewed by the Agency's Science Advisory Board at a public meeting that will be announced in a separate **Federal Register** notice. The supplemental guidance is separate from the Guidelines so that it may be more easily updated in a timely manner given the expected rapid evolution of scientific understanding about the effects of early-life exposures.

DATES: Comments must be received by Thursday, May 1, 2003.

ADDRESSES:

Document Availability

The Draft Final Guidelines for Carcinogen Risk Assessment (February 2003, NCEA–F–0644A) and the draft Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens (EPA/630/R–03/003) are available via the Internet from *http://www.epa.gov/ncea/raf/cancer2003.htm.* A limited number of paper copies of the documents are available from the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: 202–564–3261; facsimile: 202–565–0050.

Submitting Comments

One of three methods may be chosen to submit comments, and comments may be in electronic or paper copy format. First, comments may be submitted through EPA's electronic public docket and comment system, EPA Dockets. EPA Dockets is available at *http://www.epa.gov/edocket/.* Once in the system, select ''search,'' then key in the appropriate docket identification number (OAR–2003–0008). Second, comments may be submitted via e-mail to ''*a-and-r-Docket@epa.gov.*'' Third, paper copies of comments may be submitted (in duplicate if possible) to the Air Docket at the Environmental Protection Agency, EPA Docket Center (EPA/DC), Office of Air and Radiation, Mail Code 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please refer to Public Docket Number OAR–2003–0008 in e-mail and in paper correspondence. Acknowledgments will not be sent for electronic or paper comment submissions. Persons providing information or comments should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright because all comments will be made available for public viewing.

Viewing Public Comments

Public comments pertaining to this notice may be viewed by using EPA Dockets, or by visiting EPA's Air Docket. EPA intends to make all comments received in response to this **Federal Register** Notice available in EPA Dockets (*http://www.epa.gov/edocket/*), including documents originally submitted in paper format. To view comments select ''search,'' then key in the appropriate docket identification number (OAR–2003–0008). Also, paper copies of materials related to this notice are available for review under Public Docket No. OAR–2003–0008 at EPA's Air Docket. EPA's Air Docket also makes available for review the comments received on the 1996 Proposed Guidelines under Public Docket No. ORD–CAN–96–02 and comments received on the 1999 draft revised Guidelines during the November 2001 public comment period under Public Docket No. ORD–CAN–2001. EPA's Air Docket is located at the following address: U.S. Environmental Protection Agency (EPA), Public Reading Room, Room B102 EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20460. The Reading Room is open between 8 a.m. and 4:30 p.m., Monday through Friday, except on legal holidays. Visitors to the Public Reading Room are required to show photographic identification and sign the Agency's visitor log. There may be a reasonable fee for copying docket materials, as provided in 40 CFR part 2. You can reach the Air Docket by telephone at 202–566–1742, and by facsimile at 202–566–1741.

FOR FURTHER INFORMATION CONTACT: Dr. William P. Wood, Risk Assessment Forum (mail code 8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone 202–564–3361, or send electronic mail inquiries to *risk.forum@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1983, the National Academy of Sciences/National Research Council (NRC) published its report entitled, Risk Assessment in the Federal Government: Managing the Process. In that report, the NRC recommended that Federal regulatory agencies establish ''inference guidelines'' to promote consistency and

technical quality in risk assessments and to ensure that the risk assessment process was maintained as a scientific effort separate from risk management. EPA responded to this recommendation by publishing a set of risk assessment guidelines in 1986, including Guidelines for Carcinogen Risk Assessment (51 FR 33992, September 24, 1986). These Guidelines set forth principles and procedures to guide EPA scientists in assessing the cancer risks from chemicals or other agents in the environment and to inform the public about these procedures. EPA continues to revise its risk assessment guidelines and to develop new guidelines as experience and scientific understanding evolve. Revisions to the Guidelines for Carcinogen Risk Assessment are intended to make greater use of the increasing scientific understanding of the mechanisms that underlie the carcinogenic process. As part of that process, the Agency published Proposed Guidelines for Carcinogen Risk Assessment in 1996 (61 FR 17960, April 23, 1996).

The draft revisions to the Guidelines have been subject to extensive public comment and scientific peer review, including three reviews by EPA's Science Advisory Board (SAB). In 2001, EPA published a notice (66 FR 59593, November 29, 2001) providing an additional opportunity for public comment on a 1999 draft of the Guidelines. Comments were invited on experience gained in applying previous draft revised Guidelines and on issues raised in previous comments by the SAB and the public. EPA has also considered the recommendations of the NRC (Science and Judgment in Risk Assessment, 1994) in revising the Guidelines. EPA's approach to the recommendations is reflected in the Guidelines themselves. Draft EPA responses to the NRC recommendations were presented in the preamble to the 1996 draft of these revised Guidelines (61 FR 18003, April 23, 1996). EPA anticipates issuing final responses to the NRC recommendations when it issues final Guidelines.

Role of Risk Assessment Guidelines at EPA

The final Guidelines will be guidance only. They will not establish any substantive ''rules'' under the Administrative Procedure Act or any other law and will have no binding effect on EPA or any regulated entity, but instead will represent a non-binding statement of policy. EPA believes that the Draft Final Guidelines represent a sound and up-to-date approach to cancer risk assessment, and the final Guidelines will enhance the application of the best available science in EPA's risk assessments. However, EPA cancer risk assessments may be conducted differently than envisioned in the final Guidelines for many reasons, including (but not limited to) new information, new scientific understanding, or new science policy judgment. The science of risk assessment continues to develop rapidly, and specific components of the final Guidelines may become outdated or may otherwise require modification in individual settings. Use of the final Guidelines in future risk assessments will be based on decisions by EPA that approaches from the final Guidelines are suitable and appropriate in the context of those particular risk assessments. These judgments will be tested through peer review, and risk assessments will be modified to use different approaches if appropriate.

Even though the final Guidelines will not be binding rules, EPA is issuing them in a manner consistent with the procedures in the Administrative Procedure Act that are generally applicable to rulemaking, including providing an opportunity for public comment. EPA will consider and respond to all significant public comments as it prepares the final Guidelines, and will send a copy of the final Guidelines to Congress. EPA certifies that the Draft Final Guidelines will not have a significant impact on a substantial number of small entities because the Guidelines are for the benefit of EPA and impose no requirements or costs on small entities.

Issues Identified in 2001 Public Comments

A range of views were expressed in the comments submitted to EPA in response to the 2001 notice (66 FR 59593, November 29, 2001) (see the Addresses section for information on viewing these comments). Comments on four issues of interest identified by EPA in the 2001 notice included the following:

(1) Default assumptions. Default assumptions are options that EPA can apply in risk assessments when information about the effects of a substance on human health is unavailable, limited, or of insufficient quality. (For example, if no information is available on the effects of a chemical on humans, a common default assumption is that adverse effects observed in animals due to chemical exposure have the potential to occur in humans as well.) Commenters differed on whether default assumptions should be (a) built into each risk assessment unless sufficient evidence is available to depart from them, or (b) invoked only when determined to be necessary given the data available in a particular risk assessment. Commenters also differed on whether EPA's proposed default assumptions should be more protective of public health versus already being excessively conservative.

(2) Hazard descriptors. Under the 1999 draft Guidelines, one or more standard descriptors (*e.g.*, ''Likely to be Carcinogenic to Humans'') were used to express conclusions about the weight of evidence for human carcinogenic potential. Many commenters generally agreed with EPA's approach for the descriptors, but most recommended that EPA refine the phrases and descriptions to enhance their clarity. Two commenters preferred that descriptors not be used at all. A number of commenters advised the Agency to use the ''Carcinogenic to Humans'' descriptor only when epidemiological evidence of carcinogenicity is conclusive.

(3) Mode of action. EPA's draft 1999 Guidelines emphasized the value of understanding a chemical's ''mode of action,'' which refers to the series of steps and processes that lead to cancer formation. Many commenters disagreed with EPA's proposal that confirmatory data be available or a ''cogent biological rationale'' be developed before a mode of action identified in adults (or mature animals) could be considered applicable to children as well. On the other hand, several commenters stated that EPA should require much stronger evidence before concluding that a particular mode of action operates in both adults and children.

(4) Margin of exposure analysis. A margin of exposure analysis is an approach described in the 1999 draft Guidelines to inform decision-makers about cancer risks at relatively low levels of exposure. The 1999 draft Guidelines suggested its use in the case of certain carcinogens where mode of action data support a nonlinear approach for describing the relationship between dose and response for the chemical. Several commenters expressed concern that the margin of exposure analysis as described by EPA would not be sufficiently protective of public health. Other commenters stated that it inappropriately mixed risk assessment and risk management considerations and was problematic because it removed quantitative estimation of cancer risk from risk assessment.

Key Features of the Draft Final Guidelines

EPA's guiding principle for revisions to the Guidelines is that Agency cancer risk assessments be both public health protective and scientifically sound. By public health protective, EPA means that risk assessments should consider a range of susceptibilities among the human population and, in the absence of complete knowledge, employ assumptions that will reflect the risks to susceptible subpopulations and lifestages. By scientifically sound, EPA means that risk assessments should reflect current and evolving scientific practice and describe risks in a clear, consistent, and reasonable manner. In particular, the revisions to the Guidelines are intended to make greater use of the increasing scientific understanding of the mechanisms that underlie the carcinogenic process. EPA has also designed the Guidelines to be flexible enough to accommodate future scientific advances in science and risk assessment practices. EPA is particularly interested in public comments on the following areas that have been the focus of the Agency's attention in preparing today's Draft Final Guidelines:

(1) Use of default options. The Draft Final Guidelines clarify the role of default options (default assumptions) in the Agency's risk assessments. Rather than view default options as the starting point from which departures may be justified by new scientific information, the Guidelines emphasize that assessments begin with a critical analysis of the available data, and defaults would be invoked as needed when too much uncertainty exists or critical data are missing. In keeping with EPA's mission and the advice of numerous scientific advisory panels, the Agency's default options are constructed to be public health protective. The decision to invoke a default option would be determined on a case-by-case basis. Given the multitude of different types of risk assessments and potential default options, it is neither possible nor desirable to specify step-by-step criteria for decisions to invoke a default option. The Guidelines, however, identify general principles for invoking default options (as originally articulated by the National Research Council): Such decisions should be scientifically defensible, consistent with EPA's statutory mission, and responsive to the needs of decision-makers.

(2) Hazard descriptors. The Draft Final Guidelines continue to emphasize the importance of weighing all of the evidence in reaching conclusions about the human carcinogenic potential of agents, with hazard descriptors used to facilitate clarity in describing carcinogenicity conclusions. Several of the hazard descriptors presented in the Draft Final Guidelines have been modified from previous drafts of the Guidelines, and the discussion of when they would apply has been strengthened. Descriptors may apply only to certain routes of exposure, dose ranges, and durations of exposure. The following five descriptors are discussed in the Guidelines: Carcinogenic to Humans; Likely to Be Carcinogenic to Humans; Suggestive Evidence of Carcinogenic Potential; Inadequate Information to Assess Carcinogenic Potential; and Not Likely to Be Carcinogenic to Humans.

(3) Mode of action. The use of mode of action in the assessment of potential carcinogens is the main thrust of the Draft Final Guidelines. This area of emphasis arose because of scientific breakthroughs concerning the causes of cancer induction. As discussed in the Draft Final Guidelines, an important use of mode-of-action information is to identify susceptible populations and lifestages. Because it is rare to have epidemiologic studies or animal bioassays conducted in susceptible individuals, identifying the key events of the mode of action and the risk factors that can augment these key events can be critical in understanding risks to susceptible populations.

(4) Extrapolation to lower doses. An important issue to address in most EPA risk assessments is the estimation of risks at levels of environmental exposure (doses) that are lower than the levels at which adverse effects (responses) have been observed. Historically, EPA used an approach known as linear extrapolation for all potential carcinogens, which involves modeling risk in an approximately straight line extrapolation from a particular dose level (the point of departure) to the zero dose/zero response point. This approach differs from that used by EPA in assessing risks in the case of most noncancer effects, which typically involve nonlinear extrapolation. The Draft Final Guidelines generally reaffirm the use of a linear extrapolation approach for carcinogens when mode of action information is limited or indicates a linear dose-response relationship, such as in the case of mutagenic agents. The Draft Final Guidelines also discuss potential uses of nonlinear extrapolation when consistent with understanding of the mode of action, and recommend the development of a reference dose (or reference concentration) as established by EPA for effects other than cancer. This default approach is in keeping with the Agency's goal of harmonizing the assessment of risks from agents, whether carcinogens or not, that operate by a nonlinear mode of action.

(5) Susceptible populations and lifestages. The Draft Final Guidelines explicitly recognize that variability exists among people in their susceptibility to carcinogens and emphasize that this variability should be considered in risk assessment. Some subpopulations may experience increased susceptibility to carcinogens throughout their lives, such as people who have inherited a predisposition to certain cancer types or reduced capacity to repair genetic damage. Also, during certain lifestages the entire population may experience heightened susceptibility to carcinogens. In particular, the Guidelines note that childhood may be a lifestage of greater susceptibility for a number of reasons, such as susceptibility related to the rapid growth and development that occurs prenatally and after birth.

Supplemental Guidance on Early-Life Exposure

The discussion of consideration of childhood risks in the Draft Final Guidelines has been augmented by the development of the separate draft document entitled ''Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens.'' This document contains an analysis of studies and a possible approach for how quantitative scientific data could inform risk assessments when exposure to carcinogens occurring during childhood is considered. The draft document will be reviewed by EPA's Science Advisory Board following the public comment period. After SAB recommendations and public comments are incorporated into the document, the supplemental guidance will be issued separately from the final Cancer Guidelines so that it may be more easily updated in a timely manner given the expected rapid evolution of scientific understanding about the effects of early-life exposures.

Request for Comment

EPA requests comments on today's Draft Final Guidelines and will consider all comments in completing final Guidelines. Comments on earlier drafts of the revised Guidelines already submitted to EPA need not be resubmitted. Public comments are also invited on the draft supplemental guidance on early-life exposure to carcinogens. Following the public

comment period, EPA's SAB will peer-review the supplemental guidance. A separate notice of the planned SAB meeting will also appear in the **Federal Register**.

Dated: February 25, 2003.

Paul Gilman,

Assistant Administrator for Research and Development.

[FR Doc. 03–4912 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of $113 million worth of U.S. goods and services to a buyer in India. The equipment will enable the Indian buyer to produce 553,000 metric tons of Pure Terephthalic Acid (PTA) annually. According to the foreign buyer, the additional capacity of PTA is likely to be entirely consumed in the Indian market. However, depending on market conditions in India, some of the production could be exported to China, the leading market for the Indian buyer's other products. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Ave., NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 03–4866 Filed 2–28–03; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

February 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 2, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–7232 or via Internet at *Kim_A._Johnson@omb.eop.gov,* and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB review of this collection with an approval by February 20, 2003.*

OMB Control Number: 3060–0113.

Type of Review: Revision of a currently approved collection.

Title: Broadcast EEO Program Report, FCC Form 396.

Form Number: FCC 396.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,000.

Estimated Time per Response: 1.5 hours.

Frequency of Response: Recordkeeping; Renewal reporting requirement.

Total Annual Burden: 3,000 hours.

Total Annual Cost: $100,000.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new rules reinstate the requirement that broadcast licensees file the FCC Form 396 at the time they file for renewal of license. The new EEO rules also ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. Among other things, the Second R&O affords broadcasters with five or more full-time employees maximum flexibility in designing EEO programs while ensuring broad dissemination of full-time employment opportunities. These broadcasters must file annually an EEO public file report detailing their outreach efforts. In addition, licensees must include a narrative statement demonstrating how the station achieved an inclusive outreach in the prior two years and report the status of any employment discrimination complaints.

OMB Control Number: 3060–0120.

Type of Review: Revision of a currently approved collection.

Title: Broadcast Equal Employment Opportunity Model Program Report, FCC Form 396–A.

Form Number: FCC 396–A.

Respondents: Business or other for-profit entity; Not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 5,000 hours.

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new rules reinstate the requirement that broadcast licensees file the FCC Form 396–A at the time they file applications for construction permits, or assignments or transfers of license. The new EEO rules also ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. While FCC Form 396–A remains almost entirely the same as the form used under the rules adopted in 2000, the Second R&O also builds in flexibility for licensees to implement a program in compliance with the new

rules, *i.e.*, it allows for a range of community outreach programs to those interested in broadcast careers, and broadcasters with five or more full-time employees may list recruitment sources they plan to use.

OMB Control Number: 3060–0212.

Type of Review: Revision of a currently approved collection.

Title: Section 73.2080, Equal Employment Opportunities (EEO Rule).

Form Number: N/A.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 10,825.

Estimated Time per Response: 42 hours.

Frequency of Response: Recordkeeping; Annual reporting requirement.

Total Annual Burden: 454,650 hours.

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new EEO rules ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. Specifically, the Second R&O adopts EEO recordkeeping and reporting requirements; specifies which EEO materials must be kept in the public inspection file; and requires all broadcasters to adhere to the EEO rules' general anti-discrimination provisions. Only station employment units with five or more full-time employees are subject to the EEO program provisions. Among other requirements, broadcasters must widely distribute job vacancy information and provide full-time job vacancy information to requesting organizations. Broadcasters must also retain records to demonstrate that they have recruited for all full-time permanent positions, *i.e.,* full-time vacancy filled, listings of recruitment sources, dated copies of advertisements, etc., and place such types of records annually in their local public inspection file.

OMB Control Number: 3060–0349.

Type of Review: Revision of a currently approved collection.

Title: Equal Employment Opportunity Requirements.

Form Number: N/A.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,125.

Estimated Time per Response: 42 hours.

Frequency of Response: Recordkeeping; Annual and five year reporting requirements.

Total Annual Burden: 89,250 hours.

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* Among other things, the Second R&O adopts several EEO recordkeeping and reporting requirements. It specifies which EEO materials must be kept in the public inspection file. All multi-channel video program distributor (MVPD) employment units with six or more full-time employees are subject to EEO program provisions and must disseminate employment information widely. MVPDs must also retain records to demonstrate they have recruited for all full-time permanent positions and must place a listing of all full-time vacancies filled and recruitment sources used for each vacancy for the preceding year in their EEO records file.

OMB Control Number: 3060–0922.

Type of Review: Revision of a currently approved collection.

Title: Broadcast Mid-Term Report, FCC Form 397.

Form Number: FCC 397.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 4,300.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Recordkeeping; Mid-point reporting requirement.

Total Annual Burden: 269 hours (one-eighth of respondents file annually).

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new rules adopt a new version of FCC Form 397. The new EEO rules also ensure equal employment opportunity in the broadcast and multi-channel video program distribution industries through outreach to the community in recruitment and prevention of employment discrimination. The new version of FCC Form 397 is filed only once at the mid-point of the eight-year license term of television licensees, with five or more full-time employees, and radio licensees, with ten or more full-time employees. Licensees must certify that they have complied with the FCC's EEO rules during the period prior to the date of the Mid-Term Report and must include copies of EEO reports that are required to be placed in the licensees' local public file for the prior two years.

OMB Control Number: 3060–XXXX.

Type of Review: New collection.

Title: Multi-Channel Video Program Distributor EEO Program Annual Report, FCC Form 396–C.

Form Number: FCC 396–C.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,200.

Estimated Time per Response: 10 mins. to 2.5 hrs.

Frequency of Response: Recordkeeping; Annual and five-year reporting requirements.

Total Annual Burden: 3,188 hours.

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new EEO rules ensure equal employment opportunity in the broadcast and multi-channel video program distribution (MVPD) industries through outreach to the community in recruitment and prevention of employment discrimination. In addition, the Second R&O combined previous FCC Forms 395–A and 395–M, which requested substantially the same information. The FCC adopted new Form 396–C, which is substantially the same as those portions of FCC 395–A and 395–M that sought data about the MVPD's compliance with EEO program requirements, but it omits those portions of the prior forms that sought workforce data. All MVPDs must file an EEO report annually in the public file detailing their outreach efforts and the results for the prior year, as part of the in-depth MVPD investigation conducted once every five years.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–4828 Filed 2–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

February 20, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 2, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0474.

Title: Section 74.1263, Time of Operation.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other profit entities; Not-for-profit institutions.

Number of Respondents: 75.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 38 hours.

Total Annual Costs: $0.00.

Needs and Uses: 47 CFR 74.1263(c) requires licensees of FM translator or booster stations to notify the Commission of their intent to discontinue operations for 30 or more consecutive days. In addition, licensees must notify the Commission within 48 hours of the station's return to operation. Section 74.1263(d) requires FM translator or booster station licensees to notify the Commission of their intent to permanently discontinue operations and to forward the station license to the FCC for cancellation. FCC staff uses these data to keep records up-to-date. These notifications inform FCC staff that frequencies are not being used for a specified amount of time and that frequencies have become available for other users.

OMB Control Number: 3060–0602.

Title: Section 76.917, Notification of Certification Withdrawal.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: State, Local or Tribal Government.

Number of Respondents: 5.

Estimated Time per Response: 0.5 hours.

Frequency of Response: One time reporting requirement.

Total annual burden: 3 hours.

Total Annual Costs: $0.00.

Needs and Uses: 47 CFR 76.917 of the FCC Rules requires a local franchising authority (''LFA'') that has been certified to regulate basic service tier (''BST'') cable rates to notify the Commission if it no longer intends to regulate BST cable rates. The notifications are used by the Commission to readily determine the extent of BST rate regulation of cable systems and to be aware of circumstances where certified LFAs no longer intend to regulate BST cable rates.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–4829 Filed 2–28–03; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

February 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 2, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0927.

Title: Auditor's Annual Independence and Objectivity Certification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5.

Estimated Time Per Response: 5 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 25 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The Responsible Accounting Officer (RAO) letter requires that carriers' independent auditors disclose in writing all relationships between the auditor and its related entities and the carrier and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence; confirm in writing in its professional judgment it is independent of the carrier; and discuss the auditor's independence. The information will be used to determine whether the independent auditors are performing their audits independently and unbiased of the carrier they audit.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–4830 Filed 2–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Pre-Disaster Mitigation Program

AGENCY: Federal Insurance and Mitigation Administration, Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of Pre-Disaster Mitigation planning grants.

SUMMARY: FEMA gives notice of the availability of mitigation planning grants for fiscal year (FY) 2003 under the Pre-Disaster Mitigation (PDM) Program, authorized by section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5133, as amended by section 102 of the Disaster Mitigation Act of 2000 (DMA), Public Law 106–390, 114 Stat. 1552. Consolidated Appropriations Resolution, 2003, H.J. Res. 2 (February 20, 2003), directs FEMA to provide $250,000 of the FY 2003 appropriation to each of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa for eligible State and local (to include Indian Tribal governments) hazard mitigation planning. However, a general provision in the law directs that every program, project, and activity be reduced by .65 percent. Therefore, the maximum Federal share is $248,375.

FEMA will contribute up to 75 percent of the cost of activities approved for funding up to a maximum of $248,375. At least 25 percent of the total eligible costs must be provided from a non-Federal source. There will be no additional FEMA funding available for cost overruns.

All contributions, cash and in-kind, are accepted as part of the non-Federal matching share. Except as allowed by Federal statute, no other Federal funds can be used as a match. Requirements for in-kind contributions can be found in 44 CFR 13.24. In-kind contributions must be comprised of eligible program costs. The following documentation is required for in-kind contributions: record of source of donor, dates, rates, amounts, and deposit slips (cash contributions only).

Grants awarded to small, impoverished communities may receive a Federal cost share of up to 90 percent of the total cost to implement eligible PDM activities. A small, impoverished community must meet all of the following criteria:

- It must be a community of 3,000 or fewer individuals that is identified by the State as a rural community, and is not a remote area within the corporate boundaries of a larger city;
- It must be economically disadvantaged, with residents having an average per capita annual income not exceeding 80 percent of national per capita income, based on best available data;
- It must have a local unemployment rate that exceeds by one percentage point or more, the most recently reported, average yearly national unemployment rate; and
- It must meet any other factors as determined by the State in which the community is located.

DATES: Each of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa must submit a grant application to the appropriate FEMA Regional Office by April 30, 2003. If an applicant cannot meet the April 30, 2003, application deadline due to budget issues related to cost share, a letter of intent must be submitted to the Regional Director by April 30, 2003. The letter should indicate the intent to submit a FY 2003 PDM planning grant application, include an explanation of relevant budget issues, and provide a list of proposed activities and sub-grantees. Grant applications from applicants that submit a letter of intent by April 30, 2003, are due to FEMA by July 31, 2003.

ADDRESSES: FEMA Regional Offices:

Serving Maine, New Hampshire, Vermont, Rhode Island, Connecticut, and Massachusetts: FEMA Region I, Federal Regional Center, Building A, 63 Old Marlboro Road, Maynard, MA 01754–2147.

Serving New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands: FEMA Region II, 26 Federal Plaza, Rm. 1337, New York, NY 10278–0002.

Serving the District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, and West Virginia: FEMA Region III, 1 Independence Mall, 6th Floor, 615 Chestnut Street, Philadelphia, PA 19106–4404.

Serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: FEMA Region IV, 3003 Chamblee Tucker Road, Atlanta, GA 30341.

Serving Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: FEMA Region V, 536 S. Clark Street, 6th Floor, Chicago, IL 60605.

Serving Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: FEMA Region VI, FRC 800 North Loop 288, Denton, TX 76201–3698.

Serving Iowa, Kansas, Missouri, and Nebraska: FEMA Region VII, 2323 Grand Avenue, Suite 900, Kansas City, MO 64108.

Serving Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming: FEMA Region VIII, Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267.

Serving Arizona, California, Hawaii, Nevada, the Territory of American Samoa, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, and the Federated States of Micronesia: FEMA Region IX, Building 105, Presidio of San Francisco, San Francisco, CA 94129–1250.

Serving Alaska, Idaho, Oregon, and Washington: FEMA Region X, Federal Regional Center, 130 228th Street, SW., Bothell, WA 98021–979.

FOR FURTHER INFORMATION CONTACT: Margaret Lawless, Program Planning and Delivery Division, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Room 401, Washington, DC 20472, (202) 646–3027 or E-mail: *Margaret.Lawless@fema.gov.*

SUPPLEMENTARY INFORMATION:

Appropriations

Consolidated Appropriations Resolution, 2003, H.J. Res. 2 (February

20, 2003), directs FEMA to provide $250,000 of the $150M appropriated in FY 2003 for each of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa for eligible State and local (to include Indian tribal governments) hazard mitigation planning. However, a general provision in the law directs that every program, project, and activity be reduced by .65 percent. Therefore, the maximum Federal share is $248,375. We are requesting applications for mitigation planning grants from these entities.

Background

44 CFR part 201, Hazard Mitigation Planning, establishes criteria for State and local hazard mitigation planning, pursuant to section 322 of the Stafford Act, as amended by section 104 of the DMA. After November 1, 2003, FEMA-approved local mitigation plans will be required as a condition of receiving Pre-Disaster Mitigation grants for local mitigation project grants. After November 1, 2004, a FEMA-approved Standard State mitigation plan will be required as a condition of receiving Pre-Disaster Mitigation grants for State and local mitigation project activities. The Standard State Mitigation Plan will also be required for non-emergency assistance provided under the Stafford Act, including Public Assistance restoration of damaged facilities and Hazard Mitigation Grant Program funding. Therefore, the development of State and local multi-hazard mitigation plans is key to maintaining eligibility for future FEMA mitigation funding.

For FY 2003 PDM planning funds, awards will be governed by H.J. Res. 2 (February 20, 2003), section 203 of the Stafford Act, this notice, and program guidance, which will be made available to the public on the FEMA Internet site: *http://www.fema.gov.*

Applicant Eligibility

Each of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa is eligible to apply to FEMA for assistance as a grantee under this Notice of Funds Availability.

Local governments and Indian Tribal governments should consult the official designated point of contact in their State/Territory for more information on the process the State requires to be followed in applying for assistance.

All applicants must be participating in the National Flood Insurance Program (NFIP) if they have been identified through the NFIP as having a Special Flood Hazard Area (a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) has been issued). In addition, the community must not be suspended or on probation from the NFIP (except as directed by H.J. Res 2, February 20, 2003).

Grant Application Process

Local governments and Indian Tribal governments should consult the official designated point of contact in their State for more information on the process the State requires to be followed in applying for assistance.

Each of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa are requested to submit to the appropriate FEMA Regional Office the grant application, which can be obtained from the FEMA Regional Office.

The grant application should include:

- Application for Federal Assistance, Standard Form 424;
- Budget Information—Non-Construction Program, FEMA Form 20–20;
- Budget Narrative explaining cost items that have been budgeted;
- Summary Sheet for Assurances and Certification, FEMA Form 20–16;
- Assurances—Non-Construction Program, FEMA Form 20–16A;
- Certification Regarding Lobbying; Debarment, Suspension and Other Responsible Matters; and Drug-Free Workplace Requirements, FEMA Form 20–16C;
- Disclosure of Lobbying Activities, Standard Form LLL;
- Approved Indirect Cost Agreement, if applicable; and,
- Program Narrative identifying the activities for which funding is requested.

The Program Narrative should include the following:

- Individual planning locations and name of Sub-grantees;
- Individual planning costs, including Federal and non-Federal shares;
- Individual planning scopes of work, including timelines and key milestones;
- Certification that the included planning activities have been evaluated, meet all PDM Program eligibility criteria, and will be implemented in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- Assessment of the extent to which communities meet the relevant criteria under section 203(g) of the Stafford Act.

All planning activities included in the Program Narrative should be ranked in order of priority to the grantee.

Eligible Activities

Funds may be used to develop State, Tribal, and local hazard mitigation plans that meet the planning criteria outlined in 44 CFR part 201, which implements § 322 of the Stafford Act. This may include developing countywide or multi-jurisdictional plans (must be adopted by all jurisdictions participating) since many issues are better resolved by evaluating hazards in a more comprehensive fashion. Multi-hazard mitigation planning may include hazards caused by non-natural forces but must be primarily focused on natural hazards. Risk assessments for mitigation plans are also eligible.

As part of the planning grant, up to 10 percent of the funds awarded may be used to fund activities to disseminate information regarding cost-effective mitigation technologies. These activities include marketing, outreach, training and education (including planning workshops), as related to plan development.

Up to 5 percent of the funds awarded may be used to assist in soliciting and reviewing PDM applications and for providing technical assistance to sub-grantees. Sub-grantee management costs to implement awarded activities will be limited to 5 percent of the sub-grant award and may be included as part of the activity costs. Indirect costs should be included as part of management costs, if applicable, and must be supported with a current Indirect Cost Rate approved by a Federal Cognizant Agency.

Reporting Requirements

The following reports are required:

- Federal Cash Transaction Reports. If the Grantee uses the HHS Payment Management System-SMARTLINK, the Grantee shall submit a copy of the PMS 272 Cash Transaction Report submitted to the Federal Health and Human Services (HHS) to FEMA.
- Financial Status Reports. The Grantee shall submit Financial Status Reports, SF 269 or FF 20–10, to the FEMA regional office within 30 days from the end of the first federal quarter following the initial grant award. The Regional Director may waive this initial report. The Grantee shall submit quarterly financial status reports thereafter until the grant ends. Reports are due on January 30, April 30, July 30, and October 30.
- Performance Reports:

1. The Grantee shall submit performance reports (no required format) to the FEMA Regional Office within 30 days after end of each quarter.

The report shall consist of a comparison of actual accomplishment to the approved activity objectives. Reports are due January 30, April 30, July 30 and October 30. Final financial reports are due 90 days after the close of the grant. Performance Reports should be submitted to the Assistance Officer, listed under Article V, FEMA Officials.

2. Quarterly performance report shall report the name, completion status, expenditure, and payment-to-date of each approved activity/sub-grant award under the Grant Award.

• Final Reports. The Grantee shall submit a Final Financial Status Report and Performance Report within 90 days from Grant Award Performance Period expiration date, per 44 CFR 13.50.

• Enforcement. The Regional Director may suspend draw downs from the HHS/Payment Management System-SMARTLINK if quarterly reports are not submitted on time.

Dated: February 26, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–4903 Filed 2–28–03; 8:45 am]

BILLING CODE 6718–04–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0277]

Office of Citizen Services and Communications; Market Research Collection

AGENCY: General Services Administration (GSA).

ACTION: Notice of request for comments on a new one-time collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration, has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Market Research for the Office of Citizen Services and Communications. A request for public comments was published at 67 FR 72690, December 6, 2002. No comments were received.

This information collection will be used to determine the utility and ease of use of GSA's Web site, *GSA.gov.* The respondents include individuals and representatives from businesses currently holding GSA contracts.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of the functions of the agency including whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before: April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Sharon Holcombe, Office of Citizen Services and Communications, (202) 501-2719.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 3090–0277.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this information collection is to inform the General Services Administration (GSA) on how to best provide service and relevance to the American public via GSA's Web site, *GSA.gov.* The information collected from an online survey, focus groups, and Web site usability testing, will be used to refine the *GSA.gov* Web site. The questions to be asked are non-invasive and do not address or probe sensitive issues. It is important for the GSA to gain information from the many diffuse groups it serves; therefore, the GSA will be questioning individuals and households, and businesses and other-for-profit groups.

B. Annual Reporting Burden

Respondents: 190.
Responses Per Respondent: 1.
Total Responses: 190.
Hours Per Response: 72.6 minutes.
Total Burden Hours: 230.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC, 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0277, Market Research Collection for the Office of Citizen Services and Communication, in all correspondence.

Dated: February 24, 2003.

Susan White,

Deputy Chief Information Officer.

[FR Doc. 03–4827 Filed 2–28–03; 8:45 am]

BILLING CODE 6820–CX–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03038]

Cooperative Agreement for Development of the National Violent Death Reporting System; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act and section 391(a) (42 U.S.C. 280b(a)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement surveillance program to expand the implementation of the National Violent Death Reporting System (NVDRS) as mandated in FY 2003 Senate appropriations language. NVDRS will assist State governments to understand the extent of the violence problem in their states and to develop and evaluate violence prevention program efforts. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

In response to Congressional appropriations language in FY 2002, CDC began implementation of NVDRS in six states. The purpose of NVDRS is to generate public health surveillance information at the national, state, and local levels that is more detailed, useful, and timely than is currently available. This information will help develop, inform, and evaluate violence prevention strategies at the state level. The proposed system builds upon a pilot system, the National Violent Injury Statistics System (NVISS) that has been under development since 1999. Additional information on this pilot system can be found at: *http://www.NVISS.org*.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved

approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

Assistance will be provided only to the health departments of states or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the federally recognized Indian tribal governments. In consultation with states, assistance may be provided to political subdivisions of states. States funded under Program Announcement 02059—Cooperative Agreement for Development of National Violent Death Reporting System (Maryland, Massachusetts, New Jersey, Oregon, South Carolina and Virginia) are not eligible to apply.

The ability to obtain population-based information from core data sets is crucial for the successful development of the NVDRS. Eligible applicants must document, through letters of support and memorandums of agreement/ understanding (MOA/MOU), access to information on individual, identifiable decedents from all of the following data sources:

1. Death certificates.
2. Medical examiner and/or coroner records.
3. Police records (Supplemental Homicide Reports at a minimum).
4. Crime laboratory records.

The letters of support must come from the agency authorized to grant access to the specific required data. Each letter must note the most recent year for which data is available to the health department, and note that a MOA/MOU is in place between the applicant and the data agency. The MOA/MOU must provide the applicant access to data while specifying any limitations regarding data use. A copy of the MOA/ MOU must accompany each letter of support to confirm access.

Applicants from states that do not have centralized, statewide medical examiner/coroner, or police records must obtain letters of support from the agencies with authority over the four required data sources in three cities or counties within the state, and MOA/ MOUs from at least three of the four agencies in each city or county.

Applications that fail to submit all evidence listed above will be considered non responsive and will be returned without review.

Applications will be classified into two categories, ''New'' and ''Experienced.'' States with funding from an external source (other than state funds) for any form of violent death reporting or surveillance occurring among adults, defined as 18 years of age or older, will be considered ''Experienced.'' States with surveillance projects (state or local) funding, such as the Harvard Injury Control Research Center's National Violent Injury Statistics System (NVISS) will be considered ''Experienced.'' States without any such external funding will be considered as ''New'' systems. Funds awarded for this program cannot be used to supplant (replace) existing activity funds.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $2,250,000 is available in FY 2003 to fund approximately eight awards. It is expected that the average award will be $240,000, ranging from $150,000 to $220,000 for states with up to 800 cases of violent death in calendar year 2001 and from $220,000 to $320,000 for states with greater than 800 cases of violent death in 2001. At least one applicant will be funded in each funding range.

''New'' and ''Experienced'' system applications will be evaluated separately; at least one new applicant and one experienced applicant will be funded. It is expected that the awards will begin on or about September 1, 2003 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress, as evidenced by required reports, and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1A. or 1B., Recipient Activities, and CDC will be responsible for the activities under 2. CDC Activities.

Recipient Activities

1A. For New Violent Death Reporting Systems

a. Establish an advisory committee that will help in the development of the state violent death reporting system. Membership should include representatives from agencies that control medical examiner/coroner records, death certificates, police records, and crime laboratory data.

b. Establish routine access to uniquely identifiable case information from each of the four critical data sources for deaths occurring on or after 1/01/2004.

c. Use case definition and uniform data elements developed under Program Announcement 02059.

d. Obtain and code data from all core data sources for all cases identified. The means for obtaining data may be conducted by abstraction from the required data sources, electronic transfer or other method(s).

e. Develop procedures to combine information from the data sources. Maintain a unique case ID number.

f. Establish (1) a centralized location for maintaining a secure data storage system that allows for ready access to and retrieval of your collected data and (2) an off-site, backup storage system for all your data.

g. Transmit data free of personal identifiers electronically to CDC using software provided by the CDC. Office of Management and Budget (OMB) clearance for this data collection is pending.

h. Develop a quality assurance program that includes a systematic review of the accuracy, completeness and timeliness of the data collection process. This should include reabstraction of a sample of cases where applicable, and monitoring of time intervals from death to case completion, as well as routine checks to identify duplicate cases.

i. Evaluate the surveillance system annually using standard guidelines. These include: simplicity, flexibility, data quality, acceptability, sensitivity, predictive value positive, representativeness, timeliness, and stability. (See Morbidity and Mortality Weekly Report (MMWR) Recommendations and Reports, ''Updated guidelines for evaluating public health surveillance systems,'' RR–13, vol. 50, 07/27/2001, found at: *http://www.cdc.gov/mmwr/PDF/RR/RR5013.pdf.*)

j. Prepare standard reports with aggregated data and distribute them widely.

k. Share information learned from project through presentations, peer-reviewed publications and media events.

l. Participate in a collaborative effort coordinated by the CDC to establish a

national violent death reporting system that collects uniform data across states as prescribed in the FY 2002 and FY 2003 appropriations report language. Meetings will be held on a semiannual basis.

Recipient Activities

1B. For Experienced Violent Death Reporting Systems

a. Maintain an advisory committee that will help in the enhancement of the reporting system. The committee should be able to help develop methods for data dissemination and set priorities for helping to develop prevention strategies. The committee should include, at a minimum, representatives from agencies that control the core data sources.

b. Maintain or expand routine access to uniquely identifiable case information from each of the four core data sources for deaths occurring on or after 1/01/2004.

c. Use the case definition and uniform data elements developed under Program Announcement 02059.

d. Use or modify existing procedures that combine information from the data sources. Maintain a unique case ID number.

e. Maintain or modify (1) a centralized location for maintaining a secure data storage system that allows for ready access to and retrieval of all your collected data and (2) an off-site, backup data storage system for all your data.

f. Develop a quality assurance program that includes a systematic review of the accuracy, completeness and timeliness of the data collection process. This should include reabstraction of a sample of cases where applicable and monitoring of time intervals from death to case completion, as well as routine checks to identify duplicate cases.

g. Transmit data free of personal identifiers electronically to CDC using software provided by the CDC. OMB clearance for this data collection is pending.

h. Evaluate the surveillance system annually using standard guidelines. These include: simplicity, flexibility, data quality, acceptability, sensitivity, predictive value positive, representativeness, timeliness, and stability. (*See* MMWR Recommendations and Reports, ''Updated guidelines for evaluating public health surveillance systems,'' RR–13, vol. 50, 07/27/2001, found at: *http://www.cdc.gov/mmwr/PDF/RR/RR5013.pdf.*)

i. Prepare standard reports with aggregated data and distribute them widely.

j. Share information learned from the project through presentations, peer review publications and media events.

k. Participate in a collaborative effort coordinated by the CDC to establish a national violent death reporting system that collects uniform data across states as prescribed in the FY 2002 and FY 2003 appropriations report language. Meetings will be held on a semiannual basis.

Note: ''New'' recipients may choose to begin data gathering in smaller geographic areas, such as cities, counties or regions rather than beginning statewide. ''Experienced'' recipients may choose to expand data gathering to a broader geographic area, if not currently statewide. If an applicant chooses to begin collecting data in a portion of the state, the applicant must outline a plan for expansion statewide within the five-year project period.

2. CDC Activities '' Provide national leadership in the development and implementation of NVDRS through the following:

a. Provide a case definition and required uniform data elements to be collected.

b. Provide standardized model software that can be used to store and transmit data to CDC electronically, and provide software updates, as needed.

c. Train recipients on surveillance systems. This includes: data standards, coding, data entry, data editing, quality assurance functions, record tracking, and reporting format.

d. Provide technical assistance in solving problems in all aspects of the system.

e. Review submitted records for quality and completeness and provide feedback to recipients. Work with the recipient to systematically resolve problems of missing or inaccurate data.

f. Prepare an analysis file of final edited data to be shared with the recipient for data analysis and reporting of findings.

g. Prepare standard reports with aggregated data and distribute them widely.

h. Prepare Office of Management and Budget (OMB) package to obtain clearance for data collection.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 pages, double-spaced, printed on one side, 1.5-inch left margin, 1-inch top, bottom, and right margins, and Courier New 12-point font. The total number of pages should not exceed 70 pages, including appendices and abstract (MOA/MOUs are not counted in the overall page total.) Applicants that fit into the ''Experienced'' category are allowed up to an additional five pages (total of 75 pages) for a required appendix that evaluates their current violent death surveillance system according to standard CDC guidelines.

Note: Applicants who do not follow the content guidelines will have the following point reductions to their overall evaluation score: 1 point for more than 30 pages of the narrative; 1 point for use of a font smaller than 12-point; and 1 point for less than specified margins.

The narrative will consist of, Background, Goals and Objectives, Methods, Experience, Capacity and Staffing, Evaluation and Collaboration.

The application should include the following information: (Documentation of access to required data source should be included in the appendices.)

1. A one-page abstract of proposed activities and project outcomes. The abstract should specify the type of applicant (''New'' or ''Experienced'') and the number of violent deaths category into which the state fits (less than or equal to 800 or greater than 800 deaths.)
2. Background.
3. Goal(s) and Objectives. (Including an outline of a five-year plan with timeline.)
3. Methods.
4. Experience.
5. Capacity and Staffing.
6. Evaluation.
8. Collaboration.
9. Human Subjects.
10. Budget.
11. Appendices.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161—1 (OMB Number 0920–0428.) Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time June 2, 2003.

Submit the application to: Technical Information Management—PA03038, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Applications which are complete and responsive will be subjected to a preliminary evaluation by a Special Emphasis Panel (SEP) to determine if the application is of sufficient technical and scientific merit to warrant further full review. Priority scores will be assigned by the SEP to the core applications. CDC will withdraw from further consideration applications judged to be noncompetitive.

Each application will be evaluated individually against the following criteria by a Special Emphasis Panel (SEP) appointed by CDC:

1. Methods (25 points)

a. The extent to which the applicant describes the methods used for ascertaining cases and obtaining data from core data sources. This should include a discussion of methods used in motivating reporting sources, ensuring high quality data, and resolving data issues.

b. The extent to which the applicant provides a detailed and clear description of how linkage of records from different sources is, or will be, accomplished.

c. The extent to which the applicant describes how data will be stored in a central location in the state.

d. The extent to which the applicant provides a detailed plan for protecting data from loss and assuring confidentiality where required by state law or regulation.

e. The extent to which the applicant provides evidence that proposed activities are not duplications of existing activities. (Experienced applicants only)

2. Goal(s) and Objectives (15 points)

a. The extent to which the applicant has included goals, which are relevant and consistent with the purpose of the program announcement.

b. The extent to which the objectives are specific, measurable, assigned to specific staff, realistic, and time-phased.

c. The extent to which the applicant has included a five-year plan with timeline. Is it realistic? Does it accomplish the goals and objectives?

3. Experience (15 points)

a. The extent to which the applicant documents experience in accessing, collecting, linking, editing, managing, and analyzing surveillance information from multiple data sets, especially experience with mortality surveillance.

b. The extent to which the applicant provides evidence of experience in injury surveillance, conducting data quality assurance activities, and generating data reports.

4. Capacity and Staffing (15 points)

a. The extent to which the applicant provides evidence of existing staff with expertise in SAS software and database manager, (*e.g.*, Microsoft Access), computer programming skills, and skills in data management and quality assurance, especially involving large complex databases.

b. The extent to which the applicant provides a plan, with position description(s), to hire someone with such skills and expertise. Resumes or curriculum vitae should be included.

c. The extent to which the applicant provides a timetable showing when information regarding the occurrence of a violent death during a given calendar quarter is available to the applicant from each of the four required data sources.

5. Collaboration (15 points)

a. The extent to which the applicant provides evidence of involvement by key stakeholders in the current system or a plan for including key stakeholders in the development of a violent death reporting system.

b. The extent to which the applicant documents the quality and specificity of access to required and optional data sources, *e.g.*, the limitations of that access, the most recent year data are available, the timeliness and availability of data from all core and optional data sources, the duration of access, etc. Information from the letters of support will be considered in this context.

c. The extent to which the applicant provides additional letters of support from potential partners in the project.

d. The extent to which the letters of support document specific contributions of the partner, including but not limited to a description of the precise nature of past and proposed collaborations, products, services, and other activities that will be provided by and to the applicant through the proposed collaboration.

6. Evaluation (10 points)

a. The extent to which the applicant provides a detailed plan for evaluating the surveillance system. The plan should include standard CDC surveillance evaluation measures described above.

b. The extent to which the applicant describes both system and data quality assurance procedures.

7. Background (5 points)

The extent to which the applicant documents the magnitude of the violent death problem in the applicant's state and/or target area.

8. Human Subjects (Not Scored)

The extent to which the applicant adequately addresses the requirements of Title 45 CFR part 46 for the protection of human subjects. Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

9. Budget (Not Scored)

The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient and consistent with the stated objectives and planned activities. The Budget should include funds for at least two trips to CDC for program related meetings and training.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, due on July 2 of each year. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, due December 29 of each year.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment I of the program announcement, as posted on the CDC Web site:

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–9 Paperwork Reduction Act Requirements Projects that involve the collection of information from 10 or more persons and that are funded by cooperative agreements will be subject to review and approval by the Office of Management and Budget (OMB.)

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

AR–21 Small, Minority, Women-Owned Businesses

AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Van A. King, Grants Management, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2751, E-mail address: *Vking@cdc.gov.*

For program technical assistance, contact: Leroy Frazier, Jr., MSPH, CHES, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Hwy, NE, MS K60, Atlanta, GA 30341, Telephone number: (770) 488–1507, E-mail address: *Lfrazier1@cdc.gov.*

Dated: February 24, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–4858 Filed 2–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Alaska Subsistence Household Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Officer at the address listed below.

DATES: Submit comments on or before May 2, 2003.

ADDRESSES: Send your comments on the requirement to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, and related forms, contact Anissa Craghead by phone at (703) 358–2445 or by e-mail at *anissa_craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested parties and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* CFR 1320.8(d)). The U.S. Fish and Wildlife Service (we, or the Service) plans to submit a request to OMB for approval of a collection of information related to the subsistence migratory bird harvest in Alaska. We a requesting a 3-year term of approval for this collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Migratory Bird Treaty Act (16 U.S.C. 703–712) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the management of migratory bird populations frequenting the United States and for the setting of harvest regulations that allow for the conservation of those populations. These responsibilities include gathering accurate geographical and temporal data on various characteristics of migratory bird harvest. We use that data to promulgate harvest regulations. Annually, we adjust harvest regulations as needed to provide a maximum of subsistence harvest opportunity while keeping migratory bird populations at desired levels.

The Migratory Bird Treaty Act Protocol Amendment (1995) (Amendment) provides for the customary and traditional use of migratory birds and their eggs for subsistence use by indigenous inhabitants of Alaska. The Amendment, however, states that it is not the intent of the Amendment to cause significant increases in the take of species of migratory birds relative to their continental population sizes. A May 20, 1996, letter of submittal from the Department of State to the White House, which officially accompanied the Amendment, specifies the need for harvest monitoring and states that harvest estimates will be collected cooperatively by the Service, the State

Department of Fish and Game, and Native organizations within the subsistence eligible areas. Harvest survey data help ensure that customary and traditional use of migratory birds and their eggs for subsistence use by indigenous inhabitants of Alaska does not significantly increase the take of species of migratory birds relative to their continental population sizes.

We have monitored the subsistence harvest in Alaska for the past 14 years through the use of annual household surveys in the most heavily used subsistence harvest areas (*e.g.*, Yukon-Kuskokwim Delta). Continuation of this monitoring would enable tracking of any significant changes or trends in levels of harvest and user participation after legalization of the harvest. The harvest survey method and forms that we used to collect information were not approved by the Office of Management and Budget (OMB). We are initiating the process to request OMB approval of these forms through this publication and to request public comment on this information collection. We will not conduct or sponsor any surveys until we obtain OMB approval of this information collection.

This collection helped, and would help, us gather information on the annual subsistence harvests of 49 species of birds, including geese, ducks, swans, cranes, loons, seabirds, shorebirds, and upland game birds. The survey was, and would be, conducted by local village resident surveyors in the subsistence-eligible areas of Alaska, under the guidance of Service employees and contractors (such as native organizations and the Alaska Department of Fish and Game). The local village surveyors annually provided, and would provide, us lists of all households in each village. Randomly selected households then received, and would receive, survey forms from the village surveyor. The household either completed, and would complete, the form independently, or the village surveyor helped, and would help, the household complete the form. Forms were then, and would be, turned in to us. The resulting estimates of harvest per household were, and would be, combined with the complete list of households in the subsistence-eligible areas to provide estimates of the total annual harvest of the 49 species of birds.

We used, and would use, four forms to collect this information. They are described below.

Title: List of All Occupied Households, with Hunting Category Noted.

Approval Number: 1018–xxxx.

Form number: 7–FW–100.

Frequency of Collection: Once per year.

Description of Respondents: Local village surveyors.

Total Annual Responses: 188. We estimate one form for each of the 188 communities, which amounts to 188 forms annually.

Total Annual Burden Hours: 433 hours. We estimate the reporting burden at one minute for each of the total 26,000 households in 188 communities, or 433 hours total.

Note: This form is maintained by the local village surveyor. This form does not record, nor is it arranged or retrieved, by personal identifier.

Title: Households Separated by Hunting Category.

Approval Number: 1018–xxxx.

Form number: 7–FW–101.

Frequency of Collection: Once per year.

Description of Respondents: Local village surveyors.

Total Annual Responses: 188. We estimate one form for each of the 188 communities, which amounts to 188 forms annually.

Total Annual Burden Hours: 94 hours. We estimate it takes each surveyor an average of one-half hour to transfer the information from Form 7–FW–100 to Form 7–FW–101. With an estimated 188 surveyors in up to 188 communities, we estimate 94 hours total annual burden.

Note: The local village surveyor provides this form to us. This form does not record, nor is it arranged or retrieved, by personal identifier.

Title: Permission Slip for Participation in the Survey.

Approval Number: 1018–xxxx.

Form number: 7–FW–102.

Frequency of Collection: Once per year.

Description of Respondents: Households within the subsistence eligible areas of Alaska (Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range (50 CFR part 92.5)).

Total Annual Responses: 16,000. We estimate up to 13,000 of the approximately 26,000 households in the subsistence eligible areas, will participate in the survey. Up to 16,000 households will have to be asked permission in order to get a sample size of 13,000 households.

Total Annual Burden Hours: 1,333 hours. It will take the surveyor an average of 5 minutes per household to determine whether or not that household agrees to participate in the subsistence harvest survey. With an estimated 16,000 households responding to the permission slip, this amounts to 1,333 hours total annual burden.

Note: This form is maintained by the local village surveyor. The surveyor asks each household if that household will participate in the subsistence harvest survey. The surveyor then notes a ''yes'' or a ''no'' on a permission slip. Each household with a ''yes'' permission slip is given a survey form (described below). This form does not record, nor is it arranged or retrieved, by personal identifier.

Title: Migratory Bird Subsistence Harvest Household Survey.

Approval Number: 1018–xxxx.

Form number: 7–FW–103.

Frequency of Collection: Three times per year—spring, summer, and fall.

Description of Respondents: Households within the subsistence eligible areas of Alaska (Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range (50 CFR part 92.5)).

Total Annual Responses: 13,000. We estimate up to 13,000 of the approximately 26,000 households in the subsistence eligible areas will participate in the survey.

Total Annual Burden Hours: 3,250 hours. We estimate the reporting burden to average 5 minutes per respondent for the Migratory Bird Subsistence Harvest Household Survey. With an estimated 13,000 respondents filling out the form three times annually, the annual burden hours total 3,250 hours.

Note: The local village surveyor provides completed survey forms to us. The survey form consists of three pages, one page each for spring, summer, and fall. Each page has 51 bird illustrations, with spaces beside each illustration to mark down numbers of birds and eggs taken. This form does not record, nor is it arranged or retrieved, by personal identifier; the household number is written on each page of the survey form, along with a village number. The results of this annual survey help us understand the effect of subsistence hunting on migratory bird populations, while also evaluating the effects of newly established spring/summer season dates, species closures, and methods and means prohibitions.

We invite comments on this proposed information collection on the following: (1) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be

collected; and (4) ways to minimize the burden of the collection on respondents.

Dated: February 24, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–4876 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 2, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–067283

Applicant: Ralph A. Musella, Arbutus, MD.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–066261

Applicant: Zoo New England, Boston, MA.

The applicant requests a permit to import one male and one female captive born jaguar (Panthera onca) from Zoologico La Jungla, Parque Recreativo Urban (Irtra) Petapa, Ciudad de Guatemala, Guatemala, for the purpose of enhancement of the survival of the species through conservation education and captive breeding.

PRT–066262

Applicant: Tulsa Zoological Park, Tulsa, OK.

The applicant requests a permit to import one male captive born jaguar (Panthera onca) from Zoologico La Jungla, Parque Recreativo Urban (Irtra) Petapa, Ciudad de Guatemala, Guatemala, for the purpose of enhancement of the survival of the species through conservation education and captive breeding.

PRT–066263

Applicant: Akron Zoological Park, Akron, OH.

The applicant requests a permit to import one male captive born jaguar (*Panthera onca*) from Zoologico La Jungla, Parque Recreativo Urban (Irtra) Petapa, Ciudad de Guatemala, Guatemala, for the purpose of enhancement of the survival of the species through conservation education and captive breeding.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–067553

Applicant: Daniel R. Kehoe, Moline, IL.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada, for personal use.

PRT–067142

Applicant: Ricky H. Jackson, Thomasville, NC.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population in Canada, prior to April 30, 1994, for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: February 7, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–4880 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 2, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–067368

Applicant: The Dallas World Aquarium, Dallas, TX,

The applicant requests a permit to purchase in interstate commerce one female captive-born jaguar (*Panthera onca*) from D.C.''s Country Junction Zoo, Lowell, IN, for the purpose of enhancement of the survival of the species through conservation education.

PRT–057924

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE,

The applicant requests a permit to import four male and three female captive-born cheetahs (*Acinonyx jubatus*) from Hoedspruit Research and Breeding Center, Pretoria, Republic of South Africa, for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: February 14, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–4881 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to scientific research and enhancement of survival of endangered species.

DATES: Written comments on these requests for permits must be received April 2, 2003.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director—Ecological Services, U.S. Fish and Wildlife Service, PO Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400, facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

SUPPLEMENTARY INFORMATION: The following applicants have requested renewal of scientific research and enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Paul A. Jankowski, Colorado Department of Transportation, Durango, Colorado, TE–067482.

The applicant requests a permit to take Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: Edward J. Peters, University of Nebraska, Lincoln, Nebraska, TE–067486.

The applicant requests a permit to take pallid sturgeon (*Scaphirhynchus albus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: Craig Kling, TRC Mariah Associates, Inc., Laramie, Wyoming, TE–052582.

The applicant requests a permit amendment to add take of American burying beetle (*Nicrophorus americanus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: Terry Lincoln, Dakota Zoological Society, Bismarck, North Dakota, TE–051815.

The applicant requests a permit amendment to possess pallid sturgeon (*Scaphirhychus albus*) for public display in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

Applicant: Allen Crockett, Walsh Environmental, Golden, Colorado, TE–056101.

The applicant requests a permit amendment to add take of Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

Dated: February 6, 2003.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 03–4822 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council; Standard Grant Application Instructions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice notifies the public that updated instructions for applying for standard grants (*see* **SUPPLEMENTARY INFORMATION**) under the U.S. North American Wetlands Conservation Act are available on the Internet at *http://birdhabitat.fws.gov.*

DATES: Proposals may be submitted at any time. To ensure adequate review time prior to upcoming North American Wetlands Conservation Council (Council) meetings, the Council Coordinator must *receive* proposals by March 7, 2003, and July 25, 2003.

ADDRESSES: For detailed application instructions, sample proposal information, and eligibility criteria visit the North American Wetlands Conservation Act (NAWCA) Web site at *http://birdhabitat.fws.gov.* If you cannot access the Web site, contact the Council Coordinator at U.S. Fish and Wildlife Service, Division of Bird Habitat Conservation, 4401 North Fairfax Drive, MBSP 4075, Arlington, VA 22203, or by phone at 703–358–1784, or by fax at 703–358–2282, or by e-mail at *dbhc@fws.gov.* Send proposals to the Council Coordinator at the above address by mail (faxed proposals are not accepted). Send one original and two copies by regular mail and send one copy by electronic mail to the Council Coordinator. Send a copy of the proposal to your U.S. North American Waterfowl Management Plan (NAWMP) Joint Venture Coordinator (see next section for JV Coordinators) and all partners in the proposal.

FOR FURTHER INFORMATION CONTACT: North American Wetlands Conservation Council Coordinator at (703) 358–1784 or *dbhc@fws.gov,* Bettina Sparrowe at (703) 358–1784 or *bettina_sparrowe@fws.gov,* or a JV Coordinator at the number given below. JV Coordinators can give you advice about developing a proposal, about proposal ranking, and additional information that may be required for compliance requirements for the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and contaminant surveys.

Atlantic Coast (CT, DE, FL, GA, MA, MD, ME, NC, NH, NJ, NY, PA, Puerto Rico, RI, SC, VA, VT, WV) 413–253–8269 or *andrew_milliken@fws.gov.*

Central Valley (Central Valley of CA) 916–414–6459 or *robert_shaffer@fws.gov.*

Gulf Coast (coastal areas of AL, LA, MS, TX) 505–248–6876 or *greg_esslinger@fws.gov.*

Intermountain West (AZ, eastern CA, western CO and ID, southwest MT, western NM, NV, eastern OR, UT, eastern WA, WY) 801–975–3330 x129 or *iwjv@xmission.com.*

Lower Mississippi Valley (AR; eastern KY; northern LA; eastern MS, OK, and TN; northeastern TX) 601–629–6600 or *charles_baxter@fws.gov.*

Northern Great Plains 701–250–4463 x141 or *aschollett@fs.fed.us.*

Pacific Coast (AK, coastal areas of northern CA, HI, coastal areas of OR and WA) 360–696–7630 or *carey_smith@fws.gov.*

Playa Lakes (southeastern CO, southwestern KS, eastern NM, western OK, TX panhandle) 303–926–0777 or *mike.carter@pljv.org.*

Prairie Pothole (northwestern IA, western, MN, northern MT, northern and southeastern ND, eastern SD) 303–236–8155 x252 or *carol_lively@fws.gov.*

Rainwater Basin (17 counties in southeastern NE) 308–382–8112 or *steve_moran@fws.gov.*

San Francisco Bay (San Francisco Bay in CA) 415–883–3854 or *bhuning@sfbayjv.org.*

Upper Mississippi River-Great Lakes (Eastern IA and counties bordering the Missouri River, IL, IN, KS counties bordering the Missouri River, MI, MO, eastern MN, NE counties bordering the Missouri River, OH, WI) 612–713–5433 or *Barbara_pardo@fws.gov.*

SUPPLEMENTARY INFORMATION: The Council has two U.S. conservation grants programs for acquisition, restoration, and enhancement of wetlands in the U.S. Any individual or organization who has a long-term, partner-based project with matching funds can apply. The focus of this notice is standard grant proposals for requests from $51,000 to $1,000,000 per proposal (if well justified, more may be requested). A separate notice will be issued later this year for small grant proposals for requests up to $50,000 per proposal.

The NAWCA established the Council, a Federal-State-private body that recommends projects to the Migratory Bird Conservation Commission (MBCC) for final approval and requires that proposals contain a minimum 1:1 ratio of non-Federal matching funds to grant funds. ''Match'' (as referred to throughout this document) can be cash, in-kind services, or land acquired/title donated for wetlands conservation purposes.

This notice provides a summary of the 2003 proposal instructions and eligibility criteria available on the internet to develop a NAWCA standard grant proposal. In order to complete a proposal correctly, consult the Web site at *http://birdhabitat.fws.gov* for detailed instructions. If you cannot access the Web site, contact the Council Coordinator.

Paperwork Reduction Act: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501), the Office of Management and Budget has assigned clearance number 1018–0100 to this information collection authorized by the North American Wetlands Conservation Act of 1989, as amended (16 U.S.C. 4401 *et seq.*). The information collection solicited is necessary to gain a benefit in the form of a grant, as determined by the Council and MBCC, is necessary to determine the eligibility and relative value of wetland projects, results in an approximate paperwork burden of 400 hours per application, and does not carry a premise of confidentiality. Your response is voluntary. 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 public is invited to submit comments on the accuracy of the estimated average burden hours for application preparation and to suggest ways in which the burden may be reduced. Comments may be submitted to: Information Collection Clearance Officer, Mail Stop 224 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240 and/or Desk Officer for Interior Department (1018–0100), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

New NAWCA Proposal Information: Six documents are available on the Internet at *http://birdhabitat.fws.gov* and are summarized below:

1. *2003 Grant Administration Policies and Assistance Award.* Describes policies and procedures that NAWCA projects must comply with and shows the one-page grant agreement that will be completed if the proposal is funded.

2. *2003 Eligibility Criteria & Processes.* Describes eligible activities and costs for NAWCA projects, gives links to cost principles that apply to all Federal grant programs, and describes steps in the proposal funding process. A standard grant proposal is a four-year plan of action supported by a NAWCA grant and partner funds to conserve wetlands and wetlands-associated fish and wildlife through acquisition (including easements and land title donations), restoration, and/or enhancement (including creation). Match must be non-Federal and at least equal the grant request (referred to as a 1:1 match). Match is eligible up to two years prior to the year the proposal is submitted and grant and match funds are eligible during the two-year future Grant Agreement period.

3. *2003 Proposal Instructions.* Describes changes from the 2002 instructions, gives required information for a proposal and provides examples. A proposal has the following sections: Project Officer's Page; Summary; Purpose and Scope; Budget and Work Plan; Technical Assessment Questions; Attachments (budget table, tract table, partner contribution statements, optional matching contributions plan, Standard Form 424, optional aerial photographs, maps); and Easements, Leases, and Indirect Cost Rate Agreement.

4. *2003 Word Proposal Outline.* A fill-in-the-blank proposal using the Word program.

5. *2003 WordPerfect Proposal Outline.* A fill-in-the-blank proposal using the WordPerfect program.

6. *2003 Excel Budget Table.* A fill-in-the-blank budget table in case you do not want to use the budget tables provided in the Word and WordPerfect files.

Dated: February 4, 2003.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–4878 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On October 30, 2002, a notice was published in the **Federal Register** (67 FR 66166), that an application had been filed with the Fish and Wildlife Service by Neil Bayley for a permit (PRT–063291) to import one polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on February 3, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On November 27, 2002, a notice was published in the **Federal Register** (67 FR 70962), that an application had been filed with the Fish and Wildlife Service by Larry Seiler for a permit (PRT–063898) to import one polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on January 21, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On November 27, 2002, a notice was published in the **Federal Register** (67 FR 70962), that an application had been filed with the Fish and Wildlife Service by William J. Schagel for a permit (PRT–063596) to import one polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on February 3, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: February 7, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–4879 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council (Council) Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Council will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). The meeting is open to the public.

DATES: March 4, 2003, 1 p. m.

ADDRESSES: The meeting will be held at the Department of the Interior, South Penthouse, 18th and C Streets, NW., Washington, DC 20240. The Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop: MBSP 4501–4075, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784 or *dbhc@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to, and final funding approval by, the Commission. Proposal due dates, application instructions, and eligibility requirements are available through the NAWCA Web site at *http://birdhabitat.fws.gov.* Proposals require a minimum of 50 percent non-Federal matching funds. Eighteen Canadian proposals will be considered at the Council meeting. The tentative date for the Commission meeting is June 18.

Dated: February 20, 2003.

Paul R. Schmidt,

Assistant Director—Migratory Birds and State Programs.

[FR Doc. 03–4877 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–923–03–1320–00]

Fair Market Value Meeting for the South Crandall Canyon Coal Tract, Emery County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting and call for public comment on the proposed sale and fair market value and maximum economic recovery consideration for coal lease application UTU–78953.

SUMMARY: The Bureau of Land Management (BLM) will hold a public meeting on March 17, 2003, for the proposed competitive sale, of the South Crandall Canyon coal Tract. BLM requests public comment on the fair market value and environmental effects of this tract. The BLM and the Manti-La Sal National Forest signed a Decision Notice/Finding of No Significant Impact dated February 13, 2003 that discusses the environmental effects of mining this tract. The Notice of Decision was published in the Emery County Progress and the Sun Advocate on February 18, 2003. The lands included in the delineated Federal coal lease tract (''South Crandall Canyon'') are located in Emery County, Utah approximately 5 miles north of Huntington, Utah on public lands located in the Manti-La Sal National Forest and are described as follows:

T. 16 S., R. 7 E., SLM, Emery County, Utah.
Section 4, W2SW4, S2SW4NW4,
Section 5, SE4, S2SE4NE4,
Section 8, E2, NE4NW4, S2NW4,
Section 9, NW4

Approximately 880 acres

Genwal Resources submitted the application for the coal lease. The company plans to mine the coal as an extension from their existing Crandall Canyon mine if the lease is obtained. The South Crandall Canyon coal tract has two potentially minable coal beds, the Blind Canyon and Hiawatha. The minable portions of the coal beds in this area are from 6 to 8 feet in thickness. The tract contains more than 5 million tons of recoverable high-volatile C bituminous coal. The coal quality in the seams on an ''as received basis'' is as

follows: 12,790 Btu/lb., 5.26 percent moisture, 4.68 percent ash, 44.18 percent volatile matter, 45.88 percent fixed carbon and 0.61 percent sulfur. The public is invited to the meeting to make public and/or written comments on the environmental implications of leasing the proposed tract, and also to submit comments on the Fair Market Value and the Maximum Economic Recovery of the tract.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR parts 3422 and 3425, the public meeting is being held on the proposed sale to allow public comment on and discussion of the potential effects of mining and proposed lease. The meeting is being advertised in the Sun Advocate located in Price, Utah and the Emery County Progress located in Emery, Utah. 43 CFR part 3422 states that, No less than 30 days prior to the publication of the notice of sale, the Secretary shall solicit public comments on the Fair Market Value appraisal and Maximum Economic Recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Utah State Office during regular business hours (8 a.m.–4 p.m.) Monday through Friday. Comments on the Fair Market Value and Maximum Economic Recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to the following information.

1. The quality and quantity of the coal resource;

2. The mining methods or methods which would achieve maximum economic recovery of the coal, including specifications of seams to be mined and the most desirable timing and rate of production;

3. Whether this tract is likely to be mined as part of an existing mine and therefore should be evaluated on a realistic incremental basis, in relation to the existing mine to which it has the greatest value;

4. Whether the tract should be evaluated as part of a potential larger mining unit and evaluated as a portion of a new potential mine (*i.e.,* a tract which does not in itself form a logical mining unit);

5. Restrictions to mining that may affect coal recovery;

6. The price that the mined coal would bring when sold;

7. Costs, including mining and reclamation, of producing the coal and the time of production.

8. The percentage rate at which anticipated income streams should be discounted, either with inflation or in the absence of inflation, in which case the anticipated rate of inflation should be given;

9. Depreciation, depletion, amortization and other tax accounting factors;

10. The value of any surface estate where held privately;

11. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area;

12. Any comparable sales data of similar coal lands; and coal quantities and the Fair Market Value of the coal developed by BLM may or may not change as a result of comments received from the public and changes in the market conditions between now and when final economic evaluations are completed.

DATES: The public meeting is being held on Monday, March 17, 2003 at the Huntington Senior Citizen Center, address 100 North, 176 West, starting at 7 p.m. The building is just east of the Fire Department.

FOR FURTHER INFORMATION CONTACT: Written comments on the Fair Market Value and Maximum Economic Recovery must be received by April 14, 2003 and should be addressed to Stan Perkes, 801–539–4036, Bureau of Land Management, Utah State Office, Division of Lands and Minerals, PO Box 45155, Salt Lake City, Utah 84145–0155. Information on the Joint Decision Notice/Finding of No Significant Impact can be obtained by contacting Mr. Stan Perkes, 801–539–4036 for the Bureau of Land Management or Mr. Karl Boyer or Mr. Carter Reed, 435–637–2817 at the Manti-La Sal National Forest Supervisors Office, Price, Utah. The appeal periods for Joint Decision Notice/Finding of No Significant Impact document for the Forest Service Decision to consent to leasing will end on April 4, 2003 and the appeal period for BLM's decision to lease will end on March 20, 2003. Any appeals must be postmarked as of these dates.

Dated: February 24, 2003.

Kent Hoffman,

DSD, Division of Lands and Minerals.

[FR Doc. 03–4853 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–24 1A]

RIN 1004–AD42

Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the proposed amendments of the Bureau of Land Management's grazing administration regulations and announcement of public meetings.

SUMMARY: Under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the BLM will prepare a national, programmatic EIS and conduct public scoping meetings on amending the regulations governing BLM livestock grazing administration on public lands. The current rule, issued in 1995, requires amendment to comply with court decisions, provide greater flexibility to managers and permittees, improve existing administrative procedures and business practices, and promote conservation of public lands. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs as well concerns regarding possible changes to the Grazing Administration Program. The public scoping process will identify issues and develop criteria in the context of the needs and interests of the public. We encourage the public to participate in planned public meetings and to provide comments and suggestions to help us clearly define possible changes to the Grazing Administration Program.

DATES: You must submit your comments by May 2, 2003. BLM may not necessarily consider or include in the Administrative Record for the proposed rule comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed below (*see* **ADDRESSES**). In addition, BLM will hold public scoping meetings to focus on relevant issues and environmental concerns, identify possible alternatives, and help determine the scope of the EIS. The public scooping meetings will be held

on the following dates at the specified locations and times:

Location	Date and time	Address of meeting	Contact person
Billings, Montana	March 18, 2003, 6–10 p.m	Holiday Inn Grand, Montana, 550 Midland Road, Billings, MT 59101.	Mary Apple, 406–896–5258.
Reno, Nevada	March 20, 2003, 6–10 p.m	Reno Sparks Convention Center, 4590 S. Virginia St., Reno, NV 89502.	JoLynn Worley, 775–861–6515.
Albuquerque, New Mexico	March 25, 2003, 6–10 p.m	Hilton of Albuquerque, 1901 University Blvd., NE., Albuquerque, NM 87102.	Kitty Mulkey, 505–438–7511.
Washington, DC	March 27, 2003, 1–5 p.m	Courtyard By Marriott, (General Scott Room) 1600 Rhode Island Ave., NW., Washington, DC 20036.	Tom Gorey, 202–452–5137.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–AD42.

Personal or messenger delivery: 1620 L Street, NW., Room 401, Washington, DC 20036. *Direct internet response: http://www.blm.gov/nhp/news/regulatory/index.html* or go to BLM's external homepage at *http://www.blm.gov/nhp/index.htm* and click on the link.

You may also comment via email at the following address: *WOComment@blm.gov.* We intend this address for use by those who want to keep their electronic comments confidential. Please submit email comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include ''Attn: AD42'' and your name and return address in your email message. You may examine documents pertinent to this proposal at the L Street address. Comments, including names and street addresses of respondents, will be available for public review on the Internet address above and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information relating to the grazing program or the substance of the regulations to be proposed, contact Kenneth Visser at (202) 452–77434. For information relating to the rulemaking process, contact Cynthia Ellis at (202) 452–5012. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the above individuals.

SUPPLEMENTARY INFORMATION: In this issue of the **Federal Register**, BLM is also publishing an advance notice of proposed rulemaking on the changes we are considering making to the regulations governing BLM's Grazing Administration Program. BLM is committed to making the changes to reflect the Secretary's ''4C's'' philosophy of ''consultation, cooperation, and communication all in the service of conservation.'' Since the first set of grazing regulations was issued after passage of the Taylor Grazing Act of 1934 as amended (43 U.S.C. 315, 315a–315r), the regulations have been periodically modified, revised and updated. The last major revision effort culminated when BLM published and implemented comprehensive changes to the grazing regulations in 1995.

The changes BLM is considering would encourage partnerships in public land stewardship and establish new options for BLM and rangeland users in the administration and management of public lands. Our goals are to:

(1) Enhance community-based conservation and citizen-centered stewardship;

(2) Improve BLM business practices; and

(3) Provide greater flexibility for the manager and the permittee.

Description of Information Requested

BLM is committed to carrying out the Secretary's objectives and the Rangeland Management Program established by the Federal Land Policy Management Act of 1976 (43 CFR 1740), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901–1908), and the Taylor Grazing Act of 1934 as amended (43 U.S.C. 315, 315a–315r). We specifically request comments on the topics we are considering for the proposed rule, as they relate to the EIS. These topics include, but are not limited to, the following (the listing is identical to that which appears in the advance notice of proposed rulemaking):

A. Definitions.

We are considering revising or creating definitions of the following terms: Active use; Authorized use; Base property; Grazing lease; Grazing permit; Grazing preference or Preference; Livestock kind or kind of livestock; Monitoring; Reserve common allotment.

B. We are considering changing regulations to clarify current requirements and to allow better rangeland management and permit administration. Changes we are considering include:

- Clarifying the permit renewal performance review requirements when grazing permits are pledged as security for loans.
- Clarifying who is qualified for public lands grazing use and who will receive preference for a grazing permit or lease.
- Clarifying the provisions addressing grazing preference transfers.
- Reinstating an earlier provision that BLM and the permit holder may share title to certain range improvements if the improvement was constructed under a Cooperative Range Improvement Agreement.
- Clarifying that BLM will follow state law with respect to the acquisition of water rights.
- Examining whether BLM should authorize temporarily locked gates on public lands in order to protect private land and improve livestock operations.

• Clarifying which non-permit related violations BLM may take into account in penalizing a permittee.

• Considering ways to streamline the grazing decision appeal process.

• Extending the time period that BLM may approve nonuse of forage from 3 to 5 years for resource improvement, business, or personal needs.

C. We are also considering amendments related to changes in permitted use. Amendments we are considering include:

• Creating provisions re-emphasizing consideration of social, economic, and cultural impacts, in addition to the ecological impacts, of Federal actions to ensure compliance with the National Environmental Policy Act.

• Requiring a permittee/lessee to apply to renew a permit or lease.

• What criteria BLM will consider before approving increases in permitted use.

• Considering whether to amend the provision stating when BLM will implement action that changes grazing management after determining that the allotments used by a permittee or lessee are not meeting or significantly progressing toward meeting land health standards.

D. We are considering adding the following new provisions to the regulations.

• Establishing and administering a new concept called ''Reserve Common Allotments'' (RCA). RCAs would be managed as reserve forage areas for use by permittees whose allotments are undergoing restoration treatments and require rest from grazing. RCA forage would be allocated on a temporary non-renewable basis to permittees participating in restoration on their allotments.

• Adding a fee schedule for preference transfers, crossing permits, applications for nonuse, and replacement/supplemental billing under existing service charge authority. We do not intend to address grazing fees in this rulemaking.

E. We also plan to make minor revisions to correct typographical errors and to make technical changes to improve the clarity of the rule. One change we will make is to remove references to ''conservation use'' permits to reflect the decision in *Public Lands Council* v. *Babbitt,* 929 F.Supp. 1436 (D. Wyo. 1996), *rev'd in part and aff'd in part,* 167 F.3d 1287 (10th Cir. 1999), *aff'd,* 529 U.S. 728 (2000).

Additional information about BLM's Rangeland, Soils, Water, and Air Program is available at *http://web.blm.gov/internal/wo-200/wo-220/index.html.*

Dated: January 17, 2003.

Rebecca W. Watson,

Assistant Secretary of the Interior.

[FR Doc. 03–4934 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee will meet on March 25, 2003. The agenda for the Committee meeting will include discussion of Sacramento Valley Region issues, administrative matters, governance, finance, multi-year planning, priorities, and implementation of the CALFED Bay-Delta Program with State and Federal officials.

DATES: The meeting will be held Tuesday, March 25, 2003 from 10 a.m. to 6 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916) 657–2666 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the Chico Masonic Family Center located at 1110 West East Avenue, Chico, California.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, CALFED Bay-Delta Program, at (916) 654–4214, or Diane Buzzard, U.S. Bureau of Reclamation, at (916) 978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide assistance and recommendations to Secretary of the Interior Gale Norton and California Governor Gray Davis on implementation of the CALFED Bay-Delta Program. The Committee will advise on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system, integrity, and water supply reliability. The Program is a consortium of 23 State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the CALFED Bay-Delta Web site: *http://calfed.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

(Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et. seq.,* the Endangered Species Act, 16 U.S.C. 1531 *et. seq.,* and the Reclamation Act of 1902, 43 U.S.C. 371 *et. seq.,* and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, Title 34 of Pub. L. 102–575).

Dated: February 19, 2003.

Nan M. Yoder,

Acting Special Projects Officer, Mid-Pacific Region.

[FR Doc. 03–4854 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–745 (Review)]

Steel Concrete Reinforcing Bar From Turkey

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to § 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on steel concrete reinforcing bar from Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on March 1, 2002 (67 FR 9465) and determined on June 4, 2002, that it would conduct a full review (67 FR 40965, June 14, 2002). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 11, 2002 (67 FR 57628). The hearing was held in Washington, DC, on December 12, 2002,

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Deanna Tanner Okun and Commissioner Lynn M. Bragg dissenting.

and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on February 24, 2003. The views of the Commission are contained in USITC Publication 3577 (February 2003), entitled *Steel Concrete Reinforcing Bar from Turkey: Investigation No. 731–TA–745 (Review).*

By order of the Commission.

Issued: February 25, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–4825 Filed 2–28–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation TA–2111–1]

The Impact of Trade Agreements: Effect of the Tokyo Round, U.S.-Israel FTA, U.S.-Canada FTA, NAFTA, and the Uruguay Round on the U.S. Economy

AGENCY: International Trade Commission.

ACTION: Request for additional written comments.

SUMMARY: The United States International Trade Commission invites additional public input from interested parties (*e.g.*, manufacturers, service providers, labor, other interest groups, etc.) regarding the impact of the following trade agreements: the Tokyo Round of Multilateral Trade Negotiations, the United States-Israel Free Trade Agreement, the United States-Canada Free Trade Agreement, the North American Free Trade Agreement, and the Uruguay Round Agreements. In particular, the Commission is interested in the impact of these five agreements on a sector-specific basis.

DATES: *Effective Date:* February 24, 2003.

To be assured of consideration by the Commission, written comments (a signed original and 14 copies of each set of comments, along with a cover letter) should be submitted no later than March 31, 2003.

FOR FURTHER INFORMATION CONTACT: John Davitt, Industries Coordinator (202–205–3407), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on other aspects of this investigation, contact Kyle Johnson, Project Leader (202–205–3229) or Russell Hillberry, Deputy Project Leader (202–708–5405), Office of Economics. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission also may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this study may be viewed on the Commission's electronic docket at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission instituted the investigation for the purpose of fulfilling the requirement in section 2111 of the Trade Act of 2002 (Pub. L. 107–210, 116 Stat. 933), that it report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than one year after the date of enactment (*i.e.*, by August 6, 2003) regarding the economic impact on the United States of the aforementioned trade agreements. The Commission held a public hearing in connection with the investigation on January 14, 2003. 67 FR 59007 (Sept. 19, 2002).

To further inform the quantitative and qualitative analysis that will be included in the report, the Commission seeks additional input from interested parties (*e.g.*, manufacturers, service providers, labor, other interest groups, etc.) concerning their opinions or experiences with respect to the trade agreements. The Commission invites commentators to address in as much detail as possible the impact of these five agreements, their specific provisions, and their effectiveness. In particular, the Commission is interested in the impact of the five trade agreements on individual sectors relative to any other developments that have affected the sectors since 1980 (*e.g.*, changes in government regulation or trade policy, industry structure, technology, level of globalization, and competitive strength/position relative to foreign producers). The Commission also is interested in any sector-specific differentiation that can be made between the effects of tariff liberalization versus non-tariff measure liberalization. In this regard, the Commission also seeks interested party views on the effectiveness of negotiated commitments in facilitating actual market access.

Written Submissions: Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties.

The Congressional committees have requested that the Commission prepare a public report (containing no confidential business information). Accordingly, any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the entity supplying the information. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436. Hand-delivered comments must be delivered to the prescribed room during the Commission's official business hours (8:45 a.m. to 5:15 p.m.) in order to be deemed filed on the day they are delivered. The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules, as amended, 67 FR 68036 (Nov. 8, 2002).

List of Subjects

TPA, Trade Act of 2002, Tariffs, Imports.

By Order of the Commission.

Issued: February 25, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–4824 Filed 2–28–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Technology Institute: National Shipbuilding Research Program (''NSRP'')

Notice is hereby given that, on January 13, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Technology Institute has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the National Shipbuilding Research Program (''NSRP''). The notifications were filed for the purpose of extending

the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Newport News Shipbuilding and Dry Dock Co., Newport News, VA was acquired by Northrup Grumman Corporation and became Northrup Grumman Newport News. Ingalls Shipbuilding, Inc., Pascagoula, MS and Avondale Industries, Inc., New Orleans, LA were wholly owned subsidiaries of Litton Industries. Litton Industries was acquired by Northrup Grumman Corporation. Subsequently, Ingalls Shipbuilding, Inc. has changed its name to Northrup Grumman Ship Systems, Inc. (Ingalls Operations). Avondale Industries, Inc. merged into Northrop Grumman Ship Systems, Inc. and changed its name to Northrop Grumman Ship Systems (Avondale Operations). Halter Marine, Inc., Gulfport, MS was acquired by Vision Technologies Systems, Inc. and became VT Halter Marine, Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Technology Institute intends to file additional written notification disclosing all changes in membership.

On March 13, 1998, Advanced Technology Institute filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on October 24, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 3, 2002 (67 FR 348).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–4837 Filed 2–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on January 31, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chryso, Charlestown, IN has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on October 1, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 6, 2002 (67 FR 67649).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–4838 Filed 2–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: National Security Entry-Exit Registration System; File No. OMB–34.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is contained in the preamble of the INS proposed rule No. 2216–02 (RIN 1115–AG7) which was published in the **Federal Register** on June 13, 2002 at 67 FR 40581. The publication allowed for a 60-day public comment period. Comments were received and were reconciled in the final rule published in the **Federal Register** on August 12, 2002 at 67 FR 52584.

The INS intends to request an extension of this information collection. Therefore, the purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 2, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extensions of a previously approved information collection.

(2) *Title of the Form/Collection:* National Security Entry-Exit Registration System.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number; File No. OMB–34, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. INS regulations are amended to require certain nonimmigrant aliens to make specific reports to the INS upon arrival; approximately 30 days after arrival; every 12 months after arrival; upon certain events, such as change of address, employment or school; and at the time they leave the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 140,000 responses at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 70,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: February 26, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–4910 Filed 2–28–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–10840, et al.]

Proposed Exemptions; Deutsche Bank AG

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffittb@pwba.dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG
Located in New York, New York
Exemption Application Number D–10840

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Retroactive Relief

For the period from June 4, 1999 until the date this proposed exemption is granted, the restrictions of section 406(a) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of the assets of a Bank Plan or a Client Plan (either, a Plan) in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the Bundesanstalt fur Finanzdienstleistungsaufsicht (the BAFin),[1] and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section III(f);

(c) The investment is:

(i) Made by a Bank Plan; or

(ii) Made by a Client Plan and expressly authorized pursuant to a provision of such Plan (or trust thereof) or expressly authorized by an independent fiduciary,[2] as defined in

[1] For purposes of this exemption, if granted, supervision of Deutsche Bank AG by the BAFin is deemed to include supervision of Deutsche Bank AG by the Federal Banking Supervisory Authority (das Bundesaufsichtsamt fuer das Kreditwesen), the predecessor to the BAFin.

[2] The Department notes that the Act's general standards of fiduciary conduct would apply to arrangements involving the investment of Plan assets permitted by this proposed exemption, if

Continued

section III (g), with respect to such Plan; and

(d) in situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 5% of the total amount of the plan's assets managed by such investment manager.

Section II—Prospective Relief

Effective after the date this proposed exemption is granted, the restrictions of section 406(a) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of the assets of a Plan in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section II (f);

(c) Prior to: (i) An investment of Plan assets in bank deposits; or (ii) the commencement of any Deutsche Bank AG program that invests Plan assets in such deposits, an independent fiduciary (other than with respect to a Bank Plan) receives a written disclosure describing:

(A) The circumstances pursuant to which Plan assets will be invested in deposits of Deutsche Bank AG or its subsidiaries or branches; and

(B) A description of the applicable sovereign regulatory authority/ authorities governing the activities of Deutsche Bank AG;

(d) A fiduciary independent of Deutsche Bank AG and its affiliates (other than with respect to a Bank Plan) receives, upon request, copies of the most recent financial statement of Deutsche Bank AG and/or its subsidiaries;

(e) Immediately after any material adverse change in the financial condition of Deutsche Bank AG, Deutsche Bank AG will notify each Plan fiduciary of such material adverse change and will not use its authority to continue the program of deposits with respect to the Plans without the consent of a Bank Plan fiduciary or an independent Client Plan fiduciary;

(f) In situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 1% of the total amount of the plan's assets managed by such investment manager;

(g) Deutsche Bank AG—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank AG; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

(h) The investment is:

(i) Made by a Bank Plan and authorized by a Bank Plan fiduciary; or

(ii) Made by a Client Plan and authorized by an independent fiduciary with respect to such Client Plan. Notwithstanding (h)(i) and (h)(ii) above, authorization for the investment by a Plan in the deposits of Deutsche Bank AG may be presumed notwithstanding that Deutsche Bank AG does not receive any response from such Plan pursuant to two written requests by Deutsche Bank AG (one request by a certified mailing that contains only such request) for the authorization, provided that: (A) with respect to Plans that invest in the deposits of Deutsche Bank AG prior to the date this proposed exemption is granted, the first request occurs not later than 45 days after the date the proposed exemption is granted and the second request occurs within 30 days thereafter; and (B) with respect to Plans that invest in the deposits of Deutsche Bank AG following the date this proposed exemption is granted, the first request occurs at least 45 days prior to such investment and the second request occurs within 30 days thereafter;

(i) Investments in the deposits of a subsidiary of Deutsche Bank AG will be backed by the full faith and credit of Deutsche Bank AG;

(j) Short-term debt issued by Deutsche Bank AG is rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution;

(k) Deutsche Bank AG maintains or causes to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described below in paragraph (1) of this proposed exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank AG, the records are lost or destroyed prior to the end of the six-year period; and

(l)(1) Except as provided in paragraph (2) of this section (l) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (k) are unconditionally available at their customary location in the United States for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of a Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (l)(1)(ii) and (iii) shall be authorized to examine trade secrets of Deutsche Bank AG, or commercial or financial information that is privileged or confidential.

Section III—Definitions

(a) The term ''bank'' means a bank supervised by the United States, a state, or a sovereign government.

(b) An ''affiliate'' of a person includes:

(1) Any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person;

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granted. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, an independent fiduciary with respect to a Plan must act prudently with respect to: (1) The decision to enter into an arrangement described herein; and (2) the negotiation of the terms of such an arrangement, including, among other things, the specific terms by which Plan assets will be invested in the deposits of Deutsche Bank AG. The Department further emphasizes that it expects plan fiduciaries, prior to allowing or authorizing the transactions described herein, to fully understand the benefits and risks associated with such transactions, following disclosure by Deutsche Bank AG of all relevant information. In addition, the Department notes that such plan fiduciaries must periodically monitor, and have the ability to so monitor, the services provided by Deutsche Bank AG.

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) A ''Client Plan'' refers to an employee benefit plan as described in section 3(3) with respect to which Deutsche Bank AG acts as a trustee or custodian.

(e) A ''Bank Plan'' means a plan sponsored or maintained by:

(1) Deutsche Bank AG or any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, Deutsche Bank AG or;

(2) Any entity in which Deutsche Bank AG holds more than a ten percent equity interest.

(f) A ''reasonable'' rate of interest means a rate of interest determinable by reference to short-term rates available to other customers of the bank, those offered by other banks, those available from money market funds, those applicable to short-term instruments such as repurchase agreements, or by reference to a benchmark such as sovereign short term debt (e.g., in the U.S., treasury bills), all in the jurisdiction where the rate is being evaluated. The requirement that an interest rate be ''reasonable'' does not preclude the payment of no interest in situations where the deposit is with a branch or subsidiary of Deutsche Bank AG that acts as a local subcustodian and no interest is paid to similarly situated custody clients of the global custodian so long as, prior any investment in deposits that pays no interest, Deutsche Bank AG discloses to the appropriate Plan fiduciary that no interest may be paid with respect to an arrangement described above. Notwithstanding the foregoing, if local law is changed to preclude the payment of interest, and Deutsche Bank AG discloses such fact to the appropriate Plan fiduciary as soon as reasonably possible.

(g) An ''independent fiduciary'' means a fiduciary independent of Deutsche Bank AG and its affiliates who has the authority to make the investments described herein, or to instruct the trustee or other fiduciary with respect to such investments, and who has no interest in the transaction which may affect the exercise of such authorizing fiduciary's best judgment as a fiduciary so as to cause such authorization to constitute an act described in section 406(b) of the Act.

Summary of Facts and Representations

1. Deutsche Bank AG (hereinafter, Deutsche Bank or the Applicant) is a German banking corporation and commercial bank that provides a wide range of services to various types of entities worldwide. Deutsche Bank is one of the largest financial institutions in the world in terms of assets held, managing over $585 billion in assets either through collective trusts, separately, managed accounts, or mutual funds.

Deutsche Bank Trust Company Americas (DBTCA) [3] is a wholly-owned indirect subsidiary of Deutsche Bank. DBTCA is a commercial bank that provides a wide range of services to various types of entities worldwide.

2. In general terms, the transactions contained in this proposed exemption involve the investment of ''idle'' foreign currency in bank deposits, either directly or through a cash management program. In this regard, the Applicant states that, for various reasons, a portfolio manager may seek to hold foreign currency ''idle'' for short periods of time. For example, the Applicant states that an investment manager may hold ''idle'' the foreign currency a portfolio has received from the liquidation of foreign securities while determining how to reinvest such currency.

3. According to the Applicant, there are limited options with respect to the investment of ''idle'' foreign currency. In this regard, the Applicant states that most short-term investment vehicles are denominated in U.S. dollars. As a result, to invest foreign currency in such vehicles, an investment manager would have to convert the foreign currency to U.S. dollars (and, thereafter, convert the U.S. dollars back to foreign currency). Due to the costs associated with such conversion(s), the Applicant states, it is often not economically viable to invest ''idle'' foreign currency in most of the financial vehicles available for short-term investments.

Given this and for the reasons stated below, the Applicant states that investment managers and plan sponsors often seek to invest ''idle'' currency in bank deposits. In this regard, the Applicant represents that most global banks take deposits in many different foreign currencies. Accordingly, an investment manager may invest the currency of a particular foreign nation in the same-currency deposits of a bank without incurring the costs associated with converting the currency from/to U.S. dollars.[4] The Applicant additionally represents that an investment in bank deposits may be made for short periods of time, rendering such investments vehicles essential in foreign markets where collective investment funds are not available to invest short-term cash balances. Finally, the Applicant states that an investment in bank deposits provides a competitive rate of return on currency being held ''idle'' pending reinvestment, making such an investment attractive with respect to portfolios investing globally.

4. The Applicant states that the investment of ''idle'' foreign currency in bank deposits may be achieved either directly or through cash management programs. According to the Applicant, the arrangement by which foreign currency is invested often is determined by the amount of time an investment manager anticipates the assets being invested will remain in such an investment vehicle. In this regard, the Applicant represents that an investment manager who seeks to invest plan assets in bank deposits on a day-to-day basis will likely allow such assets to be ''swept'' into the bank deposits of the plan's global custodian through a cash management program. Pursuant to such a program, uninvested cash balances left with any subcustodian are placed on an overnight basis into the same currency deposits of the global custodian or the subcustodian (which may or may not be a branch or an affiliate of the global custodian).[5]

By comparison, the Applicant represents that to the extent an investment manager expects ''idle'' foreign currency will remain in bank deposits on a short-term basis of fixed duration (*i.e.,* 30 days, 60 days, etc.), the manager may choose to invest the currency directly in bank deposits. Unlike a cash management program, this method of investing in bank deposits involves an investment manager's affirmative act of investing in the deposits of a particular bank (upon taking into consideration, among other things, the interest rates and credit ratings of various banks).

5. The Applicant states that global custodians often provide cash

[3] Formerly, Bankers Trust Company.

[4] For example, when a portfolio that uses the EAFE index as a benchmark (and has assets invested primarily in Europe, Asia and the Far East) holds ''idle'' foreign currency, the portfolio will generally allow such assets to remain in a foreign currency until the next investment in that country sector occurs.

[5] The Applicant notes, however, that in certain instances (*i.e.,* late trades) uninvested balances may have to remain with the subcustodian without being placed into the global custodian's deposits.

management services whereby foreign currency left with an affiliated subcustodian will be either: (1) Swept into the deposits of the global custodian (or branch of subsidiary thereof); or (2) left in a non-interest bearing account with the subcustodian. According to the Applicant, ''idle'' foreign currency may be swept to the global custodian for several reasons. For example, the global custodian may offer a better interest rate and/or have a better credit rating than banks that are not parties in interest with respect to such plan. By comparison, ''idle'' foreign currency may remain with the subcustodian in situations where the movement of the currency outside the subcustodial bank would be too costly. Finally, ''idle'' foreign currency may remain in the account of a client of the subcustodian in situations involving, among other things, late trades and unpredicted cash flows.

6. Accordingly, the Applicant seeks an exemption to permit the investment of Plan assets in deposits of Deutsche Bank and its non-U.S. banking branches and subsidiaries, either directly or through cash management programs. The Applicant states that this exemption, if granted, is intended to cover only those Plan investments in bank deposits that are temporary in nature.

The Applicant cites a lack of applicable statutory relief with respect to deposits in branches or subsidiaries of foreign banks affiliated with a custodian or a trustee when such foreign banks are not supervised by the U.S. or a state.[6] In addition, the Applicant cites a lack of administrative relief with respect to the investment of plan assets in overnight deposits by a plan sponsor who is not an in-house asset manager (*i.e.,* an INHAM as described in PTE 96–23 (61 FR 15975 (Apr. 10 (1996)) or by an investment manager who is not a qualified professional asset manager (*i.e.,* a QPAM as described in PTE 84–14 (49 FR 9494 (Mar. 13, 1984) and corrected at 50 FR 41430 (Oct. 10 1985)).

7. Specifically, the Applicant states that DBTCA is a global custodian that offers a cash management program (the DBTCA Program)[7] to every account for which it acts either as a custodian or trustee.[8] Such Program, the Applicant states, is comprised of two parts: One that relates to domestic portfolios (*i.e.,* assets that are invested in the U.S.) and another that relates to global portfolios. In this regard, the Applicant states that with respect to domestic-only portfolios, upon opening an account, the Plan fiduciary responsible for choosing DBTCA as the Plan's trustee or custodian also selects a sweep vehicle for cash left temporarily uninvested (Idle Cash) by the Plan's portfolio manager (which may or may not be DBTCA or an affiliate). The Applicant represents that the sweep vehicle is often a collective trust for short-term investments managed by DBTCA or an affiliate although, at the election of the fiduciary, the cash sweep vehicle may also be a mutual fund affiliated with DBTCA or a fund managed by, for example, an investment manager not affiliated with DBTCA. The Applicant states that Plans investing in DBTCA's collective funds are informed, as part of the disclosure that accompanies these investments, of the sweep vehicle used.

For global investments, the Applicant states that each Client Plan fiduciary and each Bank Plan fiduciary is provided detailed disclosure, including the types of overnight investments utilized by the global cash management program and the fees related to the program. ERISA clients investing globally that have uninvested U.S. dollars have access to the types of ''cash sweep'' vehicles described above.

According to the Applicant, Idle Cash is invested pursuant to the DBTCA cash management program in one of two ways. First, Idle Cash denominated as sweep currencies[9] are deposited in the London Branch of DBTCA (the London Branch) in the same currency in which it is maintained (although some residual amounts, in the same currency, may remain in the deposits of the local subcustodian). For all other currencies, the Applicant states, Idle Cash remains in deposits of the local subcustodian.

The Applicant states that, with respect to all currencies that are part of the sweep to the London Branch, the amount of interest paid equals the deposit rate less a cash management fee. In this regard, the deposit rate is the higher of the London Branch overnight deposit rate for such currency (generally, a weekly or monthly average, depending on the currency) or the subcustodian's rate. According to the Applicant, the cash management fees differ by currency and are disclosed in advance to an independent fiduciary for each Client Plan and an appropriate Bank Plan fiduciary for each Bank Plan. The Applicant notes that Plan fiduciaries are informed that they will earn interest at the calculated rate on the entire contractual cash balances[10] without any action necessary on their part and without any minimum balance requirements. In addition, the Applicant states that Plan fiduciaries are informed that their respective Plans will receive the specified rate on all cash that is part of the Plan's contractual cash balance, regardless of whether their contractual cash balance exceeds their actual balance.

Second, for all currencies that are not swept,[11] the Idle Cash will remain in deposits of the local subcustodian. Deutsche Bank represents that with respect to these currencies, Deutsche Bank earns a cash management fee. In markets where individual client accounts are maintained with the subcustodian due to local regulations, Plans will receive interest on actual balances with no minimum rate guaranteed. In these currencies, no fee

[6] The Applicant states that where the global custodian is a U.S. or state supervised bank or trust company, relief for the investment in bank deposits by a plan is provided by section 408(b)(4) of ERISA. In addition, the applicant states that in situations where the foreign subcustodian is not affiliated with the global custodian, the global custodian may rely on PTE 84–14 to exempt the extension of credit and the use of plan assets by the foreign subcustodian party in interest inherent in the investment in that subcustodian's deposits.

[7] According to Applicant, the DBTCA is currently the only cash management program offered by Deutsche Bank containing the types of transactions described herein.

[8] The Applicant states that Deutsche Bank is not seeking relief pursuant to this proposed exemption with respect to the Bankers Trust Program itself or, to the extent relevant, any other cash management program. Rather, the Applicant states that if this proposed exemption is granted, the Bankers Trust Program, and any future program involving the types of transactions provided relief herein, will comply with the statutory exemption contained in 408(b)(6) of ERISA. Accordingly, the Department is not providing any relief herein with respect to the Bankers Trust Program or any other cash management offered by Deutsche Bank AG.

[9] The Applicant represents that, as of January 29, 2000, the Australian Dollar, British Pound Sterling, Canadian Dollar, Danish Krone, EMU Euro, Hong Kong Dollar, Norwegian Krone, South African Rand, Swedish Krona, Swiss Franc, and the U.S. Dollar are considered sweep currencies. Pursuant to the Bankers Trust Program, U.S. Dollars are swept to the U.S. and put in collective trusts.

[10] A contractual balance, Deutsche Bank notes, is the cash, securities and other investments that the Client Plan would expect to have on a given date, assuming all transactions have settled in a timely fashion. Thus, assuming that an investment manager executed a sale of a security to settle trade date plus 3 days (T+3), and the investment manager did not execute a trade using those sales proceeds until a date two days hence, the proceeds would be swept to a deposit pursuant to the sweep program regardless of whether such proceeds are received on the third day.

[11] In this regard, as of January 29, 2000, the currencies on which interest is credited, but are not swept to the London Branch are: the Argentine Peso, Czech Koruna, Greek Drachma, Hungarian Forint, Indonesian Rupiah, Israeli Shekel, Japanese Yen, Jordanian Dinar, Korean Won, Mexican Peso, New Taiwan Dollar, New Zealand Dollar, Philippine Peso, Polish Zloty, Singapore Dollar, Slovak Koruna, Thai Baht, and Turkish Lire.

or spread is earned for the DBTCA program.

The Applicant represents that Plan sponsors and/or Plan investment managers will receive information regarding the amounts of Idle Cash remaining, account activity, and the rates paid on the Idle Cash through monthly reports. Plan sponsors and Plan investment managers may also receive such information through DBTCA's proprietary on-line system (provided that they arrange for this service).

8. The Applicant represents that Deutsche Bank is supervised by the Deutsche Bundesbank and the BAFin.[12] The Deutsche Bundesbank is the central bank of the Federal Republic of Germany and part of the European System of Central Banks (the ESCB). The Applicant represents that the Deutsche Bundesbank is primarily focused on maintaining the stability of the ''Euro''[13] and the execution of domestic and international payments. In addition, the Applicant states that the Deutsche Bundesbank also participates in the supervision of credit institutions and financial services institutions.

The BAFin is the German Federal Banking Supervisory Authority, an independent federal institution responsible to the German Ministry of Finance. The BAFin supervises the operations of banks, banking groups, financial holding groups and branches of foreign banks in Germany and has the authority to: (a) Issue and withdraw banking licenses; (b) issue regulations on the capital and liquidity requirements of banks; (c) request information and conduct investigations; and (d) intervene in cases of inadequate capital or liquidity, or in cases of endangered deposits or risk of bankruptcy by means of temporarily prohibiting certain banking transactions.

Specifically, the BAFin ensures that Deutsche Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards such as: Requirements for adequate internal controls, oversight, administration and financial resources. The BAFin further reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits as ordered by the supervisory authorities. The BAFin obtains information on the condition of Deutsche Bank and its branches by requiring the submission of periodic, consolidated financial reports, and through a mandatory annual report prepared by an independent auditor.[14]

Deutsche Bank represents that the annual audit includes foreign branches and subsidiaries. The auditor is required to give positive assurance regarding whether the institution has fulfilled its duties under the German Banking Act. This requires, Deutsche Bank notes, the auditor to comment on the asset quality and the internal control environment of each part of the institution, including subsidiaries, in detail. The BAFin also receives information regarding capital adequacy, country risk exposure and foreign exchange exposures from Deutsche Bank. German banking law mandates penalties to ensure correct reporting to the BAFin. The auditors of Deutsche Bank face penalties for gross violation of their auditing duties.

The BAFin supervises all branches of Deutsche Bank, wherever located, subjecting them to announced and unannounced on-site audits and all other supervisory controls applicable to German banks. Deutsche Bank represents that in its branches located in a member state of the European Economic Area (the EEA), such audits are carried out consistent with the applicable European Directives, and with respect to branches outside the EEA, consistent with the applicable international agreements, memoranda of understanding or other arrangements with the relevant foreign supervisory authorities. Deutsche Bank subsidiaries are consolidated with Deutsche Bank for purposes of the capital ratios that the bank is required to meet on a group-wide basis. Supervision extends to the adequacy of equity capital of banking and financial holding groups and compliance with the regulation regarding large loans granted by such groups.

9. Deposits in branches of Deutsche Bank are insured. In this regard, Deutsche Bank represents that there are two deposit insurance programs that currently cover Deutsche Bank and its foreign branches. The first is the European Union deposit insurance system, which insures deposits up to the lesser of 90% of the deposit or 20,000 euros. This statutory deposit protection system is maintained by the German Bank Institution for Indemnification, the Entschadigungseinrichtung dutscher Banken (the EdB), which is maintained by the Association of German Banks, the Bundesverband Deutscher Banken, and is subject to supervision by the BAFin.

The second deposit insurance program is the Deposit Protection Fund, the Einlagensicherungsfonds, maintained by the Association of German Banks. This fund, the participation in which is voluntary, safeguards liabilities in excess of the thresholds guaranteed by the European Union program, up to a protection ceiling for each creditor of 30% of the liable capital of the bank.[15] This program is funded by the premiums paid by participating German banks and deposit-taking trust companies. The fund relies on the Auditing Association of German Banks, which audits banks and makes recommendations that are required to be implemented.

Deposits in subsidiaries of Deutsche Bank are not insured through the German deposit insurance system. However, the Applicant represents that investments by Plans in the deposits of a subsidiary of Deutsche Bank will be backed by the full faith and credit of Deutsche Bank.

10. The Applicant proposes certain safeguards applicable to both the retroactive and prospective portions of this proposed exemption. In this regard, the Applicant states that the investment by a Plan in the deposits of Deutsche Bank will be limited. With respect to the retroactive portion of the exemption, if granted, in situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank does not average, over any six month period, more than 5% of the total amount of the assets managed by such investment manager. With respect to the prospective portion of the exemption, if granted, the percentage limitation described above shall equal one percent. In all cases, the Applicant states, the interest earned on the deposits described herein will be

[12] Deutsche Bank AG, New York Branch, is regulated by the New York State Banking Department. In addition, certain activities of the U.S. affiliates of Deutsche Bank are regulated by the Federal Reserve Bank of New York.

[13] The term ''Euro'' means the single European currency adopted by eleven Member States of the European Union, which are: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and Spain.

[14] Deutsche Bank notes that the audits of their financials are done in accordance with the auditing standards established by the International Federation of Accountants (IFAC), which is an organization of national accountancy bodies, including the American Institute of Certified Public Accountants (AICPA), to develop and harmonize worldwide auditing standards. The financial statements are prepared in accordance with standards established by the International Accounting Standards Committee (IASC), which is a body formed to achieve uniformity in accounting principles used in financial statement reporting. The international equivalents to the U.S.'s AICPA and the Financial Accounting Standards Board (FASB) are the IFAC and the IASC, respectively.

[15] Liable Capital means the core capital and additional capital.

reasonable, determinable by reference to, among other things, short-term rates available to other customers of Deutsche Bank, those offered by other banks, and those available from money market funds. The Applicant notes that in situations where the deposit is with a branch or subsidiary of Deutsche Bank that acts as a local subcustodian, no interest may be paid with respect to such deposit to the extent that: no interest is paid to similarly situated custody clients of the global custodian, and, prospectively, Deutsche Bank discloses to the appropriate Plan fiduciary that no interest may be paid pursuant to such an arrangement. In addition, no interest may be paid in situations where local law is changed to preclude the payment of interest and Deutsche Bank discloses such fact to the appropriate Plan fiduciary as soon as reasonably possible.

Retroactively, a Client Plan must authorize an investment in the deposits of Deutsche Bank pursuant to a provision of such Plan or the trust thereof (unless the investments were expressly authorized by an independent fiduciary). Prospectively, investments in the deposits of Deutsche Bank must be: (i) Made by a Bank Plan and authorized by an Bank Plan fiduciary; or (ii) made a Client Plan and authorized by an independent fiduciary with respect to such Client Plan. In this regard, Notwithstanding, authorization for the investment by a Plan in the deposits of Deutsche Bank AG may be presumed notwithstanding that Deutsche Bank does not receive any response from such Plan pursuant to two written requests by Deutsche Bank (one request by a certified mailing that contains only such request) for the authorization, provided that: (A) With respect to Plans that invest in the deposits of Deutsche Bank prior to the date this proposed exemption is granted, the first request occurs not later than 45 days after the date the proposed exemption is granted and the second request occurs within 30 days thereafter; and (B) with respect to Plans that invest in the deposits of Deutsche Bank following the date this proposed exemption is granted, the first request occurs at least 45 days prior to such investment and the second request occurs within 30 days thereafter.

Further, Deutsche Bank has been and will continue to be supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank, by similar local government authorities.

11. With respect to the prospective portion of this proposed exemption, the Applicant represents that Plans will be further protected in that Deutsche Bank will furnish to each Plan certain relevant information including its most recent available audited and unaudited financial statements and will give prompt notice of any material adverse changes in its financial condition that occur prior to the date of such statements. Upon giving this notice, the Applicant states, Deutsche Bank AG will not use its authority to continue the program of deposits with respect to the Plans without the consent of a Bank Plan fiduciary or an independent Client Plan fiduciary.

In addition, with respect to the deposit cash management program described herein, Deutsche Bank, and its branches and subsidiaries, will comply with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404b–1(a)(2)(i)(A).[16] Further, Deutsche Bank: (a) Agrees to submit to the jurisdiction of the courts of the United States; (b) agrees to appoint a Process Agent for service of process in the United States, which may be an affiliate; (c) consents to service of process on the Process Agent; (d) agrees that it may be sued in the courts of the United States in connection with transactions described in this proposed exemption; (e) agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and (f) agrees to comply with, and be subject to, all relevant provisions of the Act.

The Applicant states that the deposits described herein will be in safe, well-capitalized financial institutions. In this regard, the proposal prospectively requires that short-term debt issued by Deutsche Bank must be rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution.

12. The Applicant represents that the proposed exemption would be administratively feasible since the transactions would be transparent to Client Plan fiduciaries and no action on the part of the government or plan sponsors would be necessary to effectuate such transactions, other than the grant of the exemption and an initial authorization by a Client Plan fiduciary that is independent of Deutsche Bank (*i.e.,* an independent fiduciary) or an appropriate Bank Plan fiduciary.

13. In summary, the Applicant represents that, retroactively, the described transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act since, among other things:

(a) Deutsche Bank was supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank, was also supervised by similar local government authorities;

(b) The deposits provided each affected Plan with a rate of interest that was reasonable; and

(c) In situations where Deutsche Bank, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank does not average, over any six month period, more than 5% of the total amount of the assets managed by such investment manager.

14. The Applicant represents that, prospectively, the described transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act since, among other things:

(a) Prior to either: An investment of Plan assets in bank deposits; or the commencement of any Deutsche Bank AG program that invests Plan assets in such deposits, an independent fiduciary (other than with respect to a Bank Plan) receives a written disclosure describing:

(i) The circumstances pursuant to which Plan assets will be invested in deposits of Deutsche Bank or its subsidiaries or branches; and

(ii) A description of the applicable sovereign regulatory authority/ authorities governing the activities of Deutsche Bank;

(b) Immediately after any material adverse change in the financial condition of Deutsche Bank, Deutsche Bank will notify each Plan fiduciary of such material adverse change and will not use its authority to continue the program of deposits with respect to the Plans without the consent of the appropriate Bank Plan fiduciary or an independent Client Plan fiduciary;

(c) Deutsche Bank—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint the Process Agent;

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

[16] The Department is expressing no opinion as to whether the requirements of ERISA section 404(b) and the regulations promulgated thereunder have been met.

(d) Investments in the deposits of a subsidiary of Deutsche Bank will be backed by the full faith and credit of Deutsche Bank; and

(e) Short-term debt issued by Deutsche Bank is rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution.

For Further Information Contact: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

Metropolitan Life Insurance Company (MetLife)
Located in New York, NY
[Application No. D–11042]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[17] If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective April 6, 2001, to the cash sale (the Sale) to MetLife of a note (the Note), issued by the Pacific Gas & Electric Company (PG&E), by MetLife's Liquidity Plus Account (the Account) for which MetLife acts as investment manager and is a party in interest with respect to employee benefit plans (the Plans) invested in such Account, provided that the following conditions were met:

(a) The Sale was a one-time transaction for cash.

(b) The sales price for the Note was based upon an amount representing the greater of the Note's outstanding principal balance, plus accrued interest, or the Note's fair market value as determined by independent broker-dealers.

(c) The Account did not pay any fees, commissions or other expenses in connection with the Sale.

(d) As manager of the Account, MetLife determined, at the time of the transaction, that the Sale was appropriate for, and in the best interests of, the Account, the Plans investing therein, and their participants and beneficiaries.

(e) MetLife took all appropriate actions necessary to safeguard the interests of the Account and the Plans in connection with the Sale.

(f) If the exercise of any of MetLife's rights, claims or causes of action in connection with its ownership of the Note results in MetLife recovering from PG&E an aggregate amount that is greater than the sales price for such Note, MetLife will refund such excess amount to the Account.

Effective Date: If granted, this proposed exemption will be effective as of April 6, 2001.

Summary of Facts and Representations

1. MetLife is a life insurance company organized under the laws of New York and is subject to supervision and examination of the New York Superintendent of Insurance (the Superintendent). MetLife is a wholly owned subsidiary of MetLife, Inc., a publicly held Delaware corporation. In terms of assets, MetLife is the second largest life insurance company in the United States. As of September 30, 2002, MetLife, including its insurance company subsidiaries, had total assets under management of approximately $290.1 billion[18] and, as of December 31, 2001, approximately $1.9 trillion of life insurance in force. Among the insurance products and services it offers, MetLife and certain of its affiliates provide funding, asset management and other services for thousands of employee benefit plans subject to the provisions of Title I of the Act. MetLife maintains pooled and single plan separate accounts in which Title I pension, profit-sharing, welfare benefit, and thrift plans invest, and MetLife and/or its affiliates manage all or a portion of the assets of such separate accounts. Additionally, MetLife has a number of subsidiaries and affiliates that provide certain financial services, including investment management and brokerage services.

2. MetLife is the investment manager or adviser (or an affiliate of such investment manager or adviser) of various portfolios that are subject to the Act. Among the separate accounts managed by MetLife is the Account, which is a short term liquidity plus separate account that invests in short-term debt obligations. The Account is managed by MetLife on behalf of ERISA and non-ERISA regulated Plans, including the Metropolitan Life Retirement Plan for United States Employees (the MetLife Plan), the surviving entity following the merger of the Metropolitan Life Retirement Plan for United States Salaried Employees and the Metropolitan Life Retirement Plan for the United States Commissioned Employees. MetLife believes that the MetLife Plan became a participant in the Account at or near the time of its inception. The investing Plans hold units in the Account on a pro rata basis. MetLife represents that the purchase by the MetLife Plan of units in the Account is covered under section 408(b)(8) of ERISA.[19]

On February 2, 1971, the Account was initially approved by New York State Insurance Department (the NYSID), an independent state agency that regulates MetLife. The purpose of the Account is to achieve the highest possible current income consistent with the preservation of capital and maintenance of liquidity. The Account is permitted to invest in money market instruments with maturities of 13 months of less. Generally, the average maturity is less than 60 days. The Account is valued daily and is managed to maintain a stable one dollar value, similar to a money market fund. As of April 6,. 2001, which is the date of the Sale transaction described herein, the Account had a market value of $119,000,000. Also as of such date, participating investors in the Account included a number of ERISA Plan[20] and the MetLife Plan, which had invested approximately $66,746,000 in the Account.

3. On December 15, 2000, the Account purchased, in book-entry form, certain commercial paper (the Commercial Paper) (CUSIP 69430JPC1) from Merrill Lynch, an unrelated third party, at a discount from face value for $15,856, 284.27. The Commercial Paper, which was also issued on December 15, 2000 by PG&E, California's largest public utility and an unrelated party, had a maturity date of February 12, 2001. The par value[21] of the Commercial Paper was $16,031,000, which was payable at maturity. The Commercial Paper's yield was 6.723274 percent and it represented approximately 13 percent of the Account's assets.[22]

4. The decision to invest assets in the Commercial Paper was made by MetLife

[17] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[18] This figure does not include the fourth quarter, which has not yet been published.

[19] The Department, is expressing no opinion herein on whether the purchase by the MetLife Plan of units in the Account is statutorily exempt under section 408(b)(8) of the Act.

[20] Primarily, defined benefit pension plans.

[21] Defined as the value of the Commercial Paper at maturity.

[22] As of December 15, 2000, the MetLife Pension Plan had total assets of $4,047,574,285.00. Of the total assets, the MetLife Pension Plan invested $11,494,583.03 in the Commercial Paper, which represented approximately 0.3 percent of such Plan's assets.

as investment manager of the Account. MetLife represents that the investment was consistent with the Account's investment policies and objectives.[23] At the time the Account acquired the Commercial Paper, it was rated ''A–1'' by Standard & Poor's Corporation and ''P–1'' by Moody's Investor Services, Inc.

5. Due to its inability to pay the principal amount of the Commercial Paper as a result of the energy crisis (the Energy Crisis),[24] PG&E unilaterally converted, dollar-for-dollar, the Commercial Paper into an interest-bearing floating rate note (*i.e.,* the Note) (also in book-entry form) in order to credit the holders of the Commercial Paper until it could resolve its difficulties. The conversion occurred on February 12, 2001. Everyone who held the Commercial Paper received Notes in the conversion, including the Account. The Note earned interest at the London Interbank Offered Rate (LIBOR), a floating rate with no fixed floor. According to the applicant, the LIBOR rate was presumably selected because it is a published rate that matches up with commercial paper rates. Although the Note had no specific maturity date, PG&E announced during a teleconference with all of its debt holders and in a subsequent news release that its plan was to pay the Note down as soon as possible. The Note is currently traded by independent brokers and is not listed on an exchange. As described below in Representation 6, no interest has been paid on the Note since PG&E's declaration of bankruptcy.

6. On April 6, 2001, PG&E declared bankruptcy and filed a voluntary petition under Chapter 11 of the Bankruptcy Code. As a result of PG&E's bankruptcy filing, the market value of the Note decreased according to verbal quotes obtained by MetLife's money traders from two independent brokers. Since the market values for all PG&E securities were trading below par and would continue to trade in that way until the bankruptcy was settled, MetLife determined that if the Account retained the Note, the value of the Account would be required to be reported below a value of $1.00 per share resulting in a loss to the Account investors. Therefore, MetLife sought permission from the NYSID to acquire the Note from the Account.

7. The transaction was subsequently approved by the NYSID on April 6, 2001, and it became effective on that date. MetLife purchased the Note from the Account for a cash payment of $16,041,857.11. This sum was the same as the par value of the Note, plus the accrued interest. The Account paid no commissions or other expenses in connection with the Sale. MetLife represents that the Sale allowed the Account to continue operation in the manner customers expected. Specifically, additions and withdrawals from the Account could continue to be made at $1.00 per share. Accordingly, MetLife requests an administrative exemption from the Department with respect to the Sale. If granted, the exemption will be effective on April 6, 2001.

8. MetLife represents that because PG&E had declared bankruptcy and purchasers would not pay face value for the Note, the purchase price was set above the market price. In this regard, MetLife has provided a letter from Gian Solomon, of the New York Money Desk of Goldman Sachs & Co. (Goldman Sachs) dated August 9, 2002 regarding the price at which the Commerical Paper would have traded on April 6, 2001. According to Mr. Solomon, Goldman Sachs did not effect any trades in the Commercial Paper on April 6, 2001. However, on April 3, 2001, Goldman Sachs effected trades in PG&E commercial paper having a scheduled maturity date of January 19, 2002, at dollar prices between $72–$74 of the par amount. Mr. Solomon notes that these dollar prices were below the face amount of such securities.

Mr. Solomon also states that Goldman Sachs has no interest in the Commercial Paper that is subject of the exemption request. Further, he represents that Goldman Sachs has no personal interest or bias with respect to the subject matter of the exemption application or the parties involved, and that Goldman Sachs has received no compensation for providing the pricing information.[25]

9. MetLife represents that the Sale resulted in an assignment of all of the Account's rights, claims and causes of action against PG&E. Accordingly, MetLife states that if the exercise of any of the foregoing rights, claims or causes of action results in its recovering from PG&E an aggregate amount that is greater than the sales price for the Note, such excess amount will be refunded to the Account (after deducting all reasonable expenses incurred in connection with the recovery).

10. In summary, it is represented that the transaction has satisfied the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Sale was a one-time transaction for cash.

(b) The sales price for the Note was based upon an amount representing the greater of the Note's outstanding principal balance, plus accrued interest, or the Note's fair market value as determined by independent broker-dealers.

(c) The Account did not pay any fees, commissions or other expenses in connection with the Sale.

[23] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Note by the Account violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion on whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

[24] In this regard, PG&E, along with other California utilities, was hit by soaring wholesale power costs and the state's 1996 deregulation law. Energy deregulation caused blackouts throughout California. Soaring utility rates were the subject of debate as the wholesale prices of electricity skyrocketed, jumping to an average of $30 per megawatt hour. California was the first state to deregulate its electricity market in 1996. The move was supposed to lower the bills of consumers by preventing most utilities from passing rising costs on to their customers. Under deregulation, the state's investor-owned utilities sold most of their power plants and were forced to repurchase them at higher market prices. PG&E was faced with $9 billion in debt and debt payments of $500 million in February 2001 and $1.6 billion in March 2001. PG&E, having only $500 million in cash reserves and little to no ability to borrow following rating downgrades, filed for bankruptcy on April 6, 2001.

[25] In addition to the above, MetLife represents that its money market traders obtained verbal bids for the Note on an indicative basis from three independent brokers at around the time of the Sale. According to MetLife, bids received from Goldman Sachs ranged from $57–$62 of the par value of the Note. Bids received from the Bank of America ranged from $56–$60 of the par value of the Note. Bids received from Merrill Lynch ranged from $55–$60 of the par value of the Note. MetLife further states that all of these bids were below the price that it paid for the Note.

(d) As manager of the Account, MetLife determined, at the time of such transaction, that the Sale was appropriate for, and in the best interests of, the Account, the Plans investing therein and their participants and beneficiaries.

(e) MetLife took all appropriate actions necessary to safeguard the interests of the Account and the Plans in connection with the Sale.

(f) If the exercise of any of MetLife's rights, claims or causes of action in connection with its ownership of the Note results in MetLife recovering from PG&E an aggregate amount that is greater than the sales price for such Note, MetLife will refund such excess amount to the Account.

Notice to Interested Persons

MetLife will provide notice of the proposed exemption to all interested persons by first class mail within 30 days of the date of publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments regarding the proposed exemption and requests for a public hearing are due within 60 days of the date of publication of the notice of pendency in the **Federal Register**.

For Further Information Contact: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Archer Daniels Midland Company (Archer) Located in Decatur, Illinois
[Application No. D–11068]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Agrinational Insurance Company (Agrinational) in connection with insurance contracts sold by Minnesota Life Insurance Company (Minnesota Life), or any successor insurance company to Minnesota Life which is unrelated to Archer, to provide basic and supplemental life insurance benefits to participants in Archer's programs to provide such benefits to its employees (the Plans),[26] provided the following conditions are met:

(a) Agrinational—

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with Archer that is described in section 3(14) (E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of the State of Vermont within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving Agrinational, there will be immediate and objectively determined benefit to the Plans' participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Minnesota Life or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plans only contract with insurers with a rating of A or better from A. M. Best Company (Best's). The reinsurance arrangement between the insurers and Agrinational will be indemnity insurance only, *i,e.,* the insurer will not be relieved of liability to the Plans should Agrinational be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) Agrinational retains an independent fiduciary (the Independent Fiduciary), at Archer's expense, to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been complied with. For purposes of the proposed exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Archer or Agrinational (this relationship hereinafter referred to as an ''Affiliate'');

(2) Is not an officer, director, employee of, or partner in, Archer or Agrinational (or any Affiliate of either);

(3) Is not a corporation or partnership; in which Archer or Agrinational has an ownership interest or is a partner;

(4) Does not have an ownership interest in Archer or Agrinational, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plans Prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an ''Independent Fiduciary,'' no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Archer, Agrinational, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exception granted by the Department) for that fiscal year exceeds 5 percent of that organization or individual's annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property

[26] Each Plan will be considered an ''employee welfare benefit plan'' as defined in section 3(1) of the Act.

from, sell any property to, or borrow funds from Archer, Agrinational, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

Preamble

On August 7, 1979, the Department published a class exemption (Prohibited Transaction Exemption 79–41 (PTE 79–41), 44, FR 46365) which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales or life insurance, health insurance or annuity contracts with fund such plans if certain conditions are satisfied.

In PTE 79–41, the Department states its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction under the Act.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. Archer is engaged in the business of procuring, transporting, storing, processing and merchandising agricultural commodities and products. It is one of the world's largest producers of oilseeds, corn and wheat. Archer also processes cocoa beans, milo, oats, barley and peanuts. Other operations include transporting, merchandising and storing agricultural commodities and products. These operations and processes produce products which have primarily two end uses: Food or feed ingredients. Each commodity processed is itself a feed ingredient as are the by-products produced during the processing of each commodity. Archer complements its own resources with a world-wide network of affiliates engaged in processing, transportation, storage and sales. Archer was incorporated under the laws of the State of Delaware in 1923 as successor to the Daniels Linseed Co., which was founded in 1902.

2. Agrinational is a wholly-owned subsidiary of Archer. Agrinational was incorporated in Vermont on September 10, 1987, and on September 21, 1987, the Commissioner of Banking and Insurance for the State of Vermont granted it a Certificate of Authority to transact the business of a captive insurance company in the State of Vermont. The only restrictions placed by the State of Vermont on the type of insurance that Agrinational may write pertain to personal motor vehicle or homeowner's insurance and to excess workers' compensation insurance under certain circumstances, and thus are not relevant to the exemption proposed herein.

3. At year end 2000, Agrinational had capital in the amount of $10,000,000, retained earnings in the amount of $22,731,920 and earned premium in the amount of $17,176,878. Agrinational presently provides insurance and reinsurance coverage for property, casualty and marine risks of Archer and its subsidiaries world-wide. In addition, Agrinational participates as a quota share reinsurer of various insurance company treaties that contain risks unrelated to Archer and its subsidiaries. The independent certified public accounting firm of Ernst & Young, LLP (EY), which prepared Agrinational's most recent audited financial statement, has served as Agrinational's auditor since its incorporation. EY will examine Agrinational's reserves on an annual basis in connection with the employee benefit business to be reinsured by Agrinational to ensure that appropriate reserve levels are maintained.

4. Archer maintains the ADM Omnibus Health and Welfare Plan for Salaried Employees and the ADM Omnibus Health and Welfare Plan for Hourly Employees (*i.e.,* the Plans) for substantially all of its salaried and hourly employees. The Plans provide both basic (the Basic Program) and supplemental (the Supplemental Program) life insurance programs. The Plans have been historically insured with Connecticut General Life Insurance Company, and, most recently, with Minnesota Life. However, Archer recently formulated a plan to utilize Agrinational for the reinsurance of benefits and has made or will make substantial improvements to the Plans in anticipation of that transaction.

5. Specifically, the new benefits are as follows:

(i) With respect to the life insurance program for salaried employees, the maximum benefit under the Basic Program has been increased from one-times base salary up to $100,000 to one-times base salary up to $1,000,000. In addition, the Basic Program will add an accelerated death benefit feature (which would provide benefits to the terminally ill) to the policy covering all participants. Finally, a non-contributory Accidental Death and Dismemberment benefit will be added to the Basic Program covering up to three times the basic life insurance benefit, subject to a schedule of amounts. All premiums under the Basic Program are fully paid by Archer. In addition, the maximum benefit under the Supplemental Program, which is employee paid, has been increased from up to four times salary with a cap of $1,000,000 to up to five times salary with a cap of $2,000,000. Dependent life insurance for the employee's spouse and children has been added on a voluntary basis. Portability of coverage has been added to all policies, so that coverage may continue at the group rates if a covered employee leaves employment. Finally, a waiver of premium provision has been added to the Supplemental and dependent coverage so in the event of the disability of the employee, coverage will continue without the payment of the premium. The new and/or enhanced benefits in the Supplemental Program are voluntary and the premiums are fully paid by the participants who elect them.

(ii) With respect to the life insurance program for hourly employees who are not covered by a collective bargaining agreement, the new non-contributory Accidental Death and Dismemberment benefit will be added to the Basic Program covering up to three times the basic life insurance benefit, subject to a schedule of amounts. All premiums under the Basic Program are fully paid by Archer. In addition, the Basic Program will add the accelerated death benefit feature (which would provide benefits to the terminally ill) to the policy covering all hourly employees who are not covered by a collective bargaining agreement. With respect to these employees, the Supplemental Program, which is employee paid, has

been increased from various levels to up to five times base pay with a cap of $2,000,000, and dependent life insurance for the employee's spouse and children has been added on a voluntary basis; and

(iii) With respect to the life insurance program for hourly employees who are covered by a collective bargaining agreement, Archer cannot unilaterally implement similar improvements to those which will be made to the Programs for salaried employees and hourly employees not covered by a collective bargaining agreement. However, Archer will implement such improvements if agreed to by the unions representing the hourly employees.

In addition, Archer recently has enhanced benefits for employees by making two new benefit programs available for its salaried employees and for its hourly employees who are not covered by a collective bargaining agreement. Archer will also implement these programs for hourly employees covered by a collective bargaining agreement if agreed to by the unions representing such employees in collective bargaining. The first of the new benefits is a legal services program, which provides certain legal services through Hyatt Legal Plans, Inc., for a set premium each month. The premiums are paid by the employees through amounts deducted from their paychecks. The second new program is an auto and home insurance program, which offers eligible employees group rates for automobile, home and other personal property through Hanover Insurance Company. The premiums for this program are also paid by the employees.

6. The life insurance Plans are now insured by Minnesota Life, which currently has a rating of A++ from Best's. The applicant represents that if the Plans choose another insurer in the future, that insurer will have a rating of A or better from Best's. The applicant anticipates that upon the granting of the exemption proposed herein, Minnesota Life will enter into reinsurance agreements with Agrinational. Minnesota Life was recently acquired by Liberty Mutual Insurance Company (Liberty), an A+ rated (by Best's) carrier located in Boston, Massachusetts. Liberty is rated by Moody's as Aa3 (Excellent) and by Standard & Poor's as AA− (Very Strong).

Minnesota Life will continue to insure the Plan, with the enhanced new benefits. However, Minnesota Life will reinsure up to 100% of the risk with Agrinational. The percentage of the risk to be insured will be specified in the reinsurance agreements between Minnesota Life and Agrinational. The reinsurance agreements between Minnesota Life and Agrinational will be indemnity reinsurance only, so that Minnesota Life will not be relieved of its liability to the Plans should Agrinational be unwilling or unable to cover any liability arising from the reinsurance arrangement.

The Plans will pay no more than adequate consideration for the insurance contracts with Minnesota Life or any successor insurer. The formula used to calculate premiums by Minnesota Life or any successor insurer [27] will be similar to formulae used by other insurers providing life insurance coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer providing coverage under the Plans and its competitors with the same or a better rating providing the same coverage under comparable programs.

7. In connection with this exemption request, Agrinational has engaged the services of Milliman USA (Milliman), (formerly Milliman and Robertson, Inc.) as the Independent Fiduciary for the Plans. Milliman is an international firm of consultants and actuaries with expertise in all facets of employee benefits, including insurance. Charles M. Waldron, FSA (Mr. Waldron), a Principal and Consulting Actuary employed by Milliman, has signed the Independent Fiduciary representations on behalf of Milliman. Milliman's consultants are frequently retained to advise corporations on the insurance arrangements underlying their benefit programs and have considerable expertise in the area of reinsurance and captive insurers.

8. For purposes of demonstrating independence, Mr. Waldron has represented that:

(a) Neither he nor Milliman is an Affiliate of Archer, Minnesota Life or Agrinational;

(b) He is not an officer, director, employee of, or partner in Archer, Agrinational or Minnesota Life;

(c) Milliman is not a corporation in which Archer, Agrinational or any of the other insurers involved in the proposed transaction has an ownership interest or is a partner;

(d) Neither he nor Milliman has an ownership interest in Archer, Agrinational, or Minnesota Life, or in any Affiliate of those firms;

(e) He was not a fiduciary with respect to the Plans prior to his appointment for this transaction;

(f) He has acknowledged in writing on behalf of Milliman its acceptance of fiduciary obligations and has agreed not to participate in any decision with respect to any transaction in which either he or Milliman has an interest that might affect their fiduciary duty;

(g) The gross income received by Mr. Waldron and Milliman separately and combined from Archer, Agrinational, Minnesota Life, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department), does not exceed 5 percent of Mr. Waldron's or Milliman's gross annual income from all sources for any fiscal year; and

(h) Neither Milliman nor Mr. Waldron has acquired any property from, sold property to, or borrowed funds from Archer, Agrinational, or Minnesota Life or their Affiliates.

9. Mr. Waldron represents that Agrinational is licensed to do business in the State of Vermont and has been conducting business since 1987 insuring and reinsuring property, casualty and marine business. Agrinational's reserves for the past two (2) years have been reviewed by the actuarial services group of EY, which is a firm independent of Agrinational and Archer. Mr. Waldron has reviewed the report on the reserves and is satisfied that there are no issues to be resolved. In addition, Mr. Waldron represents that future reserves will be reviewed by a qualified actuary approved by the State of Vermont. Mr. Waldron has confirmed that Agrinational has undergone an examination by EY, an independent certified public accountant, for its last completed taxable year.

10. Mr. Waldon has concluded that, as a result of the reinsurance agreement described in representation 6, above, the Plans' risks will be 100% covered by Minnesota Life, a carrier rated A++ by Best's, even if Agrinational were unable or unwilling to cover the Plans' liabilities it is assuming as a result of the reinsurance agreement. Mr. Waldon represents that he has reviewed the terms of the proposed reinsurance agreement between Minnesota Life and Agrinational. Mr. Waldron states that the agreement provides for the risk retained by Agrinational to revert back to Minnesota Life at no further cost to the Plans should Agrinational be unable or unwilling to pay the benefits.

11. Mr. Waldron has represented that he reviewed the Plans' benefits before the reinsurance transaction and the benefits implemented in anticipation of

[27] The applicant states that any successor insurer would be a legal reserve life insurance company with assets of such a size as to afford similar protection and responsibility.

the reinsurance transaction. He has concluded that there is an immediate benefit to the Plans' participants from the reinsurance transaction. Generally all participants in the Supplemental Program receive increased benefits and options. For the Basic Program, generally all participants have received an accelerated death benefit coverage and will receive Accidental Death and Dismemberment Insurance up to three times the basic life insurance benefit. Finally, there are increased basic life insurance benefits for salaried employees with annual salaries exceeding specified amounts (e.g., $100,000).

12. Mr. Waldron makes the following representations concerning the determination of the initial premium to the Plans under the proposed arrangement. The Plans contacted Minnesota Life and were quoted a rate based on Minnesota Life's evaluation of the risk. Archer received quotes from three different companies to provide insurance coverage for the group life, supplemental life and dependent life insurance programs. From these three companies, Archer selected Minnesota Life, which was the middle one in terms of premium. Minnesota Life was 3% above the lowest cost and 7.5% below the highest cost provider. The premium paid to Agrinational is based on a reinsurance agreement where Agrinational receives a portion of the premium charged equal to the proportion of the risk that Agrinational covers. This is a typical reinsurance arrangement for life insurance products. Mr. Waldron further represents that, based upon his review, the premiums charged by Minnesota Life are similar to premiums charged by other insurers providing group life, supplemental life, and dependent life insurance under similar plans. The applicant represents that the Independent Fiduciary (i.e., either Milliman or another qualified fiduciary acting as a successor, as noted below) will confirm on an annual basis that each Plan is paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plan with comparable claims experience.

13. Milliman will represent the interests of the Plans as the Independent Fiduciary at all times.[28] Milliman will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plans and of their participants and beneficiaries.

14. The applicant represents that the proposed reinsurance transaction will meet the following conditions of PTE 79–41 covering direct insurance transactions:

(a) Agrinational is a party in interest with respect to the Plans (within the meaning of section 3(14)(G) of the Act) by reason of stock affiliation with Archer, which maintains the Plans;

(b) Agrinational is licensed to conduct reinsurance transactions by the State of Vermont. The law under which Agrinational is licensed requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(c) Agrinational has undergone an examination by the independent certified public accountant firm of EY for its last completed taxable year;

(d) Agrinational has received a Certificate of Authority from its domiciliary state, Vermont, which has neither been revoked nor suspended;

(e) The Plans will pay no more than adequate consideration for the insurance. In addition, in the initial year of the proposed reinsurance transaction, there will be an immediate and objectively determined benefit to the Plans' participants and beneficiaries in the form of increased benefits; and

(f) No commissions will be paid by the Plans with respect to the reinsurance arrangement with Agrinational, as described herein.

In addition, the Plans' interests will be represented by a qualified, independent fiduciary (*i.e.,* Milliman or its Successor), who has initially determined that the proposed reinsurance transactions will be in the best interests, and protective, of the Plans and their participants and beneficiaries. The Independent Fiduciary will also confirm on an annual basis that the Plans are paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plans with comparable claims experience.

15. In summary, the applicant represents that the proposed reinsurance transactions will meet the criteria of section 408(a) of the Act because: (a) The Plans' participants and beneficiaries are afforded insurance protection by Minnesota Life, a carrier rated A++ by Best's, at competitive market rates arrived at through arm's-length negotiations; (b) Agrinational, which will enter into the reinsurance agreements with Minnesota Life, is a sound, viable insurance company which has been in business since 1987; (c) the protections described in representation 14, above, provided to the Plans and their participants and beneficiaries under the proposed reinsurance transactions are based on those required for direct insurance by a ''captive'' insurer, under the conditions of PTE 79–41 (notwithstanding certain other requirements related to, among other things, the amount of gross premiums or annuity considerations received from customers who are not related to, or affiliated with the insurer);[29] (d) Mr. Waldron, acting on behalf of Milliman as the Plans' Independent Fiduciary, has reviewed the proposed reinsurance transaction and has determined that the transaction is appropriate for, and in the best interests of, the Plans and that there will be an immediate benefit to the Plans' participants as a result thereof by reason of an improvement in benefits under the terms of the Plans; and (e) Milliman will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plans and of their participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department,

[28] In this regard, the applicant makes a representation regarding a successor independent fiduciary. Specifically, if it becomes necessary in the future to appoint a successor independent fiduciary (the Successor) to replace Milliman and Mr. Waldron, the applicant will notify the Department sixty (60) days in advance of the appointment of the Successor. Any Successor will have the responsibilities, experience and independence similar to those of Milliman and Mr. Waldron.

[29] The proposal of this exemption should not be interpreted as an endorsement by the Department of the transactions described herein. The Department notes that the fiduciary responsibility provisions of Part 4 of Title I of the Act apply to the fiduciary's decision to engage in the reinsurance arrangement.

Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan. In this regard, the Department is not providing any opinion as to whether a particular insurance or investment product, strategy or arrangement would be considered prudent or in the best interests of a plan, as required by section 404 of the Act. The determination of the prudence of a particular product or arrangement must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular product or arrangement involved, including the plan's potential exposure to losses and the role a particular insurance or investment product plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (see 29 CFR 2550.404a–1).

telephone (202) 693–8546. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC this 26th day of February, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–4921 Filed 2–28–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–03; Exemption Application No. D–11095 et al.]

Grant of Individual Exemptions; Reagent Chemical & Research, Inc. Employees' Profit Sharing Plan and Trust (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Reagent Chemical & Research, Inc. Employees' Profit Sharing Plan and Trust (the Plan); Located in Middlesex, New Jersey

[Prohibited Transaction Exemption No. 2003–03; Exemption Application No. D–11095]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a 73.4815% tenancy-in-common interest (the Property Interest) by the Plan to Brian Skeuse, a vice president and shareholder of Reagent Chemical & Research, Inc., and his spouse, Jan Skeuse, parties in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale is a one-time cash transaction;

(b) The Plan receives the greater of either: (i) $180,029.68; or (ii) the current fair market value for the Property Interest established at the time of the sale by an independent qualified appraiser; and

(c) The Plan pays no commissions or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on December 30, 2002 at 67 FR 79654.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Michigan Conference of Teamsters Welfare Fund (the Plan); Located in Detroit, MI

[Prohibited Transaction Exemption 2003–04; Exemption Application No. L–11058]

Exemption

The restrictions of sections 406(a)(1)(A) and (D) of the Act shall not apply to the cash sale, by the Plan, of certain parcels of real estate (the Property) to the Detroit Teamsters Temple Association (DTTA), a party in interest with respect to the Plan and a lessee of a portion of such Property.

This exemption is subject to the following conditions:

(a) DTTA pays the fair market value as determined by a qualified, independent appraiser on the date of the transaction.

(b) The sale transaction has been reviewed and approved by an Independent Fiduciary, who was appointed by the United States District Court for the Eastern District of Michigan, Southern Division for purposes of enforcing a settlement agreement dated January 21, 1998.

(c) The sale is a one-time transaction for cash.

(d) The Plan pays no fees or commissions in connection with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 18, 2002 at 67 FR 69566.

Extension of Comment Period

The notice of proposed exemption invited interested persons to submit comments to the Department on or before December 28, 2002. The applicant agreed to provide notice to interested persons by personal delivery or first class mail within ten days of the date that the proposal appeared in the **Federal Register**. A total of 23,511 notices was sent to Plan participants and other interested persons by first class mail. Of that total, 14,234 notices were sent on November 27, 2002 and 8,951 notices were sent on November 29, 2002 (November 28, 2002 being a federal holiday). On December 3, 2002, the applicant learned that 266 notices had not been included in the original mailings and that 66 envelopes from these mailings had been damaged. These remaining 332 notices were sent by first class mail on December 4, 2002.

To ensure that Plan participants would have a sufficient amount of time in which to provide their comments to the Department, the applicant decided to extend the comment period for another 46 days, or until February 14, 2003. In this regard, the applicant represents that on December 27, 2002, postcards were sent to the Plan's 5,662 retired participants by first class mail informing them that the period for submitting comments had been extended until February 14, 2003. In addition, on January 7, 2003, the applicant states that letters were sent by first class mail to the principal officers of the 19 Local Unions comprising the Michigan Conference of Teamsters instructing them to post an enclosure stating that the period for submitting comments had been extended until February 14, 2003. On January 8, 2003, a notice was posted on the Plan's website stating that the period for submitting comments had been extended until February 14, 2003.

Written Comments

During the comment period, the Department received two written comments with respect to the proposed exemption. The first comment expressed approval of the exemption transaction. The second comment, which was submitted by a Plan participant who chose to remain anonymous, stated matters that were not germane to the exemption request.

For further information regarding the comments received and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. L–11058) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of February, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–4922 Filed 2–28–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Jim Walter Resources, Inc.

[Docket No. M–2003–010–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) to its No. 7 Mine (MSHA I.D. No. 01–01401) located in Tuscaloosa County, Alabama. The petitioner proposes to use a 2,400-volt power center with a high-voltage trailing cable to power a continuous miner inby the last open crosscut and within 150 feet of pillar workings. The petitioner has listed in this petition for modification specific terms and conditions that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to comments@msha.gov, or on a computer disk along with an original hard copy to the Office of Standards,

Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before April 2, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 25th day of February, 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–4860 Filed 2–28–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting Notice

AGENCY HOLDING MEETING: National Science Foundation, National Science Board, Task Force on National Workforce Policies for Science & Engineering.

DATE AND TIME: March 3, 2003, 12 p.m.–1 p.m.; Open session.

PLACE: The National Science Foundation, Stafford One Building, 4201 Wilson Boulevard, Room 120, Arlington, VA 22230.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: Monday, March 3, 2003; open session.

Open Session (12 p.m. to 1 p.m.)

—Discussion of comments on the draft report of the NSB/EHR Task Force on National Workforce Policies for S&E.

FOR FURTHER INFORMATION CONTACT: Gerard Glaser, Executive Officer, NSB, (703) 292–7000, *http://www.nsf.gov/nsb.*

Gerard Glaser,

Executive Officer.

[FR Doc. 03–5007 Filed 2–27–03; 12:17 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–35594, License No. 37–30603–01, EA No. 02–072]

In the Matter of Advance Medical Imaging and Nuclear Services, Easton, PA; Order Imposing a Civil Monetary Penalty

I

Advanced Medical Imaging and Nuclear Services (Licensee) is the holder of Byproduct Materials License No. 37–30603–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35. The License authorizes the Licensee to possess and use certain byproduct materials (identified in 10 CFR 35.100 and 35.200) at its Easton, Pennsylvania facility for any uptake, excretion, imaging, and localization procedures approved in those parts. The license was issued on February 16, 2001, and is due to expire on February 28, 2011.

II

An inspection of the Licensee's activities was conducted on November 30, 2001, at the Licensee's facility located in Easton, Pennsylvania. Further, an investigation was also conducted by the NRC Office of Investigations. The results of this inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written notice of violation and proposed imposition of civil penalty (notice) was served upon the Licensee by letter dated October 22, 2002. The notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the notice, in a letter, dated November 21, 2002. In its response, the Licensee: (1) Admits the first of three violations that were classified as a Severity Level II problem; (2) denies the other two violations that were part of the Severity Level II problem; (3) contests the Severity Level II classification for the three violations; (4) contests the amount of the civil penalty for the Severity Level II problem; and (5) admits two other violations that were classified at Severity Level IV.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that an adequate basis was not provided for withdrawal of any violations, for reduction of the Severity Level II classification, or for reduction or withdrawal of the penalty. Therefore, the NRC staff has determined that a penalty of $43,200 should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $43,200 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.*

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations B and C of the notice referenced in section II above, and

(b) Whether, on the basis of such violations, and the additional violations

set forth in the notice of violation that the Licensee admitted, this Order should be sustained.

Dated in Rockville, Maryland, this 19th day of February, 2003.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

Appendix

Evaluations and Conclusion

On October 22, 2002, a notice of violation and proposed imposition of civil penalty (notice) was issued for violations identified during an NRC inspection conducted at the Licensee's facility located in Easton, Pennsylvania. The penalty was issued for three violations that were classified as a Severity Level II problem. The Licensee responded to the notice in a letter, dated November 21, 2002. In its response, the Licensee: (1) Admits the first of the three violations that were classified as a Severity Level II problem; (2) denies the other two violations that were part of the Severity Level II problem; (3) contests the Severity Level II classification for the three violations; (4) contests the amount of the civil penalty for the Severity Level II problem; and, (5) admits two other violations that were classified at Severity Level IV. The NRC's evaluation and conclusion regarding the Licensee's request is as follows:

1. Restatement of the Three Violations Classified at Severity Level II and Assessed a Civil Penalty

A. 10 CFR 35.11 requires, in part, that a person shall not use byproduct material for medical use except in accordance with a specific license or under the supervision of an authorized user as provided in 10 CFR 35.25.

Contrary to the above, from June 2001 to November 30, 2001, a Nuclear Medicine Technologist (NMT) used byproduct material for patient diagnosis on approximately 590 occasions, and the use by the NMT was not in accordance with a specific license. In addition, the NMT was not under the supervision of an authorized user.

B. 10 CFR 35.21(a) requires that a licensee shall appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in daily operation of the licensee's byproduct material program.

Contrary to the above, from about March 2001 to November 30, 2001, the licensee conducted licensed activities, including ordering and administering radiopharmaceuticals on approximately 590 occasions, and during that time, the licensee had not appointed a Radiation Safety Officer responsible for implementing the radiation safety program, to ensure that activities were being performed in accordance with approved procedures and regulatory requirements in daily operations of the licensee's program.

C. 10 CFR 30.9(a) requires, in part, that information required by license conditions to be maintained by the licensee, shall be complete and accurate in all material respects.

License condition 15.A of the NRC license for AMINS requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in various documents, including the license application dated October 20, 2000.

Item 10, Attachment 10.6 of the NRC license application for AMINS dated October 20, 2000, requires that written records will be made that identify the Authorized User when ordering radioactive materials.

Contrary to the above, on November 30, 2001, information required to be maintained by the licensee was not complete and accurate in all material respects. Specifically, all records of radioactive materials ordered between March 2001 and November 2001 indicated that the Authorized User who ordered the radiopharmaceuticals was Dr. Brij Mohan Gupta (Dr. Mohan). These records were not accurate in that Dr. Mohan was not employed by the licensee as an Authorized User, nor did he function in that capacity. This statement was material because an Authorized User was required by the license and by NRC regulations for supervision of the administration of radiopharmaceuticals to patients.

These violations represent a Severity Level II problem (Supplement IV). Civil Penalty—$43,200

2. Summary of Licensee's Response Denying Violation 1.B

The licensee denies Violation 1.B, involving the licensee not appointing an RSO responsible for implementing the program when the radiopharmaceuticals were ordered and administered on the approximately 590 occasions. The licensee contends that with the assistance of its consultant, it was able to assure regulatory requirements were met during daily operations of the facility.

NRC Evaluation of Licensee's Response Denying Violation 1.B

Although the licensee denies this violation, the licensee, in its response, admits that it was unable to finalize arrangements with the individual who was listed on its license as the RSO. Therefore, since such arrangements were never finalized, and since the individual listed as the RSO never served as the licensee's RSO, the licensee did not appoint an RSO, consistent with requirements, responsible for implementing the radiation safety program. Rather, the license identified an individual as the RSO who was not employed by the licensee either directly, or as a contractor or consultant, and who did not implement the radiation safety program at any time, including between March 2001 and November 30, 2001, when the radiopharmaceuticals were ordered and administered on the approximately 590 occasions. Therefore, even though the licensee indicates that it was able to assure, as evidenced by a subsequent review by its consultant, that other regulatory requirements had been met during daily operations of the facility, the licensee did not provide an adequate basis for the NRC to withdraw Violation 1.B in the notice. Accordingly, the violation remains as stated in the notice.

3. Summary of Licensee's Response Denying Violation 1.C

The licensee denies Violation 1.C involving the creation of inaccurate records of the radioactive materials ordered on the 590 occasions. The records were considered inaccurate in that the licensee listed as the authorized user an individual physician who was not employed by the licensee and was not performing the duties of the authorized user. The licensee denies this violation because the physician was identified on the license as the AU, and the records were completed in a manner consistent with the license. The licensee states that it was not aware of any regulatory requirement that the authorized user be employed by the licensee.

NRC Evaluation of Licensee's Response Denying Violation 1.C

The NRC had determined that Violation 1.C occurred because information required to be maintained by the licensee was not complete and accurate in all material respects. Specifically, all records of radioactive materials ordered between March 2001 and November 2001 indicated that the Authorized User who ordered the radiopharmaceuticals was Dr. Brij Mohan Gupta (Dr. Mohan). These records were not accurate in that Dr. Mohan was not employed by the licensee, nor acting in any capacity, as an Authorized User.

In denying this violation, the licensee states that the crux of this regulatory requirement is that the licensee's records be accurate, and that the performance by the AU of his/her obligations is not the focus of this regulation but is covered under other regulations. The NRC maintains that these records were not accurate because the individual listed in the records as the AU was never employed by the licensee, nor did that individual otherwise serve or act as the AU (such as via a contractor or consultant arrangement). Therefore, the licensee did not provide an adequate basis for the NRC to withdraw Violation 1.C in the notice. Accordingly, the violation remains as stated in the notice.

4. Summary of Licensee's Response Contesting Classification of the Three Violations at Severity Level II

The licensee contests the Severity Level II problem classification for the three violations set forth in section I of the notice. The licensee contends that the violations were not willful; the VP and COO have been penalized; even if the VP and COO's actions were willful, the action taken against them obviates the need for substantial penalties to the licensee; there were no actual or realistic potential safety consequences as a result of the violations; and classification of the violations at a Level II is inconsistent with NRC policy and prior determinations. With respect to the last point, the licensee indicates that the seven examples of Severity Level II described in the HP supplement of the enforcement policy, relate to overexposures or unauthorized releases.

Further, the licensee provided a list of 16 other Severity Level III enforcement actions that the licensee maintains are similar to its case.

NRC Evaluation of Licensee's Response Contesting Classification of the Three Violations at Severity Level II

In assessing the significance of violations, and assigning an appropriate Severity Level, the NRC considers the actual and potential consequences of the violations, their impact on the regulatory process, and any willful aspects of the violations, as noted in section IV.A of the NRC enforcement policy (NUREG–1600). The supplements to the enforcement policy provide examples of different Severity Levels and serve as guidance in determining the appropriate Severity Level for the violations, as noted in section IV.B of the enforcement policy. In this case, since the violations included the failure to have an AU and RSO, the violations would normally have been classified at Severity Level III in accordance with section C.8 of Supplement VI of the enforcement policy. However, section IV.A.4 of the enforcement policy specifies that violations may be considered more significant if they include indications of willfulness. In deciding whether to increase the significance of the violations, the NRC considers the positions and responsibilities of the persons involved, the significance of the underlying violations, the intent of the violators, and the economic advantage gained.

In this case, the NRC maintains that the violations were deliberate, notwithstanding the licensee's denial. As noted in the NRC October 22, 2002, letter transmitting the notice of violation and proposed imposition of civil penalty, the NRC considered the following facts in concluding that the violations were deliberate: (1) The VP prepared the NRC license application in October 2000, with the aid of a consulting physicist, and he listed an individual (a physician) as the AU and RSO on the application; however, the named individual was never employed by AMINS and never performed the duties of the AU or RSO at AMINS; (2) from June 2001 through November 2001, AMINS staff listed that individual as the AU of record when it ordered and administered radiopharmaceuticals on approximately 590 occasions; (3) in October 2001, a consulting physicist conducted an audit that revealed that the duties of the AU/RSO had not been performed, and he briefed the licensee regarding the problem at the end of the audit, yet NRC licensed activities continued until the NRC inspection on November 30, 2001; (4) the VP, when interviewed by an OI investigator, admitted that he knew the facility was required to have an AU and RSO and knew as early as June 2001 that not having an AU and RSO was a problem, but he did not take action to correct the situation; and (5) both the VP and COO admitted to the OI investigator that there were financial considerations associated with keeping the facility open.

Furthermore, the violations were the result of the actions by senior individuals in the organization (namely a Vice President and the Chief Operating Officer), and there was an economic advantage to the licensee when it performed 590 administrations of radioactive materials at a time when it did not have an RSO and AU. Accordingly, even though there were no safety consequences identified from these violations, and actions were taken against both the Vice President and Chief Operating Officer, by both the licensee and the NRC, the NRC maintains that it was appropriate to increase the Severity Level classification from a Severity Level III to a Severity Level II in this case, and that such an increase is consistent with NRC policy and past determinations. In addition, contrary to the licensee's assertion, the 16 enforcement actions listed in the licensee's response are not similar to the circumstances of the AMINS enforcement action. Only six involved medical or human uses, and each of those six only involved one or two incidents of regulatory violations.

5. Summary of Licensee's Response Contesting the Amount of the Civil Penalty and Requesting Withdrawal or Reduction of the Civil Penalty

The licensee contests the amount of the civil penalty, contending that the NRC has abused its discretion by proposing a civil penalty of $43,200. In support of that contention, the licensee reiterates that it denies two of the three violations that were classified as the Severity Level II problem. In addition, the licensee maintains that it should be given credit for notification, asserting that the COO and VP voluntarily informed the inspector of the violations. Also, the licensee stated that even if it is not entitled to credit for identification, the violations should be classified at Severity Level III and the penalty should not exceed the base amount of $3000 for a Severity Level III. Finally, the licensee states that the use of weekly civil penalties was not warranted and was inconsistent with prior NRC cases, and cited examples of prior enforcement actions that the licensee believes to be inconsistent with the action taken against the licensee.

NRC Evaluation of Licensee's Response Contesting the Amount of the Civil Penalty and Requesting Withdrawal or Reduction of the Civil Penalty

The NRC disagrees that it has abused its discretion in determining the amount of the civil penalty in this case. For the reasons set forth in sections 3 and 4 above, the NRC maintains that all three violations occurred as stated in the notice, and were appropriately classified as a Severity Level II problem.

In addition, the NRC also maintains that the licensee is not entitled to credit for identification because the violations were identified by the NRC when the inspector arrived at the site on November 30, 2001. The NRC was not informed of such violations prior to that inspection, nor were there any indications in licensee's records identifying the violations. During that inspection, the NRC learned that the licensee's consulting physicist had identified the failure to have an AU during an audit, and briefed the licensee regarding the problem on October 3, 2001.

Finally, as noted in the October 22, 2002, letter transmitting the notice of violation and proposed imposition of civil penalty, the NRC decided that consideration of daily civil penalties was appropriate in this case, due to the multiple instances of deliberately ordering and administering byproduct material to human patients without the benefit of a physician authorized user and a radiation safety officer, the level of management involved, the economic benefit associated with continuing to operate without an AU and RSO, and the failure to correct the problem even after the findings of the licensee's consultant on October 3, 2001. The NRC has also reviewed the enforcement cases referenced by the licensee, and finds that the circumstances in this case are not similar to any of the cases cited. Accordingly, the NRC maintains that it is appropriate to issue: (1) A base civil penalty amount of $4,800 for the occurrence of the violations between March 2001 and October 3, 2001; and (2) additional civil penalty in the base amount of $4,800 for each of the eight weeks that the violations continued even after the consultant identified the problem to the licensee on October 3, 2001. Therefore, the licensee has not provided an adequate basis to withdraw or reduce that civil penalty.

6. NRC Conclusion

The NRC has concluded that the Licensee did not provide an adequate basis for withdrawal of any of the violations, or for withdrawal or reduction of the civil penalty amount. Accordingly, the proposed civil penalty in the amount of $43,200 should be imposed.

[FR Doc. 03–4891 Filed 2–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Export a Utilization Facility

Pursuant to 10 CFR 110.70(b)(1) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *<http://www.nrc.gov/NRC/ADAMS/index.html>* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export a utilization facility as

defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION FOR A UTILIZATION FACILITY

Name of applicant, date of application, date received, Application No., Docket No.	Description of facility	End use	County of destination
General Electric Nuclear Energy (GE), February 6, 2003. February 10, 2003, XR168, 11005399 ...	Equipment—major components of a GE Advanced Boiling Water Reactor (ABWR). Approximate Value: $750,000,000.00.	Teollisuuden Voima Oy (TVO) Finland 5 Nuclear Power Plant (FIN5).	Finland.

For the Nuclear Regulatory Commission.

Dated this 24th day of February 2003, at Rockville, Maryland.

Donna C. Chaney,

Acting Director, Office of International Programs.

[FR Doc. 03–4889 Filed 2–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting; Pre-application Early Site Permit Meeting for the Clinton Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting in Clinton, Illinois.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will hold a facilitated meeting on March 20, 2003, to provide information to the public on the NRC Early Site Permit review process, as well as the opportunities for public involvement in that process for the Clinton site. Exelon Generation Company is expected to file an early site permit application in June 2003 for a new reactor or reactors at the Clinton site.

DATE/TIME: The meeting will be held on Thursday, March 20, 2002, from 7 p.m. through 9 p.m. The meeting will be preceded by an informal ''orientation session'' from 6 p.m. through 7 p.m. to allow for individual discussions with NRC staff members.

Location: Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, Illinois.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Council for Public Liaison, Office of General Council, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov*. Mr. Cameron will facilitate the meeting.

SUPPLEMENTARY INFORMATION: Additional information can be obtained from the Web site (*http://nrcweb.nrc.gov:300/reactors/new-licensing/license-reviews/esp.html*), or by contacting Ms. Nanette Gilles at (301) 415–1180, or via e-mail at *nvg@nrc.gov*.

Dated at Rockville, Maryland, this 26th day of February 2003.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 03–4892 Filed 2–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting; Pre-application Early Site Permit Meetings for the North Anna Site

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of public meetings in Mineral, Virginia.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) will hold facilitated meetings on April 1, 2003, to provide information to the public on the NRC Early Site Permit (ESP) review process, as well as the opportunities for public involvement in that process for the North Anna site. Dominion Energy, Incorporated (Dominion) is expected to file an ESP in September 2003 for a new reactor or reactors at the North Anna site.

Date/Time: The meetings will be held on Tuesday, April 1, 2003, beginning with the first meeting from 2 p.m. through 4:30 p.m., followed by a later meeting from 7 p.m. through 9:30 p.m. Each meeting will be preceded by an ''open house'' one hour prior to the meeting to allow for individual discussions with staff members.

Location: Louisa County Library, 881 Davis Highway, Mineral, Virginia

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Council for Public Liaison, Office of General Council, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov*. Mr. Cameron will facilitate the meeting.

SUPPLEMENTARY INFORMATION: Additional information can be obtained from the Web site (*http://nrcweb.nrc.gov:300/reactors/new-licensing/license-reviews/esp.html*), or by contacting Mr. Michael Scott at (301) 415–1421, or via e-mail at *mls3@nrc.gov.*

Dated at Rockville, Maryland this 26th day of February 2003.

For the Nuclear Regulatory Commission:

James E. Lyons,

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 03–4893 Filed 2–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity to Comment on Model Safety Evaluation on Technical Specification Improvement To Eliminate Post Accident Sampling Requirements for Babcock and Wilcox Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the elimination of requirements on post accident sampling imposed on licensees through orders, license conditions, or technical specifications. The NRC staff has also prepared a model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to remove requirements for the Post Accident Sampling System (PASS) for Babcock and Wilcox (B&W) Reactors. Licensees

of nuclear power reactors to which the models apply could request amendments conforming to the models. In such a request, a licensee should confirm the applicability of the SE and NSHC determination to its reactor and provide the requested plant-specific verifications and commitments. The NRC staff is requesting comments on the model SE and model NSHC determination before announcing their availability for referencing in license amendment applications.

DATES: The comment period expires April 2, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Comments may be submitted by electronic mail to *CLIIP@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Dennig, Mail Stop: O–12H2, Technical Specifications Section, Operating Reactor Improvement Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1156.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The Consolidated Line Item Improvement Process (CLIIP) is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the Standard Technical Specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comment on a proposed change to the STS that removes requirements for the PASS for B&W plants. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to technical specifications are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability would be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the elimination of requirements for PASS and related administrative controls in technical specifications for B&W plants. This proposed change was proposed for incorporation into the standard technical specifications by the B&W Owners Group (BWOG) participants in the Technical Specification Task Force (TSTF) and is designated TSTF–442. TSTF–442 is supported by the NRC staff's safety evaluation dated November 14, 2002, for the BWOG topical report BAW–2387, ''Justification for the Elimination of the Post Accident Sampling System (PASS) from the Licensing Basis of Babcock and Wilcox-Designed Plants,'' which was submitted to the NRC on June 25, 2001. The BWOG request followed the staff's approval of similar requests for elimination of PASS requirements from the Combustion Engineering Owners Group (CEOG), the Westinghouse Owners Group (WOG), and the Boiling Water Reactor Owners Group (BWROG).

Applicability

This proposed change to remove requirements for PASS from technical specifications (and other elements of the licensing bases) is applicable to B&W plants.

To efficiently process the incoming license amendment applications, the staff requests each licensee applying for the changes addressed by TSTF–442 using the CLIIP to address the following plant-specific verifications and regulatory commitments. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested verifications and regulatory commitments. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review. In making the requested regulatory commitments, each licensee should address: (1) That the subject capability exists (or will be developed) and will be maintained; (2) where the capability or procedure will be described (*e.g.,* severe accident management guidelines, emergency operating procedures, emergency plan implementing procedures); and (3) a schedule for implementation. The amendment request need not provide details about designs or procedures.

Each licensee shall fulfill the actions, verifications or commitments that are identified in section 4.0 of the following proposed safety evaluation.

Public Notice

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. Following the staff's evaluation of comments received as a result of this notice, the staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation or proposed no significant hazards consideration determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The staff will in turn issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed no significant hazards consideration determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the elimination of the PASS requirements for each plant that applies for and receives the requested change.

Proposed Safety Evaluation; Consolidated Line Item Improvement; Technical Specification Task Force (TSTF) Change TSTF–442; Elimination of the Post Accident Sampling System (PASS) From the Licensing Basis of Babcock and Wilcox Designed Plants

1.0 Introduction

In its letter dated June 25, 2001, the BWOG submitted for the NRC staff's review topical report BAW–2387,

''Justification for the Elimination of the Post Accident Sampling System (PASS) from the Licensing Basis of Babcock and Wilcox-Designed Plants.'' The NRC staff's safety evaluation for the BWOG topical report is dated November 14, 2002 (ADAMS Accession Number ML022560119). The BWOG proposed elimination of the PASS requirements from the standard technical specifications by submitting TSTF–442.

In the aftermath of the accident at Three Mile Island (TMI), Unit 2, the Nuclear Regulatory Commission (NRC) imposed requirements on licensees for commercial nuclear power plants to install and maintain the capability to obtain and analyze post-accident samples of the reactor coolant and containment atmosphere. The desired capabilities of the Post Accident Sampling System (PASS) were described in NUREG–0737, ''Clarification of TMI Action Plan Requirements.'' The NRC issued orders to licensees with plants operating at the time of the TMI accident to confirm the installation of PASS capabilities (generally as they had been described in NUREG–0737). A requirement for PASS and related administrative controls was added to the technical specifications (TS) of the operating plants and was included in the initial TS for plants licensed during the 1980s and 90s. Additional expectations regarding PASS capabilities were included in Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants To Assess Plant and Environs Conditions During and Following an Accident.''

Significant improvements have been achieved since the TMI accident in the areas of understanding risks associated with nuclear plant operations and developing better strategies for managing the response to potentially severe accidents at nuclear plants. Recent insights about plant risks and alternate severe accident assessment tools have led the NRC staff to conclude that some TMI Action Plan items can be revised without reducing the ability of licensees to respond to severe accidents. The NRC's efforts to oversee the risks associated with nuclear technology more effectively and to eliminate undue regulatory costs to licensees and the public have prompted the NRC to consider eliminating the requirements for PASS in TS and other parts of the licensing bases of operating reactors.

The staff has completed its review of the topical report submitted by the Babcock and Wilcox Owners Group (BWOG) that proposed the elimination of PASS. The justifications for the proposed elimination of PASS requirements center on evaluations of the various radiological and chemical sampling and their potential usefulness in responding to a severe reactor accident or making decisions regarding actions to protect the public from possible releases of radioactive materials. As explained in more detail in the staff's safety evaluations for the topical report, the staff has reviewed the available sources of information for use by decision-makers in developing protective action recommendations and assessing core damage. Based on this review, the staff found that the information provided by PASS is either unnecessary or is effectively provided by other indications of process parameters or measurement of radiation levels. The staff agrees, therefore, with the owners group that licensees can remove the TS requirements for PASS, revise (as necessary) other elements of the licensing bases, and pursue possible design changes to alter or remove existing PASS equipment.

2.0 Regulatory Evaluation

The ways in which the requirements and recommendations for PASS were incorporated into the licensing bases of commercial nuclear power plants varied as a function of when plants were licensed. Plants that were operating at the time of the TMI accident are likely to have been the subject of confirmatory orders that imposed the PASS functions described in NUREG–0737 as obligations. The issuance of plant specific amendments to adopt this change, which would remove PASS and related administrative controls from TS, would also supersede the PASS specific requirements imposed by post-TMI confirmatory orders.

The NRC staff prepared this model safety evaluation (SE) relating to the elimination of requirements on post accident sampling for B&W plants and solicited public comments in [insert FR number] in accordance with the CLIIP. The use of the CLIIP in this matter is intended to help the NRC to efficiently process amendments that propose to remove the PASS requirements from TS. Licensees of nuclear power reactors to which this model apply were informed that they could request amendments conforming to the model, and, in such requests, should confirm the applicability of the SE to their reactors and provide the requested plant-specific verifications and commitments.

3.0 Technical Evaluation

The technical evaluations for the elimination of PASS sampling requirements are provided in the safety evaluation dated November 14, 2002, for BWOG topical report BAW–2387. As described in its safety evaluation for the topical report, the staff finds that the post-accident sampling requirements for the following may be eliminated for B&W plants:

1. Reactor coolant dissolved gases.
2. Reactor coolant hydrogen.
3. Reactor coolant oxygen.
4. Reactor coolant chlorides.
5. Reactor coolant pH.
6. Reactor coolant boron.
7. Reactor coolant conductivity.
8. Radionuclides in the reactor coolant.
9. Containment atmosphere hydrogen.
10. Containment atmosphere oxygen.
11. Radionuclides in the containment atmosphere.
12. Radionuclides in the containment sump.
13. Containment sump pH.
14. Chlorides in the containment sump.
15. Boron in the containment sump.

PASS sampling of the above 15 parameters is specified in NUREG–0737 and RG 1.97. The sampling of the parameters are either not required to manage an accident and recover plant conditions, or not necessary due to redundancy in sampling capabilities. Based upon the detailed justifications provided in topical report BAW–2387 and its associated safety evaluation of November 14, 2002, the staff concludes that the proposals to eliminate PASS sampling of the above parameters is acceptable.

The staff concludes that sampling of radionuclides is not required to support emergency response decision making during the initial phases of an accident because the information provided by PASS is either unnecessary or is effectively provided by other indications of process parameters or measurement of radiation levels. Therefore, it is not necessary to have dedicated equipment to obtain this sample in a prompt manner.

The staff does, however, believe that there could be significant benefits to having information about the radioisotopes existing post-accident in order to address public concerns and plan for long-term recovery operations. As stated in the safety evaluation for the topical report, the staff has found that licensees could satisfy this function by developing contingency plans to describe existing sampling capabilities and what actions (*e.g.,* assembling temporary shielding) may be necessary to obtain and analyze highly radioactive samples from the reactor coolant system (RCS), containment sump, and containment atmosphere. The use of the contingency plans for obtaining samples would depend on the plant conditions

and the need for information by the decision-makers responsible for responding to the accident (*see* section 4.0 below).

In addition, the staff considers radioisotope sampling information to be useful in classifying certain types of events (such as a reactivity excursion or mechanical damage) that could cause fuel damage without having an indication of a loss of reactor coolant inventory. However, the staff agrees with the topical report's contentions that other indicators of failed fuel, such as radiation monitors, can be correlated to the degree of failed fuel.

In lieu of the information that would have been obtained from PASS, the staff believes that licensees should maintain or develop the capability to monitor radioactive iodines that have been released to offsite environs. This information would be useful for decision makers trying to assess a release of and limit the public's exposure to radioactive materials.

The staff believes that the changes related to the elimination of PASS that are described in the topical report, related safety evaluation and this proposed change to TS are unlikely to result in a decrease in the effectiveness of a licensee's emergency plan. Each licensee, however, must evaluate possible changes to its emergency plan in accordance with 10 CFR 50.54(q) to determine if the change decreases the effectiveness of its site-specific plan. Evaluations and reporting of changes to emergency plans should be performed in accordance with applicable regulations and procedures.

The staff notes that containment hydrogen concentration monitors are required by 10 CFR 50.44 and are relied upon to meet the data reporting requirements of 10 CFR part 50, Appendix E, section VI.2.a.(ii)(3). The staff concludes that these hydrogen monitors provide an adequate capability for monitoring containment hydrogen concentration during the early phases of an accident. The staff sees value in maintaining the capability to obtain grab samples for complementing the information from the hydrogen monitors in the long term (*i.e.,* by confirming the indications from the monitors and providing hydrogen measurements for concentrations outside the range of the monitors). The licensee's contingency plan for obtaining highly radioactive samples will include sampling of the containment atmosphere and may, if deemed necessary and practical by the appropriate decision-makers, be used to supplement the hydrogen monitors.

(**Note 1**—Each licensee should specify a desired implementation period for its specific amendment request. The implementation period would be that period necessary to develop and implement the items in section 4.0 below and, as necessary, to make other changes to documentation or equipment to support the elimination of PASS requirements. As an alternative, the licensee may choose to have a shorter implementation period and include the scheduling of items in section 4.0 as part of the regulatory commitments associated with this amendment request. Amendment requests that include commitments for implementation of the items in section 4 within 6 months of the implementation of the revised TS will remain within the CLIIP.)

(**Note 2** —There may be some collateral changes to the TS as a result of the removal of the administrative controls section for PASS. For example, the elimination of the TS and other regulatory requirements for PASS would result in additional changes to TS such as (*e.g.*, the renumbering of sections or pages or the removal of references). The changes are included in the licensee's application to revise the TS in order to take advantage of the CLIIP. The staff has reviewed the changes and agrees that the revisions are necessary due to the removal of the TS section on PASS. The changes do not revise technical requirements beyond that reviewed by the NRC staff in connection with the supporting topical reports or the preparation of the TS improvement incorporated into the CLIIP.)

4.0 Summary and Licensee Required Actions

The staff concludes that BAW–2387 provides a sufficient technical basis to eliminate sampling the above 15 PASS parameters specified in NUREG–0737 and RG 1.97. The staff has identified the following licensee required actions, verifications or commitments that must be fulfilled by a licensee that eliminates the PASS for sampling the above 15 parameters in accordance with BAW–2387 and this safety evaluation. The licensee shall verify that it has, and make a regulatory commitment to maintain, or a regulatory commitment to develop and maintain:

1. A capability for classifying fuel damage events at the Alert level threshold (typically this is 300 microcuries per ml dose equivalent iodine). This capability may utilize the normal sampling system or correlations of sampling or letdown line dose rates to coolant concentrations.
2. Contingency plans for obtaining and analyzing highly radioactive samples of reactor coolant, containment sump, and containment atmosphere.
3. Offsite capability to monitor radioactive iodines.

The NRC staff finds that reasonable controls for the implementation and for subsequent evaluation of proposed changes pertaining to the above regulatory commitments are provided by the licensee's administrative processes, including its commitment management program. Should the licensee choose to incorporate a regulatory commitment into the emergency plan, final safety analysis report, or other document with established regulatory controls, the associated regulations would define the appropriate change-control and reporting requirements. The staff has determined that the commitments do not warrant the creation of regulatory requirements, which would require prior NRC approval of subsequent changes. The NRC staff has agreed that NEI 99–04, Revision 0, ''Guidelines for Managing NRC Commitment Changes,'' provides reasonable guidance for the control of regulatory commitments made to the NRC staff. (*See* Regulatory Issue Summary 2000–17, Managing Regulatory Commitments Made by Power Reactor Licensees to the NRC Staff, dated September 21, 2000 (ADAMS Accession Number ML003741774).) The commitments should be controlled in accordance with the industry guidance or comparable criteria employed by a specific licensee. The staff may choose to verify the implementation and maintenance of these commitments in a future inspection or audit.

5.0 State Consultation

In accordance with the Commission's regulations, the State official was notified of the proposed issuance of the amendments. The State official had ((1) no comments or (2) the following comments—with subsequent disposition by the staff).

6.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20 and change surveillance requirements. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards consideration, and there has been no public comment on such finding. Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR

51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

7.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendments delete requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated in Rockville, Maryland, this 21st day of February, 2003.

For the Nuclear Regulatory Commission.

Robert L. Dennig,

Section Chief, Technical Specifications Section, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–4890 Filed 2–28–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; Notice of RRB and SSA Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of records used in computer matching programs; notification to individuals who are railroad employees, or applicants and beneficiaries under the Railroad Retirement Act or who are applicants or beneficiaries under the Social Security Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, information obtained from the Social Security Administration (SSA) of the amount of wages reported to SSA and the amount of benefits paid by that agency. The RRB is also issuing public notice, on behalf of the Social Security Administration, of SSA's use and intent to use, in ongoing computer matching programs, information obtained from the RRB of the amount of railroad earnings reported to the RRB.

The purposes of this notice are (1) to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from SSA by means of a computer match and (2) to advise individuals applying for or receiving benefits under the Social Security Act of the use made by SSA of this information obtained from RRB by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4548.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program. The last notice for the matching program which began October 2, 2000, was published at 65 FR 50724 (August 21, 2000).

Name of Participating Agencies: Social Security Administration and Railroad Retirement Board.

Purpose of the Match: The RRB will, on a daily basis, obtain from SSA a record of the wages reported to SSA for persons who have applied for benefits under the Railroad Retirement Act and a record of the amount of benefits paid by that agency to persons who are receiving or have applied for benefits under the Railroad Retirement Act. The wage information is needed to compute the amount of the tier I annuity component provided by sections 3(a), 4(a) and 4(f) of the Railroad Retirement Act (42 U.S.C. 231b(a), 45 U.S.C. 231c(a) and 45 U.S.C. 231c(f). The benefit information is needed to adjust the tier I annuity component for the receipt of the Social Security benefit. This information is available from no other source.

In addition, the RRB will received from SSA the amount of certain social security benefits which the RRB pays on behalf of SSA. Section 7(b)(2) of the Railroad Retirement Act (45 U.S.C. 231f(b)(2)) provides that the RRB shall make the payment of certain social security benefits. The RRB also requires this information in order to adjust the amount of any annuity due to the receipt of a social security benefit. Section 10(a) of the Railroad Retirement Act (45 U.S.C. 231i(a)) permits the RRB to recover any overpayment from the accrual of social security benefits. This information is not available from any other source.

Thirdly, the RRB will receive from SSA once a year a copy of SSA's Master Benefit Record for earmarked RRB annuitants. Section 7(b)(7)) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7) requires that SSA provide the requested information. The RRB needs this information to make the necessary cost-of-living computation quickly and accurately for those RRB annuitants who are also SSA beneficiaries.

SSA will receive form RRB weekly RRB earnings information for all railroad employees. SSA will match the identifying information of the records furnished by the RRB against the identifying information contained in its Master Benefit Record and its Master Earnings File. If there is a match, SSA will use the RRB earnings to adjust the amount of Social Security benefits in its Annual Earnings Reappraisal Operation (AERO). This information is available from no other source.

SSA will also receive from RRB on a daily basis RRB earnings information on selected individuals. The transfer of information may be initiated either by RRB or by SSA. SSA needs this information to determine eligibility to Social Security benefits and, if eligibility is met, to determine the benefit amount payable. Section 18 of the Railroad Retirement Act (45 U.S.C. 231q(2)) requires that earnings considered as compensation under the Railroad Retirement Act be considered as wages under the Social Security Act for the purposes of determining entitlement under the Social Security Act if the person has insufficient years of railroad service to qualify for an annuity under the Railroad Retirement Act, or has sufficient years of service but does not have a current connection with the railroad industry at the time of his/her death.

Authority for Conducting the Match: Section 7(b)(7) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7)) provides that the Social Security Administration shall supply information necessary to administer the Railroad Retirement Act.

Sections 202, 205(o) and 215(f) of the Social Security Act (42 U.S.C. 402, 405(o) and 415(f) relate to benefit provisions, inclusion of railroad compensation together with wages for payment of benefits under certain circumstances, and the recomputation of benefits.

Categories of Records and Individuals Covered: All applicants for benefits under the Railroad Retirement Act and current beneficiaries will have a record of any social security wages and the amount of any social security benefits furnished to the RRB by SSA. In addition, all persons who ever worked in the railroad industry after 1936 will have a record of their service and compensation furnished to SSA by RRB. The applicable Privacy Act Systems of Records used in the matching program are as follows:

RRB–5, Master File of Railroad Employees' Creditable Compensation; RRB–22, Railroad Retirement, Survivor, Pensioner Benefit System; SSA/OSR, 09–60–0090, Master Beneficiary Record (MBR); and SSA/OSR, 09–60–0059, Master Earnings File (MEF).

Inclusive Dates of the Matching Program: The consolidated matching program shall become effective no sooner than 40 days after notice of the

matching program is sent to Congress and the Office of Management and Budget (OMB), or 30 days after publication of this notice in the **Federal Register,** whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

The notice we are giving here is in addition to any individual notice.

A copy of this notice will be or has been furnished to the Office of Management and Budget and the designated committees of both Houses of Congress.

Dated: February 25, 2003. By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–4857 Filed 2–28–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47394; File No. SR–NASD–2003–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Proposed Rule Change to Section 9 of Schedule A to the NASD By-Laws

February 24, 2003.

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 February 12, 2003, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD has designated the proposed rule change as ''establishing or changing a due, fee, or other charge'' under section 19(b)(3)(A)(ii) of the Act[3] and rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend section 9, Schedule A of the By-Laws of NASD to implement a fee schedule for NASD member firms that choose to use a secure Web-based electronic file transfer application to submit to the CRD or IARD systems multiple form filings in a single transaction or to download member firm data and processing results from Web CRD or IARD. Below is the text of the proposed rule change. The proposed fee becomes operative on March 24, 2003. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

* * * * *

Section 9—Subscription Charges for [Firm Access Query System (FAQS)] *Registration Batch Filing/Data Download Via the Web CRD Electronic File Transfer (EFT) System*

(a) Each firm electing to subscribe to the [Firm Access Query System (FAQS)] *Web CRD Electronic File Transfer (EFT) System for registration batch filing and/or data download* will be assessed [a user fee consisting of three components (1) a monthly data base access charge, (2) an hourly usage fee, and (3) a charge per 1,000 characters (''kilocharacter'') of information sent or received.] *an annual subscription fee based on the type of service that the firm uses.* The fee schedule to be paid by each firm is as follows:

(1) [Monthly Data Base Access Charge—$70.00] *Data Download—$1,800.00*

(2) [Hourly Usage Charge—$70.00 per hour; and] *Form Filing—$3,600.00*

(3) [Kilocharacter Transmission Charge—$0.70] *Data Download and Form Filing—$4,800.00*

[Each firm which subscribes to the service will provide its own terminal and modem.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to amend section 9 of Schedule A to the NASD By-Laws by deleting the Firm Access Query System (''FAQS'') subscription charges[5] and, in its place, establishing a yearly subscription charge for NASD member firms that choose to use a new secure web-based electronic file transfer application (''Web EFT'') to submit multiple Form U–4 and Form U–5 filings in a single transaction to the CRD or IARD systems (hereinafter referred to as ''batch filing'') or to download member firm data and processing results from the CRD or IARD systems.

Although NASD retired the legacy CRD system and the FAQS functionality in 1999, it did not retire a legacy electronic filing transfer (''Legacy EFT'') application. Legacy EFT gives participating firms the ability to interface electronically with the CRD system to (1) submit ''batch'' filings and (2) download registration data and accounting reports on a regular basis. Legacy EFT, which is based on older technology that provides limited batch filing and data download capabilities, is currently available to NASD members that choose to submit form filings and download data via a dedicated (modem) line established by the firm.

In the first quarter of 2003, NASD plans to introduce Web EFT, a state-of-the-art application that will replace the current Legacy EFT.[6] Web EFT will allow NASD firms to interface with NASD systems in an automated manner to submit batch filings to NASD and/or to download registration data (*i.e.*, firm

[5] The FAQS functionality enabled members to enter non-disclosure-related amendments to the Form U–4, and full terminations (with or without disclosure) or partial terminations via the Form U–5 directly onto the legacy CRD system via a dedicated (modem) line established by the member. Upon implementation of the Web CRD system in August 1999, NASD retired the legacy CRD system (which relied primarily on hard copy filing of uniform registration forms that were data-entered upon receipt) and the FAQS functionality. Since the implementation of Web CRD, members use the Internet as their primary method of filing forms into the CRD system.

[6] NASD plans to deploy the Web EFT application in the first quarter of 2003, but it does not plan to retire the Legacy EFT application until the third quarter of 2003. This will give firms time to test and convert to Web EFT.

data and processing results from Web CRD or IARD). Web-based form filing (on a single transaction basis) will remain available through Web CRD and IARD; therefore, member firms will not be required to use Web EFT.

Member firms that elect to use the new Web EFT application will be charged a fee based on whether they choose to use the data download or form filing functionalities, or both. NASD is proposing annual subscription fees of $1,800.00 per year for data downloading; $3,600.00 per year for form filing; and $4,800.00 per year for data downloading and form filing. The proposed fees would be effective upon full deployment of Web EFT, currently scheduled for March 24, 2003.[7] The proposed fees are designed to recover the cost of developing and operating registration-related batch filing and data downloads via Web EFT.

Web EFT will benefit NASD and member firms by eliminating the costs and risks associated with maintaining Legacy EFT, enhancing security, and increasing efficiencies through the expanded batch filing and data download options that will be available. Further, the proposed Web EFT application and accompanying infrastructure will give firms a more secure interface to NASD systems, and it will enable firms that use the registration batch filing service to submit in batches additional filing types not currently available through the legacy system.[8] For example, the new application will enable firms to batch file all forms for registered persons and all filings for non-registered personnel who are required to be fingerprinted. As with Legacy EFT, firms will not be able to submit filings that include Disclosure Reporting Pages (''DRPs''). The new application will also enable firms to download more reports than are currently available to firms through Legacy EFT.

Web EFT should be especially attractive to larger member firms that process high volumes of filings (*e.g.*, office of employment address changes for large numbers of registered individuals when there is a branch relocation), or that wish to download from Web CRD or IARD large amounts of data on their registered persons (*e.g.*, to obtain a download of exam results for registered persons at the firm for a specified period) to populate their own internal systems. In this regard, large member firms that maintain such internal systems have expressed a desire for a more robust EFT application to support registration transactions because of the efficiencies it will provide them, including the elimination of duplicative data entry.

(2) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed subscription charges are reasonable fees that fairly reflect the benefit to be gained by members from using a secure Web-based EFT application to submit batch filings in a single transaction or to download member firm data and processing results from Web CRD or IARD.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as ''establishing or changing a due, fee, or other charge'' under section 19(b)(3)(A)(ii) of the Act[9] and rule 19b–4(f)(2) thereunder,[10] which renders the proposal effective upon receipt of this filing by the Commission. The NASD will implement the fee on March 24, 2003. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to the file number in the caption above and should be submitted by March 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4833 Filed 2–28–03; 8:45 am]

BILLING CODE 8010–01–P

[7] Details on how a firm can sign up for Web EFT, payment schedules, and additional information on Web EFT are available on NASD's Web site at *http://www.nasdr.com/3400_eft.asp*.

[8] Web EFT will add six additional filing types that were not available in Legacy EFT.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before May 2, 2003.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Thomas Mueller, Deputy Associate Administrator, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street, SW., Suite 6400, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Thomas Mueller, Deputy Associate Administrator, (202) 205–7301 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: SBA Counseling Evaluation.
Form No: 1419.
Description of Respondents: Small Business Clients.
Annual Responses: 2,800.
Annual Burden: 476.

Title: National Training Participant Evaluation Questionnaire.
Form No: 20.
Description of Respondents: Individuals Receiving SBA Training and Counseling Assistance.
Annual Responses: 26,000.
Annual Burden: 6,500.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–4932 Filed 2–28–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4288]

Office of Oceans Affairs; Comprehensive Environmental Evaluations for Antarctic Activities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State gives notice of the availability of three draft Comprehensive Environmental Evaluations (CEEs) for activities proposed to be undertaken in Antarctica. Interested members of the public are invited to submit comments relative to these CEEs.

DATES: Comments must be submitted on or before June 3, 2003.

ADDRESSES: Send comments to OES/OA, Room 5805; Department of State; Washington, DC 20520, or to *SaturniFM@state.gov.*

FOR FURTHER INFORMATION CONTACT: Fabio M. Saturni, Office of Oceans Affairs, (202) 647–0237.

SUPPLEMENTARY INFORMATION: Article 3 of Annex I to the Protocol on Environmental Protection to the Antarctic Treaty requires parties to prepare a CEE for any proposed Antarctic activity likely to have more than a minor or transitory impact. Draft CEEs are to be made publicly available with a 90-day period for receipt of comments. This notice is published pursuant to 16 U.S.C. 2403a(h).

The Department of State has received three draft CEEs:

1. The Czech Republic has submitted a draft CEE for proposed construction and operation of a scientific station at James Ross Island. The document is available at this Web site: *http://www.cep.aq/default.asp?casid=5768.*

2. New Zealand has submitted a draft CEE for the ANDRILL program of proposed Antarctic scientific stratigraphic drilling. The document is available at this Web site: *http://www.antarcticanz.govt.nz/DownLoadDocuments/PDF/Environment/ANDRILL%20Final%20Jan22.pdf.*

3. The Russian Federation has submitted a draft CEE for water sampling of the subglacial Lake Vostok. The document is available at this Web site: *http://www.cep.aq/default.asp?casid=5762.*

The Department of State invites interested members of the public to provide written comments on these draft CEEs.

Dated: February 24, 2003.

Raymond V. Arnaudo,

Deputy Director, Office of Oceans Affairs, Department of State.

[FR Doc. 03–4909 Filed 2–28–03; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4262]

Fine Arts Committee; Notice of Meeting

The Fine Arts Committee of the Department of State will meet on Friday, March 28, 2003, at 2:30 p.m. in the Diplomatic Reception Rooms. The meeting will last until approximately 3:30 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on October 18, 2002 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 2002 through December 31, 2002.

Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by March 12, 2003, telephone (202) 647–1990 to make arrangements to enter the building. The pubic may take part in the discussion as long as time permits and at discretion of the chairman.

Dated: February 17, 2003.

Gail F. Serfaty,

Secretary, Fine Arts Committee, Department of State.

[FR Doc. 03–4907 Filed 2–28–03; 8:45 am]

BILLING CODE 4710–38–P

DEPARTMENT OF STATE

[Public Notice 4268]

Overseas Buildings Operations; Industry Advisory Panel Meeting Notice

The Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, March 27, 2003 from 9:45 until 11:45 a.m. and 1 until 3:30 p.m. Eastern Standard Time. The meeting will be held in conference room 1105 at the Department of State, 2201 C Street NW., (entrance on 23rd Street), Washington, DC. The purpose of the meeting is to discuss new technologies and successful management practices for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Luigina Pinzino at 703/875–7109 before Wednesday, March 12th, to provide date of birth, Social Security number, and telephone number.

FOR FURTHER INFORMATION CONTACT: Luigina Pinzino 703/875–7109.

Dated: February 20, 2003.

Charles E. Williams,

Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. 03–4908 Filed 2–28–03; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on March 14, 2003, from 9 a.m. to 3:30 p.m. The meeting will be closed to the

public from 9 a.m. to 1:30 p.m. and opened to the public from 1:30 p.m. to 3:30 p.m.

DATES: The meeting is scheduled for March 14, 2003, unless otherwise notified.

ADDRESSES: The meeting will be held at the Charleston Place Hotel, 205 Meeting Street, Charleston, SC.

FOR FURTHER INFORMATION CONTACT: Tamara Underwood, DFO for ISAC–14 at (202) 482–4792, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or Christina Sevilla, Director for Intergovernmental Affairs, on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda item will be discussed.

- Updates on the Free Trade Area of the Americas (FTAA) and the United States' Free Trade Agreements (FTAs) with Morocco, Australia, and the Central African Customs Union.
- Overview of Customs' Recent Projects and Programs.
- Overview of the Trade Advisory Committee System's Functions, Roles, and Responsibilities (for purposes of outreach and recruitment of new members to the ISACs).

Christopher A. Padilla,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 03–4882 Filed 2–28–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed Between February 3, and February 21, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Applications filed during week ending: February 7, 2003.

Docket Number: OST–2003–14440.

Date Filed: February 3, 2003.

Parties: Members of the International Air Transport Association.

Subject

PTC3 0608 dated 3 January 2003
TC3 Within South Asian Subcontinent Resolutions r1–r10
PTC3 0609 dated 3 January 2003
TC3 Within South East Asia Resolutions r11–r23 (except between Malaysia and Guam)
PTC3 0610 dated 3 January 2003 r24–r29
TC3 Within South West Pacific Resolutions
PTC 0611 dated 3 January 2003 r–30–r37
TC3 Between South East Asia and South Asian Subcontinent Resolutions
PTC3 0612 dated 3 January 2003 r38–r44
TC3 between South Asian Subcontinent and South West Pacific Resolutions
PTC3 0613 dated 3 January 2003 r45–r51
TC3 between South East Asia and South West Pacific Resolutions except between Malaysia and American Samoa
PTC3 0614 dated 3 January 2003 r52–r63
TC3 between Japan and Korea Resolutions
PTC3 0622 dated 17 January 2003 (Technical Correction)
PTC3 0615 dated 3 January 2003 r64–r78
TC3 between Japan, Korea and South Asian Subcontinent Resolutions
PTC3 0616 dated 3 January 2003 r79–r95
TC3 between Japan, Korea and South East Asia Resolutions except between Korea (Rep.of) and Guam, Northern Mariana Islands
PTC3 0617 dated 3 January 2003 r–96–r157
TC3 between Japan, Korea and South West Pacific Resolutions except between Korea (Rep.of) and American Samoa
Minutes—PTC3 0623 dated 24 January 2003
Tables—PTC3Fares 0196, 0197, 0198, 0199, 0200, 0201, 0202, 0203, 0204 and 0205 all dated 10 January 2003
Intended effective date: 1 April 2003

Docket Number: OST–2003–14478.

Date Filed: February 7, 2003.

Parties: Members of the International Air Transport Association.

Subject

PTC3 0626 dated 7 February 2003
Mail Vote 264—Resolution 010n,
TC3 Special Passenger Amending Resolution from Papua New Guinea
Intended effective date: 20 February 2003

Docket Number: OST–2003–14480.

Date Filed: February 7, 2003.

Parties: Members of the International Air Transport Association.

Subject

CTC COMP 0396 dated 21 June 2002
Composite Cargo Resolution 502 R1
Correction—CTC COMP 0404 dated 9 July 2002
Minutes—CTC COMP 0400 dated 25 June 2002 Airline Economic Justifications: American, Delta, FedEx and United
Intended effective date: 1 October 2002

Docket Number: OST–2003–14481.

Date Filed: February 7, 2003.

Parties: Members of the International Air Transport Association.

Subject

CTC COMP 0408 dated 2 August 2002
Composite Resolutions r1–r27
Minutes–CTC COMP 0400 dated 25 June 2002
Airline Economic Justifications: American, Delta, FedEx and United
Tables–CTC COMP Rates 0197 dated 13 August 2002
CTC COMP Rates 0198 dated 23 August 2002
Intended effective date 1 October 2002

Docket Number: OST–2003–14482.

Date Filed: February 7, 2003.

Parties: Members of the International Air Transport Association.

Subject:

CTC COMP 0410 dated 2 August 2002
Worldwide Area Resolutions (excluding changes to rates) except Alliance Countries r1–r7,
Minutes—CTC COMP 0400 dated 25 June 2002
Tables—CTC2 AFR Rates 0013 dated 13 August 2002
CTC2 ME Rates 0024 dated 13 August 2002
CTC2 EUR–AFR Rates 0022 dated 13 August 2002
CTC2 EUR–ME Rates 0032 dated 13 August 2002
Intended effective date: 1 October 2002

Applications filed during week ending: February 14, 2003.

Docket Number: OST–2003–14485.

Date Filed: February 10, 2003.

Parties: Members of the International Air Transport Association.

Subject

PTC2 EUR–ME 0152 dated 28 January 2003
TC2 Europe-Middle East Expedited Resolution 001a
Intended effective date: 1 April 2003

Docket Number: OST–2003–14486.

Date Filed: February 10, 2003.

Parties: Members of the International Air Transport Association.

Subject

CTC COMP 0412 dated 2 August 2002
Worldwide Area Resolutions (changes to rates) to/from USA/US Territories except Alliance Countries r1–r5
Correction—CTC COMP 0418 dated

20 August 2002
Minutes—CTC COMP 0400 dated 25 June 2002
Airline Economic Justifications: American, Delta FedEx and United
Tables—CTC1 Rates 0016 dated 16 August 2002
CTC3 Rates 0019 dated 16 August 2002
CTC12 NATL–TC2 Rates 0067 dated 16 August 2002
CTC23 AFR–TC3 Rates 0021 dated 16 August 2002
CTC31 N/C Rates 0015 dated 20 August 2002
CTC31 S Rates 0012 dated 20 August 2002
CTC123 Rates 0014 dated 20 August 2002
Intended effective date: 1 October 2002

Docket Number: OST–2003–14490.
Date Filed: February 10, 2003.
Parties: Members of the International Air Transport Association.

Subject

CTC COMP 0413 dated 2 August 2002
Worldwide Area Resolutions—Alliance Countries r1-r8
Minutes—CTC COMP 0400 dated 25 June 2002
Airline Economic Justifications: American, Delta, FedEx and United
Tables—CTC1 Rates 0016 dated 16 August 2002
CTC3 Rates 0019 dated 16 August 2002
CTC12 NATL–TC2 Rates 0067 dated 16 August 2002
CTC23 AFR–TC3 Rates 0021 dated 16 August 2002
CTC31 N/C Rates 0015 dated 20 August 2002
CTC31 S Rates 0012 dated 20 August 2002
CTC123 Rates 0014 dated 20 August 2002
Intended effective date: 1 October 2002

Applications filed during week ending: February 21, 2003.
Docket Number: OST–2003–14540.
Date Filed: February 19, 2003.
Parties: Members of the International Air Transport Association.

Subject

PTC12 NMS–ME 0183 dated 11 February 2003
North Atlantic-Middle East Expedited Resolutions 002as, 015v r1-r2
PTC12 NMS–ME 0184 dated 11 February 2003 r3
North Atlantic-Middle East Expedited Resolution 002bo
Intended effective dates: 15 March and 31 March 2003

Docket Number: OST–2003–14541.
Date Filed: February 19, 2003.
Parties: Members of the International Air Transport Association.

Subject

PTC1 0251 dated 14 February 2003
Mail Vote 265—Resolution 010o
TC1 Special Passenger Amending Resolution—From Uruguay
Intended effective date: 25 February 2003

Docket Number: OST–2003–14562.
Date Filed: February 20, 2003.
Parties: Members of the International Air Transport Association.

Subject

PTC12 NMS–ME 0188 dated 21 February 2003
Mail Vote 266—TC12 Mid/South Atlantic-Middle East
Special Passenger Amending Resolution 010p and Resolution 015v Add-ons (except in USA)
Intended effective date: 15 March and 31 March 2003

Docket Number: OST–2003–14568.
Date Filed: February 21, 2003.
Parties: Members of the International Air Transport Association.

Subject

PAC/Reso/418 dated January 17, 2003—Mail Vote A108
Resos 800t (r1) and 814 (r2)
PAC/Reso/419 dated January 17, 2003—Mail Vote A109
Reso 850 (r3)
Intended effective date: expedited March 1, 2003.

Dorothy Y. Beard,
Chief, Docket Operations & Media Management, Federal Register Liaison.
[FR Doc. 03–4917 Filed 2–28–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) Filed With the Department Between February 10, and February 21, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Applications filed during week ending: February 14, 2003.

Docket Number: OST–2003–14525.

Date Filed: February 14, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 7, 2003.

Description: Application of Reliant Airlines, Inc., pursuant to 49 U.S.C. 41102 and Subpart B, requesting the transfer of its certificate of public convenience and necessity, issued by Order 98–11–23, authorizing it to engage in interstate/foreign charter air transportation, to Kalitta Charters II, LLC.

Applications filed during week ending: February 21, 2003.

Docket Number: OST–2003–14553.

Date Filed: February 20, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 13, 2003.

Description: Application of Chautauqua Airlines, Inc., requesting that the Department disclaim jurisdiction over, or in the alternative approve, the transfer of the operating authority held by Chautauqua to a newly formed Indiana corporation to be named Chautauqua Airlines, Inc. (''Newco'').

Docket Number: OST–2003–14554.

Date Filed: February 20, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 13, 2003.

Description: Application of Shuttle America Corporation, requesting that the Department disclaim jurisdiction over, or in the alternative approve, the transfer of the operating authority held by Shuttle America to a newly formed Indiana corporation to be named Shuttle America Corporation (''Newco'').

Dorothy Y. Beard,
Chief, Docket Operations and Media Management, Federal Register Liaison.
[FR Doc. 03–4916 Filed 2–28–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 2003–14502]

Request for Renewal of Currently Approved Information Collection: Certification of Enforcement of Vehicle Size and Weight Laws

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of FHWA to request the Office of Management and Budget (OMB) to renew its clearance of the currently approved information collection identified below under **SUPPLEMENTARY INFORMATION**.

DATES: Comments must be submitted on or before May 2, 2003.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Please identify the specific collection of information that is being commented on by referencing its OMB control number. All comments received will be available for examination at the above address between 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Davis, (202) 366–2997, Federal Highway Administration, Office of Freight Management and Operations, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of Vehicle Size and Weight Laws.

OMB Number: 2125–0034.

Background: Title 23, U.S.C., Section 141, requires each State, the District of Columbia, and Puerto Rico to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are consistent with Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. Section 141 also authorizes the Secretary to require States to file such information as is necessary to verify that their certifications are accurate. To determine whether States are adequately enforcing their size and weight limits, each must submit an updated plan for enforcing their size and weight limits to the FHWA at the beginning of each fiscal year. At the end of the fiscal year, they must submit their certifications and sufficient information to verify that the enforcement goals established in the plan have been met. Failure of a State to file a certification, adequately enforce its size and weight laws, and enforce weight laws on the Interstate System that are consistent with Federal requirements, could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, Section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689, 2701) requires each jurisdiction to inventory (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits.

Respondents: The State Departments of Transportation (or equivalent) in the 50 States, the District of Columbia, and Puerto Rico.

Estimated Total Annual Burden: 4,160 hours. This number has not changed from the last approved OMB clearance.

Frequency: The reports must be submitted annually.

Authority: 23 U.S.C. 141; 44 U.S.C. 3506(c)(2)(A); 23 CFR 657; sect. 123, Pub. L. 95–599, 92 Stat. 2701; 49 CFR 1.48.

Issued on: February 24, 2003.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 03–4918 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Missoula County, MT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared in accordance with the National Environmental Policy Act for proposed transportation improvements in the vicinity of Miller Creek Road in Missoula County, Montana.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Genzlinger, P.E., Operations Engineer, Federal Highway Administration, 2880 Skyway Drive, Helena, Montana 59602; Telephone (406) 449–5302, extension 240 or Ms. Jeanette Lostracco, Carter & Burgess, Inc., 707 17th Street, Suite 2300, Denver, Colorado, 80202; Telephone (303) 820–4808.

SUPPLEMENTARY INFORMATION: The FHWA hereby gives notice that it intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), Pub. L. 91–190, 83 Stat. 852, 1969), as amended, for road and bridge improvements in the vicinity of Miller Creek Road, Missoula County, Montana. The study area is approximately four miles long and three miles wide including portions of US 93, the Bitterroot River, the city of Missoula, Missoula County and Lolo National Forest. The study area begins near the intersection of Miller Creek Road and US 93 to the north and extends southward approximately four miles along US 93. The east-west boundaries are approximately .25 miles west of US 93 and approximately 2.5 miles east of US 93.

Alternatives being considered will include a no build and build alternatives. The build alternatives will connect to US 93 and provide a new structure crossing the Bitterroot River.

Improvements to the corridor are necessary as the population is expected to increase in the near future. The need for a second connection to U.S. 93 in this area has been a priority to the local community, Missoula County, and the city of Missoula. A second entrance into the Miller Creek area is needed for safety and to relieve congestion. An additional access could provide regional benefits to connectivity, improving air quality by reducing total vehicle miles traveled (VMT), improving pedestrian and bike circulation, facilitating bus service to the Miller Creek and Linda Vista area, and providing secondary emergency egress and, potentially, improved emergency response times.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A formal public scoping meeting is scheduled for Wednesday, March 26th from 5 p.m. to 8 p.m. at the Linda Vista Golf Course Clubhouse located on 4915 Lower Miller Creek Road, Missoula, Montana. Brief identical presentations will be

given at 6 p.m. and 7 p.m. A series of public meetings will be held in Missoula. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. Additional project information can be obtained at the Web site (*www.millereis.com*) or from the Telephone Information 'Hotline' (1–800–865–6905).

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs an activities apply to this proposed action.)

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Issued February 25, 2003.

Dale Paulson,

Program Development Engineer, Montana Division, Federal Highway Administration, Helena, MT 59602.

[FR Doc. 03–4856 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 5, 2002. No comments were received.

DATES: Comments must be submitted on or before April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Olsen, Maritime Administration (MAR–560), 400 Seventh Street, SW., Washington, DC 20590. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Determination of Fair and Reasonable Rates for Carriage of Agricultural Cargoes on U.S. Commercial Vessels.

OMB Control Number: 2133–0514.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. citizens who own or operate U.S.-flag vessels.

Form(s): MA–1025, MA–1026, and MA–172.

Abstract: This collection of information requires U.S.-flag operators to submit annual vessel operating costs and capital costs data to MARAD officials. The information is used by MARAD in determining fair and reasonable guideline rates for the carriage of preference cargoes on U.S.-flag vessels. In addition, U.S.-flag vessel operators are required to submit Post Voyage Reports to MARAD after completion of a cargo preference voyage.

Annual Estimated Burden Hours: 700 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, D.C. 20503, Attention MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on February 26, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–4898 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement; Correction

The notice, announcing the extension of the Voluntary Intermodal Sealift Agreement (VISA) for another two-year period until February 13, 2005, appearing on pages 8800–8808 in the issue of Tuesday, February 25, 2003, should have included the following flow chart entitled: ''Figure 1—VISA Activation Process Diagram'' at the end of the document.

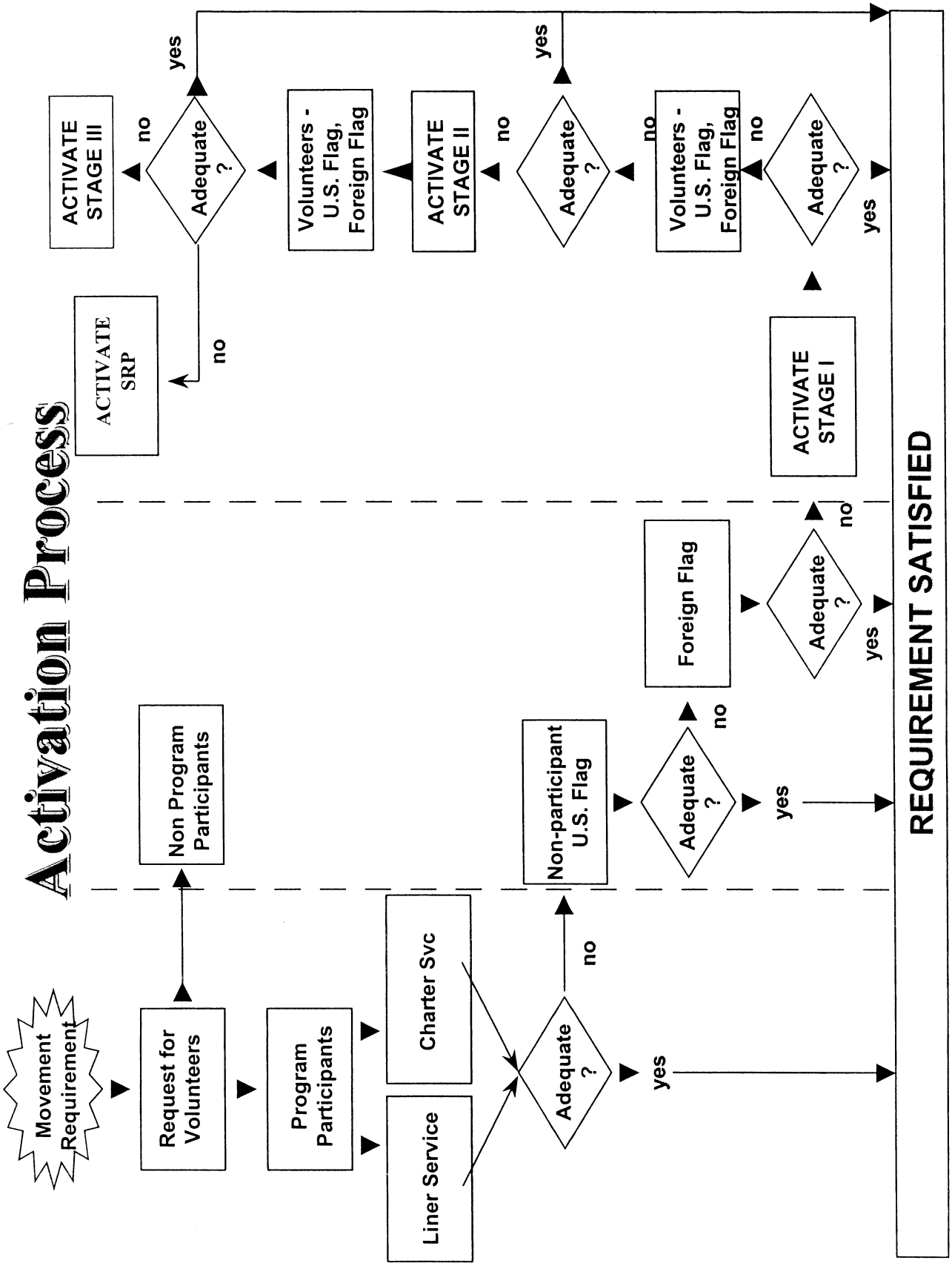
By Order of the Maritime Administrator.

Dated: February 26, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

BILLING CODE 4910–81–P


Activation Process
Movement Requirement
Request for Volunteers
Program Participants
Liner Service
Charter Svc
Adequate ?
yes
no
Non Program Participants
Non-participant U.S. Flag
Adequate ?
yes
no
Foreign Flag
Adequate ?
yes
no
ACTIVATE STAGE I
Adequate ?
yes
no
Volunteers - U.S. Flag, Foreign Flag
Adequate ?
yes
no
ACTIVATE STAGE II
Adequate ?
yes
no
Volunteers - U.S. Flag, Foreign Flag
Adequate ?
yes
no
ACTIVATE STAGE III
ACTIVATE SRP
REQUIREMENT SATISFIED

[FR Doc. 03–4899 Filed 2–28–03; 8:45 am]
BILLING CODE 4910–81–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–02–13956, Notice 2]

Lotus Cars Ltd.; Grant of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 201

This notice grants the application of Lotus Cars Ltd. (''Lotus'') of Norwich, England, for a renewal of NHTSA Temporary Exemption No. 99–12, from S7, *Performance Criterion,* of Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact,* as described below. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We published notice of receipt of the application on December 4, 2002, requesting public comment on it (67 FR 72267).

Background

On November 10, 1999, NHTSA granted Lotus Cars Ltd. NHTSA Temporary Exemption No. 99–12 from S7, *Performance Criterion,* of Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact* (64 FR 61379). The basis of the grant was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. The exemption covered the Esprit model, and was to expire on September 1, 2002. However, Lotus applied for a renewal of its hardship exemption on May 10, 2002, thereby staying the expiration date until the agency has acted upon its petition (49 CFR 555.8(e)). The reader is referred to the 1999 notice for information on the original application and Administrator's decision to grant it.

Why Lotus Needs a Temporary Exemption

In early 1997, Lotus decided to terminate production of the Esprit on September 1, 1999, and to homologate another model, the Elise, for the American market beginning in 2000. This decision allowed it to choose the option for compliance with S7 provided by S6.1.3, *Phase-in Schedule #3,* of Standard No. 201, to forego compliance with new protective criteria for the period September 1, 1998—September 1, 1999, and to conform 100 percent of its production thereafter.

But a fresh look was taken at the direction of the company, and the plans of early 1997 were abandoned. In due course, new management decided to continue the Esprit in production beyond September 1, 1999, until September 1, 2002, while developing an all-new Esprit, and to remain in the American market without interruption. However, as described in its original petition, the company found itself unable to conform the current Esprit to Standard No. 201. It petitioned for, and received, a temporary exemption until September 1, 2002. Its continued need for an exemption is explained in the next section.

Why Compliance Would Cause Substantial Economic Hardship and How Lotus Has Tried in Good Faith To Comply With Standard No. 201

Lotus remarked that the entity that ultimately controls Lotus Cars is the manufacturer of Proton cars, ''the Malaysian company Perusahan Otomobile Nasional Berhad (Proton).'' We noted in the December 4, 2002, notice that Lotus' balance sheets and income statements did not indicate that this Asian entity, itself a motor vehicle manufacturer, made capital contributions to Lotus or otherwise participated in the management of this British company. Lacking these indicia of control, we stated that we had decided not to count cumulatively the production of the two companies which, if totaling at least 10,000 units would render Lotus ineligible for a hardship exemption.

On December 16, 2002, during the comment period, Lotus addressed the question of its relationship to Proton. At the time Lotus filed its application in May 2002, Proton owned 80 percent of the shares of Lotus but had since acquired total ownership of the company. Proton had in fact made a capital contribution to the company ''since its acquisition,'' which allowed Lotus ''to pay off certain debts, return to solvency, and thus to continue trading.'' It noted that ''the capital infusion also permitted continued operations from a cash-flow basis.'' Lotus argued that we should more properly consider the facts that (1) there is no similarity of design between the cars produced by Proton and Lotus, (2) Lotus designed and engineered the Esprit without assistance from Proton, and (3) Lotus's vehicles are imported and sold both in the U.S. and Europe by a dealer/distributor network ''totally independent'' of Proton. In support, Lotus reminded us that we had established these three criteria in deciding that Maserati (when it was owned by Chrysler Corporation and G.B.M. S.p.A) and Ferrari (when Fiat held a 90-percent ownership interest) were eligible to apply for hardship exemptions (*See* respectively, 53 FR 28324, July 27, 1988 and 54 FR 46321, November 2, 1989). These three factors also exist in the Lotus case, and an additional one of relevance: the vehicle for which exemption is sought was designed well over 20 years ago when Lotus was an independent company. Therefore, we have decided that Lotus remains a small volume manufacturer within the meaning of the exemption legislation. In 1999, Lotus produced 2,569 automobiles; in 2000, 2,993 automobiles (including 127 Opel/Vauxhall cars); and in 2001, 5,181 automobiles (including 3,046 for Opel/Vauxhall). Over the same three-year period it exported 112, 162, and 48 vehicles respectively to the United States.

Notwithstanding the increase in production between 1999 and 2001, Lotus's financial submissions show the company's operating loss of 7,513,000 Pounds for its fiscal year 2001–2002, a loss of 20,244,000 Pounds for its fiscal year 2000–2001, and an operating profit of 12,368,000 Pounds for its fiscal year 1999–2000. This represents a cumulative loss of 15,389,000 Pounds, or $24,622,400 computed at a rate of $1.6 = 1 Pound.

Lotus had intended to cease production of the exempted Esprit by August 31, 2002, but the successor project was cancelled in early 2001 because of lack of capital. A back-up plan was conceived for a project called M260, but ''was unable to launch itself.'' By the end of 2001, Lotus had laid off 197 employees, and, by early 2002, ''an additional 241 employees were made redundant.'' However, it had located ''an additional supply of air bags and transmissions * * * permitting the construction of up to an additional 140 vehicles.'' The company stated that its ''only hope for keeping the US market alive [is] to build the additional 140 Esprits, ending production on December 21, 2003,'' the period for which it has requested an exemption. No further exemption will be requested for the Esprit. It hopes to ''find a way to finance'' the M260 project for introduction in the U.S. in 2004, a vehicle being designed to conform with Standard No. 201.

Absent an exemption until 2004, Lotus will suffer the loss of the U.S. market, a substantial economic hardship.

Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

In its application, Lotus simply said that ''the extension will continue to be consistent with the public interest and the objectives of the Safety Act.'' On December 16, 2002, it repeated and confirmed the assertions made in the past that, after many years of sales of the Esprit with its current body shape, the company knew of no head injuries suffered by occupants contacting the upper interior of the cockpit. The number of vehicles anticipated to be sold during the exemption period is insignificant in terms of the number of vehicles already on the roads.

If Lotus USA is required to close because of a denial, its employees will be out of work and its dealers ''significnatly adversely affected.'' In its new application, the company adds that its ''image and credibility would be ruined.'' An exemption would be consistent with the public policy of affording consumers a wide choice of motor vehicles.

Comments Received on the Lotus Petition

We received five comments on the Lotus petition, all of which supported an extension of the exemption. Three of the comments emphasized the importance of adequate repair facilities and availability of spare parts for the continued safe operation of Lotus cars in the United States.

The Agency's Findings

Both the 1999 and 2002 petitions by Lotus clearly demonstrate the financial turmoil that the company has experienced in the past few years. With recent losses cumulating over $24,000,000, Lotus has experienced some temporary relief by the infusion of capital from Proton. This relief will allow it to manufacturer from existing parts the final 140 Esprits and to sell them in the Untied States (cars which, built to American specifications, might not be saleable elsewhere). In engineering the M260 to comply with Standard No. 201, Lotus has made a good faith effort to comply with that standard. The term of the exemption would be short and only a limited number of vehicles produced under it. An exemption would assure an adequate supply of spare parts and afford a continuing, uninterrupted commercial relationship with Lotus dealers and their employees in the United States.

According, for the reasons discussed above, it is hereby found that to require compliance with Standard No. 201 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is further found that a temporary exemption from Standard No. 201 would be in the public interest and consistent with the objectives of traffic safety. Therefore, NHTSA Temporary Exemption No. 99–12, exempting the Esprit model from 49 CFR 571.201 Standard No. 201, *Occupant Protection in Interior Impact,* is hereby extended to February 1, 2004.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: February 25, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–4801 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20994]

New Jersey Transit Bus Operations, Inc.—Pooling—Academy Lines, L.L.C.

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed pooling application.

SUMMARY: By application filed on January 27, 2003,[1] New Jersey Transit Bus Operations, Inc. (NJT Bus), and Academy Lines, L.L.C. (Academy), jointly request approval of a service pooling agreement under 49 U.S.C. 14302 and 49 CFR 1184.1, *et seq.* to pool portions of their commuter operations that extend over U.S. Highway 9 between Lakewood, NJ, and New York, NY (the Route 9 Corridor).

DATES: Comments on the proposed service pooling agreement may be filed with the Board in the form of verified statements on or before April 2, 2003. If comments are filed, applicants' rebuttal statement is due on or before April 22, 2003. The Board will issue a decision on the merits after consideration of any comments and rebuttal that are submitted.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20994 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any comments to each of applicants' representatives: (1) E. Philip Isaac, Deputy Attorney General, One Penn Plaza East, Newark, NJ 07105–2246; and (2) Joseph J. Ferrara, 111 Paterson Avenue, Hoboken, NJ 07030.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under the proposed pooling agreement, the carriers will coordinate their schedules and fares over the involved routes for their regularly scheduled passenger bus operations. The carriers do not intend to pool revenues or share expenses (except for the costs associated with preparing and printing public timetables showing their combined coordinated services and Port Authority Bus Terminal (PABT) gate and platform fees), but will cross-honor their independently sold commutation tickets and reimburse each other accordingly.

In 1991, NJ Transit was authorized to perform these same pooling operations with another regulated passenger carrier, Suburban Trails, Inc. (Suburban). *See NJ Transit Bus Operations, Inc.—Pooling—Suburban Trails, Inc.,* No. MC–F–19737 (ICC served Mar. 19, 1991). Effective January 3, 2003, however, Suburban ceased serving the Route 9 Corridor, withdrew from the pooling agreement, and exited the market. By the filing of this application, approval is being sought to allow Academy to assume Suburban's place in the pooling operation.[2]

NJT Bus is a wholly owned subsidiary of the New Jersey Transit Corporation,

[1] Applicants concurrently filed a petition under 49 U.S.C. 13541(a) requesting exemption from 49 U.S.C. 14302 so as to enable them to conduct interim operations under their service pooling agreement for a period of not more than 50 days, or such other time as the Board may direct, pending Board action on the pooling application. Applicants' request was granted by decision served February 12, 2003 in *New Jersey Transit Bus Operations, Inc.—Pooling—Academy Lines, L.L.C., Exemption Pursuant to 49 U.S.C. 13541 From the Provisions of 49 U.S.C. 14302,* STB Docket No. MC–F–20994 (STB served Feb. 12, 2003).

[2] In an application filed on February 4, 2003 in STB Docket No. MC–F–20997, *Coach USA, Inc., et al.—Purchase and Sale of Assets—Academy Bus, L.L.C., et al.,* Coach USA, Inc. and two of its subsidiaries, Suburban Transit Corp., and Red & Tan Tours, Inc. (the Coach applicants), and Academy Bus, L.L.C. and two of its subsidiaries, Academy Express, L.L.C., and Academy (the Academy applicants) state that they have entered into a transaction to ''swap'' certain interstate and intrastate motor passenger carrier operating authorities in order to enhance the efficiency of their respective operations. The Academy applicants will transfer to the Coach applicants the ''Academy Routes,'' while the Coach applicants will transfer to the Academy applicants the ''Route 9 Corridor route,'' the ''Suburban Atlantic City Routes,'' and the ''Red & Tan Routes.'' This proceeding is presently pending before the Board. Reference is made to it here because Academy and Suburban (another Coach subsidiary) are involved in the instant proceeding.

an instrumentality of the State of New Jersey. NJT Bus holds operating authority in No. MC–3647 and subnumbers thereunder. It operates a fleet of about 2,025 buses and conducts interstate operations over approximately 238 bus routes, including commuter operations to and from the PABT in New York City. NJT Bus currently operates approximately 123 daily weekday peak period trips in the Route 9 Corridor to and from midtown Manhattan, NY. NJT Bus will provide some service on Saturdays and Sundays, but on a substantially reduced basis compared with weekday schedules.

Academy is a privately held New Jersey limited liability company, holding operating authority in No. MC–414016 and subnumbers thereunder. Applicant operates a fleet of over 600 buses rendering scheduled, regular-route intercity operations primarily in commuter services from specified origins in New Jersey to various points in New York City, including the PABT. Academy presently is a competitor in the Route 9 Corridor, serving the Wall Street area of lower Manhattan, rather than the PABT in midtown Manhattan. Under the negotiated pooling agreement, Academy anticipates operating approximately 74 daily weekday peak period trips between New Jersey points and the PABT. Academy will operate from the gates in the PABT that are used by NJT Bus, and passengers will board and alight from buses at the same locations both in New York City and in the communities along the Route 9 Corridor.

Applicants assert that there is substantial competition on the pooled route to protect the public and that the pooling agreement does not threaten to produce an unreasonable restraint on competition. According to applicants, private automobiles provide ample competition for the pooled operations on the Route 9 Corridor. Moreover, the New Jersey Coast Line and the Northeast Corridor Line are not too distant from the Route 9 Corridor, and the frequent weekday rail service which the rail arm of NJ Transit and the National Railroad Passenger Corporation (Amtrak) offer is another alternative available to applicants' passengers.

Applicants state that the proposed pooling of the bus lines' schedules will result in better service to the public, will render operations more economical and efficient, and will not unreasonably restrain competition. In addition, they assert that approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources.

Copies of the pooling application may be obtained free of charge by contacting applicants' representatives. Alternatively, the application may be inspected at the offices of the Surface Transportation Board, Room 755, during normal business hours, or a copy of the application may be obtained from the Board's Web site at ''*http://www.stb.dot.gov.*''

A copy of this notice will be served on the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; the New York Department of Transportation, Truck and Bus Safety Section, Room 501–A, Building 7A, 1220 Washington Avenue, Albany, NY 12232; and the New Jersey Department of Transportation/Office of Regulatory Affairs (Commercial Bus Inspection), 225 E. State Street, P.O. Box 611, Trenton, NJ 08666–0611.

Decided: February 25, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–4888 Filed 2–28–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service; Request for Comments

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: At its January 8th public meeting, the Commission established its public-comment process. This process is designed to ensure that every affected and interested party has an opportunity to share its views and concerns with us. Pursuant to the procedures established at the January 8th public meeting, the Commission has received numerous written comments from a wide variety of sources. Most of these comments are now posted on the Commission's Web site at *http://www.treas.gov/offices/domestic-finance/usps*.

To ensure that all views are properly considered and tested, the Commission will give interested parties an opportunity to respond to the assertions and recommendations made by other parties during the public-comment process. Rebuttal comments should clearly indicate the specific assertion or recommendation that is being challenged as well as the party that had advanced this assertion or recommendation in its public comment.

The Commission has established three methods by which rebuttal comments can be submitted for consideration and review:

1. Transmission by Email to the following address: *pcusps_rebuttal@do.treas.gov*. Statements can be embedded in the Email as ASCII text or sent as a MS Word or ASCII text attachment. Do not include artwork or other graphic elements.

2. Stored on 3½ inch high density computer disk as a MS word or ASCII text document (Windows format only) and mailed or hand-delivered to: President's Commission on the United States Postal Service, 1120 Vermont Avenue, NW., Suite 971, Washington, DC 20005.

3. Typewritten statements may be mailed or hand-delivered to: President's Commission on the United States Postal Service, 1120 Vermont Avenue, NW., Suite 971, Washington, DC 20005.

DATES: E-mail transmissions of all rebuttal comments must be received by the Commission no later than 5 p.m. Eastern Standard Time on Thursday, March 13. Mailed submissions must be postmarked no later than 5 p.m. Eastern Standard Time on Thursday, March 13.

FOR FURTHER INFORMATION CONTACT: If you have any questions about this rebuttal process, please contact Randall Lewis or Jana Sinclair White of the Commission staff at (202) 622–5930.

SUPPLEMENTARY INFORMATION: To be accepted by the Commission, rebuttal comments must not exceed a maximum length of 10 pages of double-spaced written text. Please be aware that the Commission may, at its discretion, post any rebuttal comments it receives on the Commission's Web site at *http://www.treas.gov/offices/domestic-finance/usps*.

Roger Kodat,

Designated Federal Official.

[FR Doc. 03–4819 Filed 2–28–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (collectively, the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On November 8, 2002, the agencies requested public comment for 60 days on proposed revisions to the Country Exposure Report and the Country Exposure Information Report, which are currently approved collections of information. After considering the two comments the agencies received, the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, adopted the proposed revisions.

DATES: Comments must be submitted on or before April 2, 2003.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number(s) and will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0100, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments, which should refer to ''Country Exposure Report, 7100–0035,'' may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to ''Country Exposure Report, 3064–0017.'' Commenters are encouraged to submit comments by fax or electronic mail [Fax number: (202) 898–3838; Internet address: *comments@fdic.gov*]. Comments also may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: 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 electronic mail to *jlackeyj@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia M. Ayouch, Board Clearance Officer, (202) 452–2204, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Tamara R. Manly, Management Analyst, (202) 898–7453, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Request for OMB approval to extend, with revision, the following currently approved collections of information:

Report Title: Country Exposure Report/Country Exposure Information Report.

Form Number: FFIEC 009 and FFIEC 009a.

Frequency of Response: Quarterly.

Affected Public: Business or other for profit.

For OCC

OMB Number: 1557–0100.

Estimated Number of Respondents: 21 (FFIEC 009), 21 (FFIEC 009a).

Estimated Average Time per Response: 30 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 2,520 burden hours (FFIEC 009), 441 burden hours (FFIEC 009a).

For Board

OMB Number: 7100–0035.

Estimated Number of Respondents: 31 (FFIEC 009), 16 (FFIEC 009a).

Estimated Average Time per Response: 30 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 3720 burden hours (FFIEC 009), 336 burden hours (FFIEC 009a).

For FDIC

OMB Number: 3064–0017.

Estimated Number of Respondents: 22 (FFIEC 009), 22 (FFIEC 009a).

Estimated Average Time per Response: 30 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 2,640 burden hours (FFIEC 009), 462 burden hours (FFIEC 009a).

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 and 1817 (for national banks), 12 U.S.C. 248(a), 1844(c), and 3906 (for state member banks and bank holding companies); and 12 U.S.C. 1817 and 1820 (for insured state nonmember commercial and savings banks). The FFIEC 009 information collection is given

confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment. Small businesses (*i.e.*, small banks) are not affected.

Abstract

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of one percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. As part of the Country Exposure Information Report, reporting institutions must also furnish a list of countries in which they have lending exposures above 0.75 percent of total assets or 15 percent of total capital, whichever is less.

Current Action

On November 8, 2002, the OCC, the Board, and the FDIC jointly published a notice soliciting comments for 60 days on proposed revisions to the FFIEC 009 and FFIEC 009a (67 FR 68228). The agencies proposed to require electronic submission of all FFIEC 009 and 009a reports effective with the March 31, 2003, report date. The agencies proposed to have the Board collect and process the FFIEC 009 and 009a reports on their behalf via the Federal Reserve System's Internet Electronic Submission (IESUB) system. Electronic filing capability via IESUB is available on the Internet through the use of data entry or a file transfer feature. These methods are secure and result in a minimal burden to banks and bank holding companies. The agencies would no longer accept paper (hard copy) reports from banks and bank holding companies after the December 31, 2002, report date. The submission deadline would remain 45 calendar days after the report date. No other changes to the FFIEC 009 reporting forms or the FFIEC 009a reporting forms and instructions were proposed.

Type of Review: Revision of a currently approved collection.

Comments Received on the Agencies' Proposal

In response to the November 8, 2002, notice, the agencies received 2 comment letters, one from a banking organization and one from a bankers' association. The two commenters alluded to their familiarity with the IESUB system filing requirements and supported the proposed submission method. However, the commenters expressed concern about the start-up time and effort required to initially submit their FFIEC 009 and 009a reports electronically. The commenters specifically cited the lack of currently approved FFIEC 009 and 009a vendor software applications as a concern. The commenters recommended the agencies investigate the possibility of providing a standardized pre-formatted form for file transfer submission to alleviate this concern.

The FFIEC and the agencies have considered the comments received and determined that it would not be practical or necessary for the Board, or the Federal Reserve district banks, to create a specific pre-formatted form for filing the FFIEC 009 and 009a via IESUB using the file transfer method. Rather than developing a pre-formatted form for file transfer submissions, the Federal Reserve district banks will provide technical assistance to any respondent who needs assistance creating files for their initial FFIEC 009 and 009a submission via IESUB. Any FFIEC 009 and 009a respondent who needs assistance is encouraged to visit the Federal Reserve System Web site *http://www.reportingandreserves.org/req.html* for additional information on IESUB. The Web site also includes a link that respondents may use to contact their local Federal Reserve district bank for assistance with IESUB.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: February 24, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 24th day of February, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–4911 Filed 2–28–03; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, April 1, 2003, from 3 p.m. e.s.t. to 4:30 p.m. e.s.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving

customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 26, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–4883 Filed 2–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, March 18, 2003.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, March 18, 2003, from 1:30 to 3 pm EST via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: Monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 24, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–4884 Filed 2–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Capital Asset Realignment for Enhanced Services (CARES) Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Capital Asset Realignment for Enhanced Services (CARES) Commission will meet on Tuesday, Wednesday and Thursday, March 11, 12 and 13, 2003, in the first floor conference room, 1575 Eye Street, NW., Washington, DC. On March 11, the meeting will be from 8:30 a.m. until 2:30 p.m. On March 12 and 13, the meeting will be from 8:30 a.m. until 5 p.m. The meeting is open to the public.

The purpose of the Commission is to conduct an external assessment of VA's capital asset needs and to assure that stakeholder and beneficiary concerns are fully addressed. The Commission will consider recommendations prepared by VA's Under Secretary for Health, veterans service organizations, individual veterans, Congress, medical school affiliates, VA employees, local government entities, community groups and others. Following its assessment, the Commission will make specific recommendations to the Secretary of Veterans Affairs regarding the realignment and allocation of capital assets necessary to meet the demands for veterans health care services over the next 20 years.

This is the second meeting of the Commission. On March 11, the principal agenda topic is a detailed briefing and discussion of the CARES Demand Model. On March 12, the Commission will receive detailed briefings and discuss CARES Market Areas, Gap Analysis, Special Disability Populations and Stakeholder Communication. On March 13, the Commission will receive a detailed briefing and discuss CARES Planning Initiatives.

No time will be allocated at this meeting for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Commission. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Department of Veterans Affairs, CARES Commission (OOCARES), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing additional information should contact Mr. Richard E. Larson at (202) 501–2000.

Dated: February 24, 2003.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–4906 Filed 2–28–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

President's Task Force To Improve Health Care Delivery for Our Nation's Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled for Thursday, March 6, 2003, beginning at 9 a.m. and adjourning at 5 p.m. The meeting will be held in the Horizon Ballroom of the Ronald Reagan Building International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC and is open to the general public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and Department of Defense (DoD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Identify opportunities to remove barriers that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DoD, to maximize the use of resources and infrastructure, including buildings, information technology and data sharing systems, procurement of supplies, equipment and services.

The morning and afternoon sessions will be a discussion of format and issues for the Final Report to the President.

Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia 22209.

Dated: February 24, 2003.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–4905 Filed 2–28–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 41

Monday, March 3, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2003–14449; Notice No. 03–03]

RIN 2120–AH78

Enhanced Flight Vision Systems

Correction

In proposed rule, document 03–3265 beginning on page 6802 in the issue of Monday, February 10, 2003 make the following corrections:

§ 91.175 [Corrected]

1. On page 6807, in § 91.175, in the third column, under the heading ''EFVS Proposed Rule'' in paragraph (c), in the second line, ''paragraph (1)'' should read ''paragraph (l)''.

2. On the same page, in the same section, in the same column, under the same heading, in paragraph (e)(1), in the first line, the words ''pilot operating'' should be removed.

3. On the same page, in the same section, in the same column, under the same heading, in the same paragraph, in the second line ''paragraph (c) or (1)'' should read ''paragraph (c) or (l)''.

4. On the same page, in the same section, in the same column, under the same heading, in paragraph (l), in the first line, the words ''may land that approach'' should be removed.

5. On the same page, in the same section, in the same column, under the same heading, in the same paragraph, in the fifth line, ''at any airport at any airport'' should read ''at any airport''.

6. On page 6808, in the same section, in the third column, under the heading ''EFVS Proposed Rule'', in paragraph (l)(7), in the third line, ''his'' should read ''has''.

[FR Doc. C3–3265 Filed 2–28–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
March 3, 2003

Part II

Department of Treasury

Alcohol and Tobacco and Trade Bureau

27 CFR Parts 4, 5, and 7
Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages (99R–199P); Final Rule

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[TTB T.D.–1; Ref: ATF Notice Nos. 884, 892, and 896]

RIN: 1512–AB97

Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages (99R–199P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: TTB is amending the regulations to prohibit the appearance on labels or in advertisements of any health-related statement, including a specific health claim, that is untrue in any particular or tends to create a misleading impression. A specific health claim on a label or in an advertisement is considered misleading unless the claim is truthful and adequately substantiated by scientific evidence; properly detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. In addition, TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of specific health claims on labels. If FDA determines that a specific health claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of such statement on a label.

Health-related statements that are not specific health claims or health-related directional statements will be evaluated on a case-by-case basis to determine if they tend to mislead consumers. The final rule provides that health-related directional statements (statements that direct or refer consumers to a third party or other source for information regarding the effects on health of alcohol consumption) will be presumed misleading unless those statements include a brief disclaimer advising consumers that the statement should not encourage consumption of alcohol for health reasons, or some other appropriate disclaimer to avoid misleading consumers. TTB believes that the final regulations will ensure that labels and advertisements do not contain statements or claims that would tend to mislead the consumer about the significant health consequences of alcohol consumption.

DATES: This rule is effective June 2, 2003.

FOR FURTHER INFORMATION CONTACT: William H. Foster, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION: Please note: References to ''ATF'' are to the Bureau of Alcohol, Tobacco and Firearms as it existed before January 24, 2003. The new Alcohol and Tobacco Tax and Trade Bureau (TTB) has taken over the former ATF's responsibilities for alcohol beverage labeling regulations.

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I. Background

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and (f), authorizes TTB to issue regulations on the packaging, labeling and advertising of alcohol beverages in order to prohibit deception of the consumer, and to prohibit, irrespective of falsity, statements relating to analyses, guarantees, and scientific or irrelevant matters that are likely to mislead the consumer. The FAA Act generally requires bottlers and importers of alcohol beverages to obtain certificates of label approval prior to the bottling or importation of alcohol beverages for sale in interstate commerce. Pre-approval of advertising is not required by the FAA Act.

Regulations that implement the provisions of section 205(e) and (f), as they relate to the labeling and advertising of wine, distilled spirits, and malt beverages, are set forth in Title 27, Code of Federal Regulations (CFR), parts 4, 5, and 7, respectively. These current regulations prohibit the appearance on labels or in advertisements of any statement, design, representation, pictorial representation, or device representing that the use of wine, distilled spirits, or malt beverages has curative or therapeutic effects if the representation is untrue in any particular or tends to create a misleading impression. This standard originated more than 60 years ago with the initial labeling and advertising regulations issued under the FAA Act.

TTB and its predecessor agencies have historically taken a very strict view of the regulatory prohibition on false or misleading curative or therapeutic claims about alcohol beverages. This strict interpretation is based on the view that ''distilled spirits, wines and malt beverages are, in reality, alcoholic beverages and not medicines of any sort, * * *.'' FA–129, dated January 5, 1938.

In view of the undisputed health risks associated with alcohol consumption, we and our predecessors have always taken the position that statements attributing positive effects on health to the consumption of alcohol beverages are misleading unless such statements are appropriately qualified and properly balanced. TTB views statements that make substantive claims regarding health benefits associated with alcohol beverage consumption (*e.g.*, ''moderate alcohol consumption is good for your health'') as making curative or therapeutic claims. Claims that set forth only a partial picture or representation might be as likely to mislead the consumer as those that are actually

false. A claim that is supported by scientific evidence might still mislead the consumer without appropriate qualification and detail. Any such claim is considered misleading unless it is properly qualified and balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive effects on health would be outweighed by numerous negative effects on health.

II. Health Consequences of Alcohol Consumption

The risks associated with alcohol consumption are well documented. In Notice No. 884, ATF summarized these risks as set forth in an article by Charles H. Hennekens, M.D. as follows: [1]

> The hazards of heavy alcohol consumption are clear and substantial and have far-reaching health and social consequences. Alcohol is the second leading cause of preventable deaths in the United States as well as most industrialized countries, second only to cigarette smoking. Drinking increases the risk of cancer of the liver, mouth, tongue, and esophagus and has been implicated as a cause of 3 to 5 percent of all cancer deaths. Heavy alcohol consumption is also associated with increased risks of hemorrhagic stroke and cardiomyopathy, and it predisposes to hepatic cirrhosis, the ninth most common cause of death in the United States. In pregnant women, heavy alcohol consumption is associated with fetal alcohol syndrome. Alcohol drinking is also implicated in over 40 percent of all fatal traffic crashes, which are a chief cause of premature deaths in younger people, and it is associated with suicides, industrial accidents, sex crimes, robberies, and murders. It is estimated that 14 million U.S. residents suffer from alcohol abuse and dependence, and 76 million are affected by its presence in a family member. (Citations omitted).

It is true that heavier levels of alcohol consumption cause many of these health risks. It is also true that there are millions of Americans with alcohol dependency problems who find themselves unable or unwilling to control their consumption of alcohol. Given the serious health risks associated with higher levels of alcohol consumption, and given the fact that most medical studies agree that the effects of moderate consumption differ from individual to individual, it was ATF's longstanding, and is now our, position that any claim associating health benefits with moderate alcohol consumption must be carefully evaluated to ensure that it does not mislead the consumer about the various health consequences related to the consumption of alcohol beverages.

Prior to engaging in this rulemaking, ATF recognized that there were several scientific studies establishing a link between moderate alcohol consumption and a reduced risk of coronary artery disease (''CAD'').[2] However, it was ATF's conclusion that there was not significant scientific evidence to support an unqualified conclusion that moderate alcohol consumption has net health benefits for all or even most individual consumers. Some studies have suggested that only older drinkers will accrue any net health benefits from moderate alcohol consumption.[3] This is because younger individuals have such a low risk for coronary artery disease, and are much more likely to be at risk from alcohol consumption, even at lower levels. This difference in risk factors has been explained as follows:[4]

> The net outcome of all-cause mortality associated with a certain alcohol consumption level therefore also depends on the drinker's absolute risk of dying from these various causes. Accordingly, older people—who are at high absolute risk of coronary heart disease and ischemic stroke and at low risk for injury, cirrhosis, and other alcohol-related diseases'are most likely to benefit from low levels of alcohol consumption. In contrast, for men and women under age 40, who have relatively low absolute risk of dying from strokes, heart disease, and alcohol-related diseases but a high absolute risk of dying from injury, all-cause mortality will increase even at relatively low alcohol-consumption levels. * * *. Finally, the absolute risk of death from injury or coronary heart disease is lower in young women than in young men, leading to an increase in all-cause mortality even in young women who are light drinkers (less than two drinks every 3 days) compared with abstainers. (Citations omitted).

Overall, the available scientific literature establishes that there may be serious health risks associated with heavy as well as moderate alcohol consumption, depending on the individual.[5]

III. Industry Circular 93–8

On August 2, 1993, ATF published Industry Circular 93–8. The circular generally restated ATF's longstanding position regarding misleading curative and therapeutic claims. ATF explained that claims that set forth only a partial picture, representation, or truth might be as likely to mislead the consumer as those that are actually false. Thus, a statement that attributed health benefits to the moderate consumption of alcohol beverages, even if backed up by medical evidence, might have an overall misleading effect if such statement was not properly qualified, did not give all sides of the issue, and did not outline the categories of individuals for whom any such positive effect would be outweighed by numerous negative effects on health.

ATF also explained that its policy regarding health claims on labels had been reinforced by the 1988 enactment of the Alcoholic Beverage Labeling Act (ABLA), 27 U.S.C. 213 *et seq*. The ABLA contains a declaration of policy and purpose which states that the Congress finds that ''the American public should be informed about the health hazards that may result from the consumption or abuse of alcoholic beverages, and has determined that it would be beneficial to provide a clear, nonconfusing reminder of such hazards, and that there is a need for national uniformity in such reminders in order to avoid the promulgation of incorrect or misleading information and to minimize burdens on interstate commerce.'' 27 U.S.C. 213. As a result of this concern, the ABLA requires that any alcohol beverage container held for sale or distribution in the United States must bear the following statement on the label:

> Government Warning: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

It is clear that one of the purposes of the ABLA was to avoid confusing the American public about the health hazards associated with the consumption of alcohol beverages. In order to effectuate this goal, Congress prescribed specific language that must appear on the labels of alcohol beverage containers. To the extent that the overall message of any health claim is inconsistent with the message of the Government warning statement, then it may result in label information that is confusing and could mislead the consumer, and would thus be prohibited under the FAA Act.

In Industry Circular 93–8, ATF further noted that other Federal agencies, such as the Food and Drug Administration and the Federal Trade Commission, might have jurisdiction over certain aspects of advertising and labeling issues involving health claims. We will address this issue further in section IV (''Role of Other Federal Agencies with Respect to Specific Health Claims and other Health-Related Statements'').

ATF also stated that the distribution of advertising materials that included the full text of the April 1992 edition of ''Alcohol Alert,'' a publication of the National Institute on Alcohol Abuse and Alcoholism (NIAAA), would not be in violation of current regulations. This NIAAA publication provides a comprehensive discussion of the health consequences of moderate alcohol consumption. The industry circular

stated that if the advertising materials also contained editorializing, advertising slogans, or exhortations to consume the product, ATF would evaluate the additional text to determine whether or not the advertisement presented a balanced picture of the risks associated with alcohol consumption. In addition, ATF stated that the use of buttons, shelf talkers (additional product information placed on the retail shelf), table tents, and similar items that excerpt any portion of the NIAAA publication, contain health slogans or other inferential statements drawn from this publication, or are based on any other publication or article citing the health benefits of alcohol consumption, would be closely scrutinized to determine if they presented a balanced picture of the risks associated with alcohol consumption.

ATF reminded industry members in Industry Circular 93–8 that substantive health claims on labels are considered to be misleading unless they are properly qualified, present all sides of the issue, and outline the categories of individuals for whom any positive effects on health would be outweighed by numerous negative effects on health. Finally, ATF stated that it intended to initiate rulemaking on this issue; however, pending rulemaking, ATF would continue to evaluate claims in labeling and advertising on a case-by-case basis.

IV. Role of Other Federal Agencies With Respect to Specific Health Claims and Other Health-Related Statements

While TTB now has primary jurisdiction over the labeling and advertising of alcohol beverages, under certain circumstances the labeling and advertising of alcohol beverages may also be subject to the jurisdiction of the Food and Drug Administration (FDA) or the Federal Trade Commission (FTC). For example, since certain wine products containing less than 7 percent alcohol by volume are not wines subject to the FAA Act, the labeling of such products generally falls within FDA's jurisdiction. ATF always utilized, as TTB does now, the scientific and public health expertise of FDA in approving ingredients in alcohol beverages, requiring label disclosure of certain substances, and identifying adulterated alcohol beverages that are deemed mislabeled.

By letter dated April 9, 1993, FDA advised ATF that certain curative, therapeutic, or disease-prevention claims for an alcohol beverage might place the product in the category of a drug under the Federal Food, Drug and Cosmetic Act (FFDC Act), 21 U.S.C. 321(g)(1)(B). FDA evaluates health claims on food labels pursuant to its authority under the FFDC Act, as amended by the Nutrition Labeling and Education Act (NLEA), Pub. L. 101–535 (1990). The law provides that a food product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with certain procedures mandated by FDA. 21 U.S.C. 343(r)(1)(B). FDA's regulations provide that FDA will approve a health claim when it determines, ''based on the totality of publicly available scientific evidence'' that there is ''significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.'' 21 CFR 101.14(c).

FTC's general jurisdiction over advertising extends to alcohol beverages. In a policy statement published in the **Federal Register** on June 1, 1994 (59 FR 28394), FTC stated that it is necessary to examine ''whether qualified claims are presented in a manner that ensures that consumers understand both the extent of the support for the claim and the existence of any significant contrary view within the scientific community.'' The FTC policy statement stated that an unqualified health claim in the advertising of a food was likely to be deceptive if the food also contained a nutrient that increased the risk for another disease or health-related condition, and the risk-increasing nutrient was closely related to the subject health claim.

V. Fourth Edition of the Dietary Guidelines for Americans (1995)

The Fourth Edition (1995) of the ''Dietary Guidelines for Americans'' was published by the U.S. Department of Agriculture (USDA) and the U.S. Department of Health and Human Services (HHS) in 1996. This edition of the Guidelines contained a detailed discussion of the health consequences of alcohol consumption.

The 1995 Guidelines acknowledged that ''[c]urrent evidence suggests that moderate drinking is associated with a lower risk for coronary heart disease in some individuals.'' The Guidelines then went on to discuss the ''serious health problems'' caused by higher levels of alcohol consumption, including increased risk for high blood pressure, stroke, and heart disease.

The 1995 Guidelines recommended that if adults chose to drink alcohol beverages, they should consume them only in moderation. The term ''moderation'' was defined as no more than one drink per day for women and no more than two drinks per day for men. However, the 1995 Guidelines stressed that many people should not drink alcohol beverages at all, including children and adolescents, women who are trying to conceive or who are pregnant, individuals who plan to drive or take part in activities that require attention or skill, and individuals using prescription and over-the-counter medications. Finally, the 1995 Guidelines suggested that individuals of any age who could not restrict their drinking to moderate levels should not drink at all.

VI. Competitive Enterprise Institute Petition

On May 9, 1995, the Competitive Enterprise Institute (CEI) submitted a petition asking ATF to issue a rule allowing alcohol beverage labels and advertisements to carry statements regarding the purported benefits of moderate alcohol consumption. More specifically, CEI proposed that ATF issue a rule specifically allowing the following statement to appear on labels and in advertisements: ''There is significant evidence that moderate consumption of alcoholic beverages may reduce the risk of heart disease.'' By letter dated November 10, 1995, CEI submitted a survey purporting to show that less than 42 percent of the general public was ''aware of the medical benefits of moderate consumption.''

By letter dated January 13, 1997, ATF denied CEI's rulemaking petition. ATF determined that CEI's proposed claim was not appropriately qualified, in that it did not define the categories of individuals for whom there would be no appreciable benefits (such as younger individuals already at low risk of heart disease), or individuals for whom there would be significant risks associated with moderate alcohol consumption (such as recovering alcoholics and persons otherwise at risk for alcohol abuse, or people with certain medical conditions). The claim was not balanced, in that it did not explain the significant risks associated with higher levels of alcohol consumption, as well as the potential risks of moderate alcohol consumption for certain individuals. ATF found that the claim, taken in isolation, would tend to mislead the consumer about the significant health consequences of alcohol consumption.

Before ATF had issued its denial of CEI's petition, CEI had filed suit (October 29, 1996) in the United States District Court for the District of Columbia, challenging ATF's delay in

acting on its petition. In 1997, CEI amended its complaint to challenge ATF's denial of the rulemaking petition. CEI also alleged that ATF had a ''de facto'' ban on the use of health claims, which violated the First Amendment and the FAA Act. In 1998, the district court granted the Government's motion for summary judgment on CEI's challenge to the denial of its rulemaking petition. Both parties filed motions for summary judgment on the remaining issues.

VII. Other Health-Related Statements on Alcohol Beverage Labels

On February 4, 1999, ATF approved two applications for certificates of label approval bearing directional health-related statements directing consumers to the Dietary Guidelines or their family doctor for information about the ''health effects of wine consumption.'' ATF approved those labels based on its determination that the statements were not substantive health claims, but instead were neutral statements directing consumers to third parties for additional information regarding the effects on health of alcohol consumption. The first approved labeling statement read as follows:

The proud people who made this wine encourage you to consult your family doctor about the health effects of wine consumption.

The second labeling statement read as follows:

To learn the health effects of wine consumption, send for the Federal Government's *Dietary Guidelines for Americans,* Center for Nutrition Policy and Promotion, USDA, 1120 20th Street, NW., Washington, DC 20036 or visit its web site: *http://www.usda.gov/fcs/cnpp.htm.*

Prior to being approved, the two applications received a great deal of public attention. In July of 1997, both HHS and FTC urged ATF not to approve the labels until a consumer survey was conducted. In that same month, Senators Robert Byrd and Strom Thurmond wrote to the Secretary of the Treasury, also raising several concerns about the proposed labeling statements. ATF also received several letters from public health organizations concerned that the labels would encourage consumers to consume alcohol beverages for health reasons. In view of these concerns, ATF decided to defer final action on the labels pending the completion of a consumer survey by the Center for Substance Abuse Prevention (CSAP), a component of HHS.

In January of 1998, CSAP transmitted to ATF the main findings from its consumer survey. The survey found that most subjects reported that they do not read wine labels, and that neither of the two labeling statements would likely induce wine drinkers to alter their drinking pattern, quantitatively or otherwise. However, several members of the focus groups reported that information about the positive effects on health of wine consumption from the media had led them to increase their wine intake.

While the CSAP survey did not establish that the labeling statements would influence the drinking patterns of wine drinkers, it did indicate that heavy drinkers may justify or increase their consumption levels based on their independent understanding of information regarding the alleged health benefits of moderate consumption. Furthermore, the survey established that consumers would be no more likely to seek additional health information after reading the proposed labeling statements.

Based on the evidence before it, including the consumer survey conducted by CSAP, ATF concluded that there was insufficient evidence in the record to establish that the directional statements tended to mislead consumers about the effects on health of alcohol consumption. Accordingly, the labels were approved.

The approval of these labels generated considerable interest from Federal health officials, members of Congress, and public advocacy groups, who expressed concern about consumer perception of the label statements. Of particular note, former Surgeon General David Satcher expressed concern that people might draw an incorrect message from these labels.

Moreover, ATF became aware of a number of press accounts interpreting the directional statements as actual health claims about the benefits of alcohol consumption. For example, on February 5, 1999, the ''Wall Street Journal'' wrote that the expected decision to approve the labels would allow ''wine producers to put labels on bottles that point to the potential health benefits of their product.'' On February 5, 1999, the Associated Press reported the decision as follows: ''Scientific studies have suggested it, and now winemakers finally may get a chance to tout it through their labeling: A glass or two of the grape each day could be good for you.'' On February 6, 1999, the ''Los Angeles Times'' reported that ''[t]he federal government approved changes Friday that will allow winemakers for the first time to tout on labels the connection between drinking wine and better health.'' That same date, the ''Washington Post'' reported that ATF had ''decided that winemakers may add another label to the bottle to encourage consumers to learn more about the possible benefits of drinking wine.'' In an article dated February 9, 1999, the ''San Francisco Examiner'' stated that ATF's decision ''would allow winemakers to carry bottle labels suggesting consumers check with their doctors or the government's nutritional guidelines on the possible health benefits of wine.''

VIII. Notice of Proposed Rulemaking

On October 25, 1999, ATF invited comments on its current policy on health claims and health-related statements by publishing the policy as a proposed regulation in the **Federal Register** (Notice No. 884; 64 FR 57413). As proposed, labels or advertisements could not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, representing that consumption of alcohol beverages has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of an alcohol beverage would be misleading unless such claim was properly qualified and balanced, sufficiently detailed and specific, and outlined the categories of individuals for whom any positive effects on health would be outweighed by numerous negative effects on health.

ATF also sought comments on whether even balanced and qualified health claim statements should be prohibited because the negative consequences of alcohol consumption are so serious as to make any health-related statement on labels or in advertisements inherently misleading. In addition, ATF sought comments on whether health-related directional statements such as those approved in February 1999 tend to mislead consumers about the health consequences of alcohol consumption.

The comment period for Notice No. 884, initially scheduled to close on February 22, 2000, was extended until June 30, 2000, pursuant to Notice No. 896. (*See* following section, ''Notice of Hearings.'')

IX. Notice of Hearings

On December 9, 1999, ATF announced in a press release that after the close of the comment period, it would hold public hearings on the issue of health claims in the labeling and advertising of alcohol beverages. ATF stated that the hearings would provide it with a comprehensive record on

which to base final regulations on health claims.

Because it was seeking public comments on this very issue, ATF announced that it would suspend action on any new applications for label approval bearing similar health-related directional statements pending the completion of the rulemaking proceeding. ATF noted that due to the adverse consequences of alcohol consumption, it was concerned about any risk of misperception resulting from the two approved statements.

On February 28, 2000, ATF published a notice in the **Federal Register** announcing the dates and locations of five hearings that it planned to hold concerning the proposed regulations (Notice No. 892; 65 FR 10434). ATF subsequently canceled the hearings that were scheduled for Atlanta, Chicago, and Dallas, due to the low number of requests to present oral comments in those locations (Notice No. 896; 65 FR 24158). In addition, the hearings scheduled for Washington, DC and San Francisco, California, were limited to two days each. The hearing in Washington, DC was held on April 25–26, 2000, and the hearing in San Francisco was held on May 23–24, 2000. ATF also extended the close of the comment period regarding Notice No. 884 from February 22, 2000, to June 30, 2000. Written comments addressing testimony presented at the hearings could also be submitted up until June 30, 2000.

X. Recent Developments

A. 1999 Alcohol Alert

In 1999, NIAAA published an ''Alcohol Alert'' on ''Alcohol and Coronary Heart Disease'' (No. 45–1999). In this publication, NIAAA reaffirmed that ''[r]esearch has revealed an association between moderate alcohol consumption and lower risk for CHD.'' (Footnote omitted). However, NIAAA cautioned that ''[a]n association between moderate drinking and lower risk for CHD does not necessarily mean that alcohol itself is the cause of the lower risk. For example, a review of population studies indicates that the higher mortality risk among abstainers may be attributable to shared traits other than the participants' nonuse of alcohol.'' (Footnote omitted). NIAAA noted that ''[t]he role of exercise in the alcohol-CHD association requires additional study.''

NIAAA noted that ''[t]he apparent benefits of moderate drinking on CHD mortality are offset at higher drinking levels by increasing risk of death from other types of heart disease; cancer; liver cirrhosis; and trauma, including trauma from traffic crashes. Moderate drinking is not risk free. The trade-offs between risks and benefits can be exemplified by the fact that alcohol's anticlotting ability, potentially protective against heart attack, may increase the risk of hemorrhagic stroke, or bleeding within the brain.'' (Footnotes omitted).

In a commentary that appeared with the Alert, NIAAA Director Enoch Gordis, M.D., offered the following advice with respect to the health implications of alcohol consumption:

> (1) Individuals who are not currently drinking should not be encouraged to drink solely for health reasons, because the basis for health improvements has not yet been established as deriving from alcohol itself;
>
> (2) Individuals who choose to drink and are not otherwise at risk for alcohol-related problems should not exceed the one-to two-drink-per-day limit recommended by the U.S. Dietary Guidelines; and
>
> (3) Individuals who currently are drinking beyond the U.S. Dietary Guidelines' recommended limits should be advised to lower their daily alcohol intake to these limits.

B. Dietary Guidelines—Fifth Edition (2000)

In the summer of 2000, USDA and HHS published the ''Dietary Guidelines for Americans, 2000.'' The 2000 Dietary Guidelines contain more specific guidance about alcohol consumption, and summarize the current medical evidence regarding the risks associated with alcohol consumption as follows:

> Alcoholic beverages supply calories but few nutrients. Alcoholic beverages are harmful when consumed in excess, and some people should not drink at all. Excess alcohol alters judgment and can lead to dependency and a great many other serious health problems. Taking more than one drink per day for women or two drinks per day for men * * * can raise the risk for motor vehicle crashes, other injuries, high blood pressure, stroke, violence, suicide, and certain types of cancer. Even one drink per day can slightly raise the risk of breast cancer. Alcohol consumption during pregnancy increases risk of birth defects. Too much alcohol may cause social and psychological problems, cirrhosis of the liver, inflammation of the pancreas, and damage to the brain and heart. Heavy drinkers are also at risk of malnutrition because alcohol contains calories that may substitute for those in nutritious foods. If adults choose to drink alcoholic beverages, they should consume them only in moderation * * * and with meals to slow alcohol absorption.

The 2000 Dietary Guidelines also contain a discussion of the possible health benefits of alcohol consumption; however, the following excerpt from this section emphasizes that these benefits accrue primarily to older drinkers, and that there are other ways of reducing the risk of heart disease:

> Drinking in moderation may lower risk for coronary heart disease, mainly among men over age 45 and women over age 55. However, there are other factors that reduce the risk of heart disease, including a healthy diet, physical activity, avoidance of smoking, and maintenance of a healthy weight. Moderate consumption provides little, if any, health benefit for younger people. Risk of alcohol abuse increases when drinking starts at an early age. Some studies suggest that older people may become more sensitive to the effects of alcohol as they age.

The 2000 Dietary Guidelines recommend that if adults choose to drink alcohol beverages, they should consume them only in moderation. The term ''moderation'' is defined as no more than one drink per day for women and no more than two drinks per day for men. The Dietary Guidelines also conclude that for some people, even moderate drinking is not recommended. Thus, many people should not drink alcohol beverages at all, including children and adolescents; individuals of any age who cannot restrict their drinking to moderate levels; women who may become pregnant or who are pregnant; individuals who plan to drive, operate machinery, or take part in other activities that require attention, skill, or coordination; and individuals taking prescription or over-the-counter medications that can interact with alcohol.

C. Recent Developments in the CEI Litigation

On June 18, 2001, the district court granted the Government's motion for summary judgment on the remaining issues in the CEI litigation. The court ruled that the case was not ready for judicial review given the fact that ATF was in the middle of a rulemaking proceeding on the very issues raised by CEI in the litigation. The plaintiffs appealed this decision to the Court of Appeals. On May 10, 2002, the appellate court upheld the district court's ruling that the case was not ripe (ready) for judicial review because ATF was nearing completion of a rulemaking proceeding on the use of health claims. Thereafter, the plaintiffs filed a petition for rehearing with the Court of Appeals that was denied.

XI. Analysis of Comments Received in Response to Notice No. 884

In response to Notice No. 884, ATF received 535 comments. Comments were submitted by several United States Senators, two Federal agencies, an agency of a foreign government, consumers and consumer organizations,

medical professionals (including physicians, nurses, and local health departments), public health organizations, industry members, and others.

As previously noted, in Notice No. 884 ATF sought comments on whether the serious health risks associated with alcohol consumption meant that any health claim, even a balanced and qualified one, was inherently misleading to consumers. In response, approximately 45 commenters supported the use of substantive health claims or health-related statements in the labeling and advertising of alcohol beverages. On the other side, approximately 120 commenters opposed the use of either substantive health claims or health-related directional statements in the labeling or advertising of alcohol beverages. Many of these commenters suggested that health statements were inherently misleading when used to market alcohol beverages.

ATF specifically sought comments on whether health-related directional labeling statements such as the ones approved in February 1999 tended to mislead consumers about the health consequences of alcohol consumption. The vast majority of the commenters focused exclusively on this issue. Approximately 355 comments supported the use of health-related directional statements on alcohol beverage labels. The major issues raised by the commenters, as well as the individuals who testified at the public hearings, are summarized below.

XII. Is There a Need To Engage in Rulemaking on This Issue?

A. Issue

Four comments either opposed ATF's decision to engage in rulemaking on this issue or suggested that the notice of proposed rulemaking be withdrawn. These were comments submitted by the Beer Institute, a trade association for domestic and international brewers; the National Association of Beverage Importers (NABI), a trade association representing importers of beer, wine, and distilled spirits; the Distilled Spirits Council of the United States (DISCUS), a national trade association representing producers and marketers of distilled spirits and importers of wine; and a comment submitted jointly by CEI and Consumer Alert (CA).

DISCUS, the Beer Institute, and NABI all questioned the necessity for engaging in rulemaking on the issue of health claims and health-related statements in the labeling and advertising of alcohol beverages. (Comments 530, 396, and 522). These comments suggested that the authorization of any directional statement on a label would be in violation of the ABLA. TTB does not agree with this legal analysis. This issue will be discussed further in section XIII.

DISCUS and Beer Institute also objected to the proposed advertising regulations. DISCUS suggested that ATF's proposal was ''insurmountably vague and ambiguous. It only would serve to interfere with the rights of advertisers to engage in truthful, non-misleading speech about their products that are consumed responsibly by over a hundred million Americans.'' DISCUS suggested that ''[a]n advertiser could run afoul of the provisions of BATF's proposed rule without making any type of curative or therapeutic claim,'' giving as an example an advertisement depicting attractive individuals relaxing in an enjoyable setting. The Beer Institute similarly suggested that the requirements for labeling and advertising should be separate, and that the proposed regulation complicated the existing advertising standard. The Beer Institute suggested that the current standard is readily understood and straightforward, and that instead of issuing new regulations, ATF should adopt a more formal review process of health statements on a case-by-case basis.

These commenters also suggested that large portions of the alcohol beverage industry had no interest in using health claims in the labeling or advertising of their products. For example, the Beer Institute comment suggested that there was no need to amend the malt beverage regulations, since to its knowledge, none of its constituents had ever used such claims in the past, and none had any intention to do so in the future. NABI raised similar concerns, and stated that it did not support the proposed amendment to the regulations ''because any such support might imply the industry intends to make health-related statements on its labels and in its advertising.'' The comment from DISCUS stressed that ''America's distillers do not recommend that consumers drink beverage alcohol for health reasons.'' (Comment 530).

CEI, a pro-market public interest group dedicated to advancing the principles of free markets and limited government, and CA, a free-market consumer advocacy group, suggested that the proposed rule should be withdrawn because the issuance of a regulation based on the proposal would restrict commercial speech in a way that violates the First Amendment. (Comment 326). These issues will be discussed further in section XIX.

B. Decision

After carefully considering the record, TTB has determined that it is important to issue a final rule on specific health claims and other health-related statements in the labeling and advertising of alcohol beverages. The rulemaking record confirms that alcohol abuse is an important public health issue. The use of health claims and health-related statements in the labeling and advertising of alcohol beverages requires a balance between a producer's First Amendment right to label and advertise its products in a truthful and non-misleading fashion and the public's right to be informed of the significant health risks associated with alcohol consumption. Specific regulations on the use of health claims and other health-related statements in the labeling and advertising of alcohol beverages will ensure that both the industry and the public are aware of the restrictions on the use of labeling and advertising statements that might tend to mislead the consumer about the serious health risks associated with alcohol consumption.

TTB recognizes that based on the administrative record, it does not appear that distillers and brewers are interested in using health claims or health-related statements in the labeling or advertising of alcohol beverages. However, as noted later in this preamble, both the Wine Institute and the American Vintners Association (AVA), two industry associations representing hundreds of wineries, supported ATF's proposed rule regarding substantive health claims. At least one individual testifying at the hearing, Mr. John Hinman, indicated that there were wineries interested in using a 664-word substantive health claim in advertising materials. The Wine Institute and AVA, as well as many individual wineries, commented in favor of allowing directional statements in the labeling of alcohol beverages. Thus, the record reflects that there may be some wineries interested in using substantive health claims in the advertising of alcohol beverages, and that many wineries are interested in using directional statements on labels. For this reason, TTB believes it is important to issue regulations that set forth the standards that must be met in the event that a specific health claim or other health-related statement is used in the labeling or advertising of alcohol beverages. As set forth later in section XVII, the same standards should apply to wines, distilled spirits, and malt beverages, even if there is no evidence that any members of the malt beverage or distilled spirits industries are

interested in using health claims or health-related statements. The rule does not require anyone to use such statements; it merely sets forth the standards that would apply in the event that an industry member wishes to use a specific health claim or a health-related statement on a label or in an advertisement.

TTB does not agree that the proposed regulations would inject uncertainty with respect to the use of advertisements that do not involve health claims or health-related statements, such as the example provided by DISCUS of an advertisement that shows people relaxing in an attractive setting. There is nothing in the proposed rule that would extend the definition of a health claim or curative or therapeutic claim to cover such advertisements. However, we agree that the lack of any definition of a ''curative or therapeutic claim'' or ''health claim'' in the proposed rule might give rise to some uncertainty as to what types of advertising claims would be covered by the regulation. Accordingly, the final rule includes definitions of the terms ''health-related statement'' (which includes statements of a curative or therapeutic nature), ''specific health claims,'' and ''health-related directional statements.'' We believe that these definitions should resolve any concerns by the commenters that the labeling or advertising regulations are intended to broaden ATF's traditional interpretation of a curative or therapeutic claim.

XIII. Does the ABLA Preclude the Use of Specific Health Claims or Other Health-Related Statements on the Labels of Alcohol Beverages?

A. Issue

Five commenters, including Senator Thurmond (Comment 526), DISCUS (Comment 530), the Beer Institute (Comment 396), NABI (Comment 522), and Remy Amerique, Inc. (Comment 531), suggested that the use of any health claims or other health-related statements on alcohol beverage labels was foreclosed by the provisions of the ABLA. They argued that it was Congress' intent to foreclose the use of any other health-related statements on alcohol beverage labels.

B. Decision

TTB does not agree with those commenters who suggested that the ABLA specifically precludes the voluntary use by industry members of any health-related statements on alcohol beverage labels other than the required warning statement. The ABLA was enacted in 1988. Pursuant to 27 U.S.C. 215, alcohol beverage containers distributed or sold in the United States must bear a Government warning statement, which warns that alcohol consumption during pregnancy may cause birth defects; that alcohol consumption impairs one's ability to drive a car or to operate machinery; and that consumption of alcohol beverages ''may cause health problems.''

Some commenters argued that the ABLA provided ATF with authority to deny any statement on an alcohol beverage label that discusses the relationship between alcohol consumption and health. The ABLA provides that ''[n]o statement relating to alcoholic beverages and health, other than the statement required by section 204 [27 U.S.C. 215] of this title, shall be required under State law to be placed on any container of an alcoholic beverage, or on any box, carton, or other package, irrespective of the material from which made, that contains such a container.'' This section of the law preempts State governments from each requiring their own version of a health warning statement on alcohol beverage containers. However, it in no way precludes producers from voluntarily placing either additional warning statements or health claims on alcohol beverage labels. *See* also 27 U.S.C. 213 (setting forth Congress' policy to ensure that the public is adequately reminded about any health hazards that may be associated with alcohol consumption or abuse, and not impeded by ''diverse, nonuniform, and confusing requirements for warnings or other information on alcoholic beverage containers with respect to any relationship between the consumption or abuse of alcoholic beverages and health'').

Some commenters argued that 27 U.S.C. 217 provides the exclusive method for allowing additional statements regarding alcohol consumption and health on the label. Section 217 provides that if the Secretary, after consulting with the Surgeon General, determines that there should be a change in the mandatory health warning statement, or if such statement should be deleted, he shall report such information to the Congress together with specific recommendations for necessary amendments to the ABLA. After soliciting public comments on this issue, ATF determined in 1993 that there was no need to seek changes to the required health warning statement. However, this provision applies only to the required health warning statement, not to voluntary statements that producers seek to place on alcohol beverage labels. Thus, it is clear that the statute does not specifically preclude the voluntary use of additional health-related statements on alcohol beverage labels.

XIV. What Are the Effects on Health of Alcohol Consumption?

A. Issue

Most of the commenters who addressed this issue agreed that there was a link between moderate alcohol consumption and a reduced risk of heart disease in certain individuals. However, some commenters concluded that the risks associated with alcohol consumption greatly outweighed any purported cardiovascular benefits, while other commenters emphasized the benefits associated with moderate consumption.

CEI and CA presented a review of the medical evidence summarized by Michael Gough (Ph.D.), which concluded that most adults would benefit from moderate alcohol consumption. Dr. Gough stated that ''with the exception of those well-defined groups of people who should avoid alcohol, there is clearly convincing evidence for the health benefits of moderate alcohol consumption.'' Dr. Gough acknowledged that individuals in their 20s and 30s do not accrue net benefits from consuming alcohol since they are at low risk for heart disease; however, he suggests that ''[b]ased on understanding of the biological basis for the protective effects of alcohol, it is likely that moderate alcohol consumption in the 20s and 30s is important to the beneficial effects seen in later years.''

CEI attached numerous medical studies regarding the effects on health of alcohol consumption. In most important respects, the studies were consistent with ATF's summary of the medical evidence in Notice No. 884. Several of the studies reported an association between light to moderate alcohol consumption and a reduced risk of heart disease. However, many of these same studies supported the conclusion that the health benefits of alcohol consumption do not apply to certain groups.

For example, the authors of one study began by noting that ''[m]en and women who drink alcoholic beverages regularly have, in comparison with abstainers, higher death rates from injuries, violence, suicide, poisoning, cirrhosis, certain cancers, and possibly hemorrhagic stroke, but lower death rates from coronary heart disease and thrombotic stroke. The net balance of

risks and benefits is likely to differ in different age groups and populations.'' [6] (Footnotes omitted). One of the conclusions of the study is that ''the balance of adverse and beneficial effects of drinking on mortality from all causes depends not only on the amount of alcohol consumed but also on age and background cardiovascular risk.'' [7]

Another article noted that it has not yet been determined how alcohol reduces the risk of coronary heart disease. The authors stated that: [8]

> Several possible mechanisms for a protective role of alcohol against coronary disease have been hypothesized, including alcohol-mediated increases in HDL cholesterol levels. * * * Knowledge of the basic mechanisms by which alcohol exerts a protective effect against coronary heart disease is critical to assessing the potential importance of moderate alcohol consumption to the public health, particularly if the beneficial effects of alcohol can be achieved through other interventions. Because heavy consumption of alcohol has been implicated in accidents, cirrhosis, cancer, and other adverse outcomes, the difference between drinking small-to-moderate quantities of alcohol and drinking large amounts may mean the difference between preventing and causing disease. Any clinical recommendations based on this epidemiologic evidence should therefore be cautious. (Footnotes omitted).

Among the more recent studies submitted by CEI and CA was one that focused on the effects on health of alcohol consumption on women. The authors noted that before beginning the study, it was unclear ''[w]hether the apparent overall benefit of light-to-moderate alcohol intake among men'' could be extrapolated to women, noting that ''[a]s compared with men, women have a lower risk of coronary heart disease, attain higher blood alcohol concentrations for a given amount of alcohol consumed, and are more susceptible to alcoholic liver disease. Moreover, women who consume moderate quantities of alcohol have an increased risk of breast cancer.'' [9] (Footnotes omitted). The results of the study showed that light to moderate female drinkers had a reduced risk of heart disease, with women who drank one to three drinks per week having the lowest risk of mortality.[10] However, the study concluded that ''the apparent benefit of light-to-moderate alcohol consumption was mainly confined to women at greater risk for coronary heart disease, specifically older women and women with one or more coronary risk factors.'' [11]

The Wine Institute, representing over 500 California winery and associate members, also submitted summaries of several medical studies that established a link between moderate alcohol consumption and reduced risk of cardiovascular disease (Comment 401). In its summary of these studies, the Wine Institute asserted that moderate drinkers have a 40–50 percent reduction in coronary artery disease risk compared with individuals who are abstinent, with a lower overall mortality rate as well.

As ATF stated in Notice No. 884, the serious health risks associated with alcohol consumption are well established, and ATF received many comments from public health organizations that focused on those adverse consequences. The major points made by these commenters are summarized below.

Many of the commenters focused on the serious public health risks associated with alcohol abuse. The National Council on Alcoholism and Drug Dependence, Inc. (NCADD) commented that ''[w]hile most people who choose to drink do so without negative health or life consequences, there are 13.8 million Americans over the age of 18 who have problems with drinking, including 8.1 million people who are alcoholic. Millions of others, because of a family history or the addictive potential of alcohol, are at risk for developing an addiction.'' (Comment 15). NCADD noted that alcohol contributes to 100,000 deaths annually, making it the third leading cause of preventable mortality in the United States, after tobacco and diet/activity patterns. While there are fewer deaths from alcohol-related causes than from cancer or heart disease, alcohol-related deaths tend to occur at much younger ages.

Some commenters focused on the cost to society associated with alcohol abuse. For example, the Center for Science in the Public Interest (CSPI) commented that ''[a] substantial body of evidence has shown a positive relationship between the aggregate consumption of alcohol in society and population rates of alcohol-related diseases, accidents, criminal violence, and suicide. According to the National Institute on Alcohol Abuse and Alcoholism (NIAAA), alcohol abuse and alcoholism cost society more than $166 billion annually and each year over 110,640 deaths have alcohol-related causes.'' (Comment 400). (Footnotes omitted).

Many of the commenters set forth the serious risks associated with higher levels of alcohol consumption. NCADD noted that ''[h]eavy and chronic drinking can harm virtually every organ and system in the body, and is the single most important cause of illness and death from liver disease. It is also associated with cardiovascular diseases such as cardiomyopathy, hypertension, arrhythmias and stroke.'' The Marin Institute identified similar health risks associated with alcohol consumption. (Comment 324).

Many recognized experts on the effects on health of alcohol consumption testified at the public hearings held by ATF in Washington, DC and San Francisco, California. Dr. David Satcher, former Assistant Secretary for Health and Surgeon General, testified about the public health dangers associated with alcohol consumption as follows:

> Although the majority of Americans who consume alcoholic beverages do so safely, alcohol is one of the nation's leading causes of preventable injury and premature death. Each year, over 100,000 premature deaths result from alcoholism and alcohol abuse. Alcohol represents, therefore, the third leading cause of premature death, right behind tobacco and physical inactivity. Traffic crashes involving alcohol killed more than 16,000 people in 1997, and one in four victims of violent crime report that the offender had been drinking alcohol prior to committing the crime. Fetal alcohol syndrome continues to be the leading preventable cause of mental retardation. I think we fail to appreciate that the roots of alcoholism and alcohol abuse have their origins in adolescence and that children are especially vulnerable to its dangers. Alcohol is the nation's number one drug problem among youth, and it is involved in teen automobile crashes, homicides, and suicides, the three leading causes of teen death. (April 25, 2000; Washington, DC, pages 72–73).

Other physicians testified regarding the effects on health of alcohol consumption. Dr. Carlos Camargo, an emergency room physician and alcohol researcher, testified at the invitation of CSPI. He stated that ''there is persuasive evidence that moderate alcohol consumption reduces risk of coronary heart disease in some people. There is also persuasive evidence that even moderate drinking carries significant health risks for many people.'' (April 25, 2000; Washington, DC, page 94).

Dr. Michael Criqui, a physician, epidemiologist, and professor, also expressed concerns regarding the use of any health-related statement in connection with the labeling of alcohol beverages. Dr. Criqui stressed that when evaluating the potential health benefits associated with alcohol consumption, it is important to look at the effects of various diseases on the potential years of life lost before age 75. He noted that while heart disease is the single largest cause of death in developed countries, it usually occurs at older ages. Motor vehicle crashes and suicides together cause the loss of more potential years of

life in men than heart disease, and both are linked to alcohol use. In women, breast cancer and motor vehicle accidents each account for more potential years of life lost before age 75 than heart disease. (May 23, 2000; San Francisco, CA, pages 53–54).

Dr. Criqui also stressed the importance of evaluating the patterns of consumption among drinkers. He said that in the United States, about 80% of men and 70% of women drink alcohol, with 50% of drinkers reporting temporary problems with alcohol. (*Id.* at page 55). About 10% of men and 5% of women are alcoholics. Furthermore, Dr. Criqui stated that ''half of all the alcohol consumed in the United States is consumed by the 10% of men and the 5% of women who are alcohol-dependent.'' (*Id.* at page 57).

Other medical professionals stressed the health benefits associated with moderate drinking for persons who do not belong in the categories of individuals for whom alcohol consumption is contraindicated. Dr. Curtis Ellison, a Professor of Medicine, testified that ''science clearly indicates that moderate drinkers have much lower risk of coronary heart disease and ischemic stroke. Because these are the number one and number three causes of death, it is not surprising that moderate drinkers will live longer in the United States.'' (April 26, 2000; Washington, DC, page 109). Dr. Ellison suggested that ''if I am withholding from a patient information that may reduce that individual's risk of a heart attack by 30 or 40 percent and do not tell him about it, I am doing him a disservice.'' (*Id.* at page 110).

B. Decision

The evidence presented by the medical experts, as well as the studies presented with some of the comments, indicate that there are differences of opinion as to how the relative risks and benefits of alcohol consumption should be weighed. The evidence reflects a broad consensus that heavy levels of alcohol consumption pose serious health risks. The record also reflects that there is a broad consensus that certain categories of people should not consume any alcohol. With regard to those individuals for whom alcohol consumption is not contraindicated, there was some difference among the experts as to how to weigh the relative risks and benefits of moderate consumption, with some experts stressing the protection against cardiovascular disease, and other experts stressing the increased risk of injury and certain cancers.

Because TTB is not an expert on public health issues, we (and our predecessors) have generally deferred to the findings of the Department of Health and Human Services, including NIAAA, FDA, CSAP, and the Surgeon General, on issues related to the effects on health of alcohol consumption. In the case at hand, TTB finds that the evidence in the rulemaking record supports the findings of NIAAA's 1999 ''Alcohol Alert'' and the 2000 Dietary Guidelines published by USDA and HHS. The main points of these findings can be summarized as follows:

- Alcohol beverages are harmful when consumed in excess, and some people should not drink at all. Excess alcohol alters judgment and can lead to dependency and many other serious problems. Heavy levels of alcohol consumption cause social and psychological problems, cirrhosis of the liver, inflammation of the pancreas, and damage to the brain and heart.
- Taking more than one drink per day for women or two drinks per day for men can raise the risk for motor vehicle accidents, other injuries, high blood pressure, stroke, violence, suicide, and certain types of cancer. Even one drink per day can slightly raise the risk of breast cancer.
- Alcohol consumption during pregnancy increases the risk of birth defects.
- Certain individuals should not drink any alcohol; for these individuals, even moderate levels of alcohol consumption may cause health risks. Included in this category are children and adolescents; individuals of any age who cannot restrict their drinking to moderate levels; women who may become pregnant or who are pregnant; individuals who plan to drive, operate machinery, or take part in other activities that require attention, skill, or coordination; and individuals taking prescription or over-the-counter medications that can interact with alcohol.
- Moderate levels of alcohol consumption are associated with a reduced risk of coronary artery disease for certain individuals, but causation has not been conclusively established.
- To the extent that moderate consumption is linked to a lowered risk for coronary heart disease, the link appears mainly among men over 45 and women over age 55. Moderate consumption provides little, if any, health benefit for younger people.
- The effects on health of alcohol consumption vary from individual to individual, depending on the individual's health profile and history, as well as the levels of consumption. Risk of alcohol abuse increases when drinking starts at an early age. Some studies suggest that older people may become more sensitive to the effects of alcohol as they age.

Based on the above, it is TTB's conclusion that the medical data still supports ATF's longstanding (and now our) position that notwithstanding the data linking moderate alcohol consumption to a reduced risk of heart disease in some individuals, there are significant health risks associated with all levels of alcohol consumption. The medical data submitted by the commenters, as well as the testimony presented by experts at the public hearings, suggest that there is a link between moderate alcohol consumption and a reduced risk of heart disease in certain individuals; however, causation has not been conclusively established. The risk/benefit ratio varies with the individual's own health profile and the level of consumption. For example, moderate alcohol consumption confers few, if any, benefits on people at low risk for heart disease. The evidence also establishes that there are serious risks associated with higher levels of alcohol consumption, and that even moderate consumption poses health risks for certain individuals. Finally, there are certain categories of individuals for whom any level of alcohol consumption is not recommended.

XV. Are Health Claims and Health-Related Statements in the Labeling and Advertising of Alcohol Beverages Inherently Misleading?

A. Comments in Opposition to the Use of Health Claims and/or Health-Related Statements

Approximately 120 comments opposed the use of health claims and/or health-related statements (including directional statements) in the labeling and advertising of alcohol beverages. Many of these commenters, including the American Medical Association, the American Cancer Society, and the Center for Science in the Public Interest, commented in support of a complete ban on the use of such statements in the labeling or advertising of beverage alcohol. The primary arguments made by these commenters are summarized below.

1. It Has Not Been Proven That Moderate Alcohol Consumption Lowers the Risk of Heart Disease

NCADD commented that the evidence for the alleged health benefits of alcohol consumption was ''far from concrete,'' noting that the 1999 NIAAA report concludes that while there is ''an

association between moderate drinking and a lower risk of CHD, science has not confirmed that alcohol itself causes the lower risk.'' ''Alcohol Alert,'' National Institute on Alcohol Abuse and Alcoholism, No. 45, October 1999. (Comment 15). Most other commenters, however, acknowledged that there was a link or association between moderate alcohol consumption and reduced risk of heart disease in some individuals.

2. Because the Negative Health Consequences of Alcohol Consumption Outweigh the Potential Benefits, Health Claims and Health-Related Statements Are Inherently Misleading and Should Be Banned

Many of the commenters stated that health claims for alcohol beverages were inherently misleading because the health risks associated with alcohol consumption outweigh the purported cardiovascular benefits. For example, the American Cancer Society commented in favor of a ban on all health benefit claims and health-related statements in the labeling and advertising of alcohol beverages. (Comment 527). They noted that ''[w]hile moderate intake of alcohol has been shown to reduce the risk of coronary heart disease in middle-aged adults, 100,000 deaths each year are attributed to alcohol-related diseases.''

The American Medical Association (AMA) strongly urged ATF to reject any type of beneficial claim for alcohol products on container labels, noting that such claims would be misleading, and for many persons, inaccurate. (Comment 534). AMA stated that ''[w]hile some research indicates that moderate drinking is associated with a decreased risk of some diseases, other research shows that such risks actually substantially increase for certain people.''

Senator Strom Thurmond opposed the use of any health-related statements on alcohol beverage labels. (Comment 526). He testified that health claims were inherently misleading because of the serious health risks associated with alcohol consumption; because the supposed health benefits of moderate drinking have not been conclusively established; and because any explanatory statements are simply insufficient to clarify a misleading health claim. (April 25, 2000; Washington, DC, pages 14–16).

CSPI argued that health claims are inherently misleading for five reasons:

(1) There are serious health risks associated with alcohol consumption, even moderate consumption;

(2) the health benefits of moderate alcohol consumption do not apply universally, but only to a discrete segment of the population;

(3) there are many groups of people who should abstain from, or minimize, their consumption of alcohol;

(4) allowing health claims would undermine the Government warning label; and

(5) explanatory statements are insufficient to clarify a misleading health claim. (Comment 400).

CSPI noted that researchers for the Centers for Disease Control and Prevention (CDC) found that, after decreasing during the late 1980s, alcohol consumption among pregnant women in the United States began to increase after 1991, and the lead author hypothesized that the increased consumption might be due to the media attention to the reports on the health benefits of moderate drinking. At the Washington, DC hearing, Mr. George Hacker, director of CSPI's Alcohol Policies Project, testified in opposition to the use of health claims. Mr. Hacker stressed the health risks associated with even moderate alcohol consumption, and stated that ''[a]lcohol is a potentially dangerous, potentially addictive, and potentially deadly drug. Any positive health statement about such a drug must be presented, if at all, only in a balanced and non-misleading manner.'' (April 25, 2000; Washington, DC, page 56).

On behalf of its three million members and supporters, Mothers Against Drunk Driving (MADD) commented in favor of banning any health claims or directional statements in the labeling and advertising of alcohol beverages. (Comment 20). MADD commented that ''[t]he negative consequences and the risk associated with alcohol consumption greatly outweigh any purported 'health benefits.' '' MADD quoted Gen. Barry McCaffrey, former Director of the Office of National Drug Control Policy, as telling an alcohol policy conference in 1997 that, ''Undoubtedly, alcohol is the principal drug abuse problem in America today.''

MADD also noted that in 1998, 15,935 people were killed in alcohol-related traffic crashes and an estimated 850,000 were injured. These alcohol-related crashes result in an annual cost of $114,800,000 in the United States.

The National Association for Children of Alcoholics commented that ''the health risks of alcohol far outweigh the health benefits'' and advocated a complete ban on health-related claims on alcohol beverage containers. (Comment 29). This comment noted that 76 million Americans, about 43% of the U.S. adult population, have been exposed to alcoholism in the family. Almost one in five (18%) of American adults lived with an alcoholic while growing up. Its comment also noted the negative impact of alcoholism on family and marital relationships, the association between alcoholism and violent crime and child abuse, and the devastating impact of alcoholism on the children of alcoholics.

The Marin Institute for the Prevention of Alcohol and Other Drug Problems (''Marin Institute'') commented in favor of a complete ban on all health-related statements (other than the required warning statement) in the labeling and advertising of alcohol beverages. (Comment 324). The Marin Institute commented that ''[s]tatements attributing positive health effects to the consumption of alcoholic beverages (as is the case with the previously approved wine labels) are misleading and potentially dangerous because media and marketing messages can be misinterpreted as public health recommendations.'' They stated that ''[s]implistic and misleading messages about the health effects of alcohol are dangerous to the health and safety of Americans and could increase the enormous toll of alcohol-related problems in this country. Because of the evidence regarding the risks associated with alcohol consumption, alcoholic beverages should not be held to a lower standard of accountability regarding health messages than well-regulated prescription drugs. Banning all health claim-related statements on labels or in advertising of alcoholic beverages assures that public health information is accurate and free of potentially harmful misinformation.''

Other public health organizations strongly urged a ban on health claims. *See,* Pacific Drug Policy Institute, Inc. (Comment 34); American Council on Alcohol Problems (Comment 37); and West Los Angeles Alcohol Policy Coalition (Comment 384).

Many individuals made similar comments, noting the serious health risks associated with alcohol consumption. Some shared personal experiences with alcoholism or alcohol abuse. *See* comments 23, 28, and 35.

Many of the individuals testifying at the public hearings also emphasized the human costs associated with alcohol abuse. For example, Barrett Duke, Ph.D., testified on behalf of the Ethics and Religious Liberty Commission, the moral concerns agency for the Southern Baptist Convention. He shared his concerns from the perspective of the faith community, and noted that ''[m]ost faith communities deal with the

devastating consequences of alcohol abuse on a regular basis in their churches, missions, and benevolent ministries. * * * Families have been destroyed. Lives have been lost. Careers have been ruined. Men and women have left the ministry as a direct result of alcohol abuse. Furthermore, alcohol is often a primary contributing component to poverty, forcing faith communities to use precious limited resources to assist the alcohol abuser as well as the abuser's intended or unintended victims.'' (April 25, 2000; Washington, DC, page 151).

Ms. Suzanne Harrington-Cole, Chair of the Vallejo Alcohol Policy Coalition, testified in favor of a complete ban on the use of health claims on alcohol beverage containers. She stated that alcohol is present in more than 50% of all incidents of domestic violence (May 24, 2000; San Francisco, CA, page 245), and noted that ''[w]e do not need a government sanction on more drinking in the name of health.'' (*Id.* at page 243).

3. The Issue Is Too Complex To Be Summarized on an Alcohol Beverage Label Because the Effects on Health of Alcohol Consumption Vary From Person to Person

Many of the commenters stated that a summary statement of health benefits on an alcohol beverage label would mislead consumers because the effects on health of alcohol consumption vary from person to person, based on various factors. These commenters also suggested that the issue was too complex to be summarized on an alcohol beverage label, rendering all such labeling statements inherently misleading. Thus, the American Cancer Society noted that the potential health impact of alcohol consumption varied from individual to individual, and that a ''brief message on any beverage container cannot provide a consumer with adequate information to make an informed decision about drinking 'for health related reasons.''' (Comment 527).

NCADD urged ATF to ''prohibit labels and advertisements that make claims regarding potential health benefits associated with the consumption of alcoholic beverages, because it would be impossible to adequately and appropriately convey the negative health consequences.'' (Comment 15). NCADD noted that elderly consumers have special concerns, and that NIAAA's definition of moderate drinking for women and men over the age of 65 is no more than one drink a day. They cited a study showing that among persons older than 65, moderate and heavy drinkers were 16 times more likely than nondrinkers to die of suicide.[12]

Senator Thurmond also testified that the effects of alcohol consumption vary from individual to individual, and any clarifying statement along those lines would ''have to address factors such as age, sex, family, medical history, diet, weight, and activity.'' (April 25, 2000; Washington, DC, page 16). MADD noted ATF's historic policy of requiring balance in health claims, and suggested that in ''order to 'appropriately qualify and balance' the alleged health claim benefits with the negative consequences, the alcohol label would have to be the size of a billboard and advertising messages would be longer than the State of the Union Address.'' (Comment 20). Accordingly, MADD suggested that to avoid misleading consumers, such claims should be banned entirely.

The United Communities Against Drug & Alcohol Abuse commented that ''[n]o brief message on any beverage container can possibly provide a consumer with adequate information to make a decision about drinking 'for health-related reasons.''' Instead, they suggested that in order to balance a health message, ''consumers would need to be provided with a detailed multi-page document (similar to those now provided by manufacturers of prescription medication) in order to make [an] informed choice about whether or not a decision to consume an alcoholic-beverage for health reasons would be, on balance, a good or a bad decision.'' (Comment 31). The Marin Institute (Comment 324) agreed, commenting that ''[d]etailed, balanced and cautionary information about potential harmful effects would be required (as it is with advertisements of prescription drugs) in order to offset the demonstrated confusion of the general public about the health effects of alcohol. The volume of information needed could hardly be legible if it were displayed on a bottle of wine or beer.''

4. Even if Moderate Alcohol Consumption Is Linked to a Reduced Risk of Heart Disease, There Are Safer Ways To Achieve the Same Reduction Without the Risks Associated With Alcohol Consumption

Many commenters suggested that even if alcohol consumption resulted in health benefits for certain individuals, there were less risky ways to obtain those benefits. For example, the Central Nebraska Council on Alcoholism, Inc. (Comment 14) noted that ''[t]here are simply less risky ways to attain the same health benefits that consuming small amounts of alcoholic beverages provide to a limited group of people. It would be irresponsible for the government to allow a health-claims statement on alcoholic beverages that urge the most risk laden way of obtaining those benefits.''

CSPI also suggested that there were safer methods of reducing one's risk of heart disease, stating that the ''discrete category of people who may benefit from moderate drinking could also lower their risk of heart disease by other less risky alternatives, such as quitting smoking, reducing fat in the diet, getting regular exercise, taking a daily low dose aspirin, or reducing stress. All of those methods are much less likely to cause accidents or other health problems than consuming alcohol, even in moderation.'' (Comment 400).

The Tangipahoa Alcohol and Drug Abuse Council (Comment 24) noted that consumers often look for ''the easy way out,'' and that many may believe that drinking alcohol will get the same benefits as an overall healthy lifestyle. The Pacific Drug Policy Institute, Inc. commented that ''smoking cessation, good diet, exercise, and stress management techniques provide cardiac benefits with much lower risk of adverse consequences. When there are low risk ways to attain the health benefits attributed to wine, it would appear absurd to allow advertisement of medicinal value in high-risk alcohol consumption.'' (Comment 34).

Ted Miller, PhD, an economist, testified at the hearings that a more cost-effective way to obtain the purported benefits associated with consumption of wine would be to walk a mile, drink a glass of juice, or eat one cup of vegetables every day. (April 25, 2000; Washington, DC, pages 179–183).

5. Health Claims and Health-Related Messages Would Be Misconstrued by Consumers, Particularly Those With a History of Alcoholism or Who Are Susceptible to Alcohol Abuse Problems, as an Endorsement To Consume or Abuse Alcohol

Many professionals in the field of addiction medicine commented that health claims and health-related messages were likely to be misinterpreted by those most susceptible to problem drinking. Many of these commenters were particularly concerned with the risk that recovering alcoholics would use information about the purported health benefits of alcohol consumption to justify their continued use of alcohol. For example, a physician who has worked in the alcohol and substance abuse treatment field for 18 years stated that any message about purported health benefits sends the

wrong message to the public, especially the alcohol abuser or alcoholic. He expressed concern that such a message ''would only encourage the alcoholic to drink more to 'help his heart''' and feared that ''many current alcoholics who are in total recovery and abstinence may use this as a justification to begin drinking alcohol again, thinking they can control it.'' (Comment 381). Another doctor made a similar point, (Comment 385) as follows:

> The American public has become accustomed to warning labels on harmful products * * *. A label touting health benefits of use of alcoholic beverages in controlled and low amounts, is likely to be misinterpreted by problem drinkers, especially by alcoholics, whose belief systems about their drinking distort reality with respect to the relative benefits and risks of consumption. * * * I do not deny the scientific validity of reports of health benefits of consumption of one glass of wine per day for females or two glasses of wine per day for males. However, the risk of misinterpretation by the drinking public is far greater than any public health or public information benefit that may be alleged to accrue from adding labels to products that promote health benefits from drinking.

The National Association for Children of Alcoholics (Comment 29) also suggested that health claims can lead to confusion among children of alcoholics about the role of alcohol, and can reinforce and perpetuate the denial process of the alcohol-addicted person.

6. The Use of the Term ''Moderate'' in a Specific Health Claim Would Be Misleading Unless the Term Is Defined

Many public health organizations commented that the use of the term ''moderate'' in a health claim could mislead consumers who did not understand the definition of the term. The United Communities Against Drug & Alcohol Abuse noted that ''moderate'' drinking was poorly defined. It noted that the Substance Abuse and Mental Health Services Administration (SAMSHA) study showed that ''virtually all drinkers define their personal level of consumption as 'moderate,' whether they consume one drink per week or five per day.'' (Comment 31). CSPI also noted that consumers had varying definitions of the term ''moderate.'' (Comment 400). Rather than recommending moderate consumption, CSPI suggested that any health claims should provide specific quantities of alcohol that constitute moderate consumption, including a recommendation that consumers drink no more than one drink per day.

Nancy Piotrowski, PhD, testified that she had been conducting research on alcohol consumption for the past 16 years, and is in the middle of ongoing research on the perceptions of drinkers regarding moderate alcohol consumption. She noted that previous studies had shown that perceptions of moderate drinking were clearly related to drinkers' current drinking patterns and their history of problems relating to drinking. (May 23, 2000; San Francisco, page 37).

B. Comments in Favor of Health Claims

A few commenters specifically supported ATF's proposal to allow qualified, detailed and balanced health claims in the labeling and advertising of alcohol beverages. One comment, from CEI and CA, specifically supported the use of summary health claim statements without qualification or disclosure of the adverse effects on health caused by alcohol consumption. Finally, approximately 45 commenters supported the general use of health claims with respect to alcohol beverages.

1. Comments in Favor of Allowing Balanced Health Claims, as Set Forth in the Proposed Rule

The comments in favor of the substantive health claim provisions of the proposed rule generally stated that ATF had struck an appropriate balance in dealing with a difficult issue. For example, the National Consumers League (NCL), a national nonprofit consumer advocacy organization that was founded in 1899 to represent consumers in the marketplace and workplace, recognized the difficult nature of the issue as follows:

> NCL believes that the proposed rule raises a serious public policy question for which there is no easy answer. NCL understands ATF's concern as to whether health claims should be permitted on alcoholic beverages at all. While there is a body of research showing that moderate consumption of alcohol reduces the risk of coronary heart disease (CHD), there is also evidence that moderate drinking may increase the risk of certain cancers. Moreover, as ATF notes, moderate drinking is risky for certain individuals who are prone to alcoholism, some of whom may not realize that they are. Excessive alcohol consumption is unquestionably harmful. Whether a properly qualified health claim should be permitted on alcoholic beverage labels is a serious policy question that has been debated by public health experts for years.

NCL concluded that while it ''has reservations about authorizing any health claim for alcoholic beverages, we believe a properly qualified and balanced claim would be of value to many consumers. * * * A healthclaim that includes the elements specified in the proposed rule would provide these consumers with useful information.'' (Comment 388).

Two major associations representing the wine industry also commented in support of the substantive health claims provisions of the proposed rule. The Wine Institute commented ''that the public should receive the whole story regarding the responsible consumption of wine and applaud[ed] ATF's efforts, as reflected in the additional proposed regulation language, to refine and focus the conditions which must be met before any substantive claim regarding health benefits can be made on wine labels or in advertisements.'' (Comment 401).

The AVA also stated it had no objection to the proposed amendment to the regulations to reflect current ATF policy, noting that ''[a]s our members have been required to conform to these policies for some years, converting them to regulation would pose no further hardship.'' (Comment 417).

A comment from the Washington Legal Foundation (WLF) focused primarily on legal issues, noting that if the rule was properly implemented, it would pass muster under the First Amendment. (Comment 390). This comment will be discussed further under section XIX.

2. Comment Supporting Summary Health Claims Without Qualification or Disclosure of Adverse Effects

Only CEI and CA specifically argued in favor of allowing summary health claims without qualification or disclosure of adverse effects in the labeling and advertising of alcohol beverages. CEI and CA opposed ATF's notice on the grounds that it would serve to suppress truthful and non-misleading speech. (Comment 326). CEI and CA argued that the cardiovascular and overall health benefits associated with moderate alcohol consumption are amply supported by the medical evidence, and summary statements of these benefits are protected by the First Amendment.

CEI and CA suggested that those individuals who would not benefit from moderate drinking ''know who they are and are unlikely to be misled.'' CEI and CA also suggested that the CSAP survey supports a conclusion that consumers would not be misled by directional statements, that such statements would not change the drinking patterns of consumers, and that the population studied understands the risks of drinking, particularly that drinking is counter-indicated during pregnancy.

CEI and CA claimed that other Federal agencies have approved summary health statements without the

extensive qualifications that would be required under ATF's proposed rule. As examples, they pointed to health claims approved by FDA for diets low in saturated fat and cholesterol and diets low in sodium. They also suggested that the ''balance'' ATF is ostensibly seeking would automatically be provided by the mandatory health warning statement on alcohol beverage containers.

The CEI and CA comment suggested that the proposed rule would result in regulations that violated the First Amendment; thus, the proposed rule should be withdrawn. At the public hearing, Mr. Ben Lieberman testified on behalf of CEI and stated that CEI believed that the rulemaking should result in a ''policy allowing a wide range of accurate summary statements about moderate drinking and health to appear on alcoholic beverage labels and ads.'' (April 25, 2000; Washington, DC, page 119). Mr. Lieberman also suggested that ATF had not accurately summarized the evidence demonstrating the health benefits associated with moderate alcohol consumption, but instead spent ''much of its time identifying and somewhat exaggerating every conceivable category of individual who is not likely to benefit from moderate drinking, such as adults too young to be at risk for heart disease, pregnant women, and recovering alcoholics.'' (*Id.* at page 120).

In response to a question from the panel, Mr. Lieberman confirmed that it was CEI's belief that a health claim regarding cardiovascular benefits, such as ''there is significant evidence that moderate consumption of alcoholic beverages may reduce the risk of cardiovascular disease,'' could appear on a label with no disclaimer and still not mislead consumers. He stated that ''it is well known that people understand the limitations of advertising and labeling and that they would be skeptical. They would also read the government warning, which does at least allude to the other side of this story.'' (April 25, 2000; Washington, DC, pages 133–134).

3. Other Comments in Favor of Health Claims

Approximately 45 comments supported the use of substantive health claims in the labeling and advertising of alcohol beverages. However, these commenters did not specifically support the type of summary health claim advocated by CEI and CA. Instead, they commented in favor of the general principle that health claims for alcohol beverages are not inherently misleading. In some cases, it was difficult to determine whether these commenters meant to support directional statements only or whether they specifically supported the use of substantive health claims on labels or in advertisements.

Most of the comments that favored a rule allowing the use of substantive health claims reflected a general perception that consumers were entitled to information about potential health benefits associated with moderate alcohol consumption. For example, one individual suggested that ''consumers have the right to know and can be trusted to handle this scientific information.'' (Comment 300). Another comment supported ''the rights of wineries to list the health benefits of their product on the labels.'' (Comment 277).

Some of the individuals commenting in favor of health claims specifically supported the concept that the claims be balanced, although it was unclear whether they were suggesting that the balance would come from qualifications in the claims or the required Government warning statement. For example, one individual stated that ''[i]t is only fair and proper that the labels on the bottle contain the positive health benefits as well as the proper health warnings.'' (Comment 143). Another commenter expressed his support for ''producers of wine to be able to print both the adverse and the positive effects of consuming wine.'' (Comment 340).

Many of the commenters suggested that consumers need to be made aware of health-related information, including the positive and negative effects of alcohol consumption, in order to make informed decisions regarding its use. For example, one commenter, a psychologist and attorney, stated that it was ''necessary to rationally accept that alcohol has benefits as well as dangers * * *. Since Americans can easily and legally drink, and most in fact do so, the need to inform them of the range of drinking consequences and the related drinking limits for each is both prudent and democratic.'' (Comment 243). A doctor commented as follows:

> It makes more sense to put more information on the label in order for the consumer to make a better decision. As a physician, I implore my patients to read labels. There are certainly some potential health benefits to wine as well as potential downsides in individuals. (Comment 145).

Two commenters argued that alcohol producers have a First Amendment right to market the health benefits of alcohol consumption, provided that such information is presented in a non-misleading manner. However, neither of these comments suggested that industry members were entitled to use summary health claims without any qualification or disclosure of adverse effects. The First Amendment issues raised by these commenters will be addressed separately in section XIX.

Among the medical experts who testified at the hearings in favor of allowing health claims or health-related statements on labels or in advertisements, some specifically noted that consumers should be made aware of both the risks and purported benefits of moderate alcohol consumption. For example, Dr. Ellison suggested that an appropriate message on a label would be '' '[w]hile light to moderate alcohol consumption can be consistent with a healthy lifestyle for most individuals and has been shown to dramatically reduce the risk of heart disease, certain individuals should not drink at all.' Then, you should go through the list of the people that we are advising not to drink.'' (April 26, 2000; Washington, DC, page 116).

Finally, Mr. John Hinman testified on behalf of the American Wine Alliance for Research and Education as well as the Coalition for Truth and Balance, a group of California wineries. Mr. Hinman suggested that it was the Government warning statement, rather than the directional statements, which misled consumers about the health consequences of alcohol consumption. (May 23, 2000; San Francisco, CA, page 149). Mr. Hinman was also one of the few individuals responding to ATF's question about whether it was possible to craft a balanced substantive health claim. He noted that he had submitted a 664-word statement to ATF for review in 1993, entitled ''Wine and Health—Behind the French Paradox.'' (*Id.* at page 151). Mr. Hinman stated that ''considering that 664 words makes for a very wordy wine label, we seriously doubt whether any wine maker really has an interest in providing such a statement on the bottle. However, the statement can and should be available to hand out to those customers who request more information or are interested in the subject matter.'' (*Id.* at page 152). Accordingly, Mr. Hinman stated he was resubmitting the statement to ATF for review, and later clarified in response to a question from the panel that he would put the statement on an application for label approval. (*Id.* at pages 152, 165).

In response to a question from the panel, Mr. Hinman stated that neither the American Wine Alliance nor the Coalition for Truth and Balance was ''interested, to my knowledge, in necessarily using CEI's proposed label. * * * On the other hand, as a lawyer * * * that's an absolutely accurate statement that CEI is using on that

particular thing, and I would support their First Amendment right to utilize it. It's going to be up to them to find people that are, in fact, going to use it.'' (*Id.* at page 167).

C. Decision

After careful consideration of the record, TTB finds that the comments and testimony on this issue establish that the use of health claims in the labeling or advertising of alcohol beverages has the potential to mislead consumers as to the very serious health consequences associated with alcohol abuse and consumption. In particular, TTB finds that the rulemaking record overwhelmingly supports the conclusion that the type of detail, qualification, and balance required by the proposed rule would be necessary to avoid misleading consumers about the serious health risks associated with alcohol consumption.

Based on the comments on this issue, however, TTB is adopting certain changes to the final rule to set forth more specifically how a substantive health claim would comply with the requirements of the regulation. For example, TTB agrees with the NCADD comment that it has not been proven that alcohol itself lowers the risk of heart disease in certain people; this comment is consistent with the 1999 ''Alcohol Alert'' published by NIAAA. The 2000 Dietary Guidelines state only that ''[d]rinking in moderation may lower risk for coronary heart disease, mainly among men over age 45 and women over age 55.'' The final rule provides that a specific health claim would not be approved unless it is truthful and adequately substantiated by scientific or medical evidence. Thus, TTB would not approve any claim implying that alcohol consumption itself caused a reduced risk of heart disease in the absence of scientific or medical evidence substantiating such a claim.

TTB also agrees with those commenters who suggested that the effects on health of alcohol consumption vary from person to person, and that any labeling or advertising statement that failed to take this into account would mislead consumers. Consistent with the 2000 Dietary Guidelines, many commenters noted that moderate consumption provided little, if any, health benefit for younger people, who are at low risk of heart disease. As noted above, the Dietary Guidelines provide that ''[d]rinking in moderation may lower risk for coronary heart disease, mainly among men over age 45 and women over age 55.''

In consideration of these comments, the final rule specifically provides that a claim will not be approved unless it is sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies. For example, assuming that the evidence continues to indicate that the potential health benefits associated with moderate alcohol consumption are mainly associated with men over age 45 and women over age 55, then the claim would have to specifically set forth this qualification. Furthermore, the concerns expressed in the comments regarding the definition of the term ''moderate'' would also be addressed by requiring, where necessary, sufficient detail in the claim itself regarding the meaning of this term. This level of detail could include specific information as to what constitutes ''moderate'' levels of consumption, possibly including separate definitions for men, women, and the elderly.

Many commenters suggested that there are safer ways to reduce the risk of heart disease without the negative health consequences associated with alcohol consumption. Again, this is a point noted in the 2000 Dietary Guidelines, which remind consumers that ''there are other factors that reduce the risk of heart disease, including a healthy diet, physical activity, avoidance of smoking, and maintenance of a healthy weight.'' In reviewing whether a health claim tends to mislead consumers, TTB will certainly consider whether the health claim misstates the role played by these factors in reducing one's risk of heart disease.

Several commenters suggested that any health claim might be misinterpreted by alcoholics and other abusers of alcohol as a rationalization for their own consumption levels. TTB recognizes the possibility that certain consumers will selectively interpret data regarding the health consequences of alcohol consumption to justify their own behavior. We believe that summary health benefit claims that do not disclose the adverse health consequences of alcohol consumption would be particularly susceptible to this type of misinterpretation. We recognize the possibility that certain abusers of alcohol may use information regarding the potential cardiovascular benefits of alcohol consumption to justify alcohol abuse that clearly poses significant health risks. However, it is our conclusion that the best way to prevent this type of misinterpretation of a health claim, by both alcohol abusers as well as consumers who do not abuse alcohol, is to require detailed information regarding the health risks associated with various levels of alcohol consumption.

Accordingly, the final rule provides that a specific health claim must adequately disclose the health risks associated with both moderate and heavier levels of alcohol consumption. It is misleading to imply that moderate alcohol consumption confers only health benefits; the administrative record establishes that there are significant risks associated with moderate consumption, including an increased risk of certain cancers. Even if a claim is made regarding only moderate consumption, consumers should be advised of the health risks of heavier levels of alcohol consumption. The record reveals that a high percentage of the alcohol consumed in this country is consumed at levels that exceed ''moderate drinking.'' The Marin Institute comment states that alcohol is consumed at heavy levels (3 or more drinks per day, or more than 5 drinks at one time) in 78 percent of all drinking occasions. (Comment 324). Furthermore, Dr. Criqui testified that half of all the alcohol consumed in the United States is consumed by the 10% of men and the 5% of women who are alcohol-dependent. (May 23, 2000; San Francisco, CA, page 57). Finally, a study submitted by CEI and CA noted that ''[i]n the United States, less than 10% of the population reports drinking more than two drinks per day, the cutoff for 'heavy drinking' in national survey research. This means that 'moderate' drinkers, because of their much greater numbers, probably account for well over half of all alcohol problems, a finding that led researchers at the Institute of Medicine to observe in a groundbreaking report that 'if all the clinically diagnosed alcoholics were to stop drinking tomorrow, a substantial fraction of what we understand as alcohol problems would still remain.' ''[13] These statistics make it clear that a specific health claim touting the potential health benefits of moderate alcohol consumption would be misleading without a referral to the health risks associated with both moderate and higher levels of alcohol consumption.

In addition, the administrative record establishes that there are certain categories of individuals for whom any alcohol consumption at all is not recommended. Accordingly, the final rule provides that any specific health claim must outline the categories of individuals for whom any levels of alcohol consumption may cause health risks. The Beer Institute commented that ATF's proposed standard on this issue made it unclear whether ''disclaimers

are required only for categories of individuals whose potential negative health effects are literally numerous or whether the potential negative health effects would be aggregated for the purposes of performing the balancing test envisioned by the proposed regulation.'' (Comment 396). Accordingly, the final rule clarifies that this requirement is intended to cover the categories of individuals for whom alcohol consumption is not recommended (*e.g.*, pregnant women, individuals taking certain medications, *etc.*).

We do not agree with CEI and CA that it is unnecessary to set forth this information in conjunction with a health claim because these people know who they are. For example, it is not at all clear that most consumers know that alcohol can interact harmfully with a variety of prescription and over-the-counter medications. It is TTB's conclusion that any labeling or advertising statement that makes a substantive health claim regarding alcohol consumption would mislead consumers if it does not set forth this important information about the adverse consequences of alcohol consumption. Notwithstanding the above, we find that the rulemaking record does not support a conclusion that health claims in the labeling and advertising of alcohol beverages are inherently misleading. Nor does the record support a conclusion that the potentially misleading nature of such claims cannot be cured with the appropriate use of disclaimers and qualifying statements.

Initially, it should be noted that none of the commenters who supported a total ban on the use of health claims in the labeling and marketing of alcohol beverages presented consumer data on the use of substantive health claims in the labeling or advertising of alcohol beverages. Thus, we have no consumer data establishing that consumers would be misled by the use of properly qualified health claims that are sufficiently detailed and specific, and which disclose the adverse health consequences of alcohol consumption.

A complete ban on the use of health claims or health-related statements in the labeling and advertising of alcohol beverages would prohibit even the most qualified, detailed, and balanced discussion of health consequences in advertising materials. For example, in Industry Circular 93–8, ATF advised industry members that the regulations did not prohibit them from including the entire text of NIAAA's April 1992 edition of ''Alcohol Alert'' in advertising materials. This NIAAA publication presents a comprehensive overview of the benefits and risks associated with alcohol consumption. If the regulations imposed a complete ban on advertising materials that included health-related statements, then industry members would no longer be allowed to include this NIAAA publication in advertising materials. Yet TTB finds nothing in the record to establish that the inclusion of this type of comprehensive discussion of effects on health in an advertisement in any way misleads consumers as to the health risks of alcohol consumption. Accordingly, we find that the record does not support an overall ban on the use of specific health claims and health-related statements in the advertising of alcohol beverages.

A closer issue is presented by the labeling of alcohol beverages. As ATF noted in Industry Circular 93–8, we believe that it would be difficult to compose a health claim that is detailed and specific enough to meet our standards, yet short enough to fit on a traditional alcohol beverage label. In addition, TTB will not approve any labeling health claim that contradicts the message of the required Government warning statement.

TTB agrees with the commenters who suggested that a summary substantive health claim which does not include sufficient detail and qualification would mislead consumers about the serious health consequences of alcohol consumption. However, we do not believe that this provides a basis for banning all substantive health claims on alcohol beverage labels. Instead, as set forth above, TTB is making changes to the final rule to clearly provide that a specific health claim will not be allowed unless it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks.

We disagree with the arguments made by CEI and CA, the only commenters who specifically favored allowing industry members to make summary statements regarding health benefits that contained no qualification, balance, or disclosure of adverse effects. In the first place, the record did not establish that there was any concrete interest on the part of the alcohol beverage industry in using the summary health claim proposed in the CEI petition. Secondly, we find that statements such as the one proposed by CEI would mislead consumers by not disclosing the significant adverse effects on health associated with alcohol consumption, which are set forth in great detail in this rulemaking record.

TTB has not drafted a model health claim for use on alcohol beverage labels because this extensive rulemaking record has revealed little, if any, interest on the part of industry members in using substantive health claims on alcohol beverage labels. In fact, industry members not only failed to express such an interest, in many cases, they specifically disavowed any interest in using substantive health claims. Furthermore, as discussed further in section XVIII, any such claim might well subject the product to regulation as a drug under FDA regulations.

Accordingly, TTB will leave it to any interested industry members to seek approval of a substantive health claim through the label approval process. The final rule sets forth the standards that would apply to any such labeling statement. If an industry member wishes to use a substantive health claim on a label in compliance with the standards set forth in the final rule, it should apply for a certificate of label approval.

ATF announced in Industry Circular 93–8 that dissemination of the full text of the April 1992 edition of ''Alcohol Alert'' as published by NIAAA, would not be in violation of the regulations. The final rule does not change this policy. Furthermore, dissemination of the entire Dietary Guidelines as advertising materials by industry members, or dissemination of the two pages from the current Guidelines dealing with alcohol beverages (pages 36 and 37) would not violate the final rule. Both of these materials provide a comprehensive discussion of the health consequences of alcohol consumption. The information in these materials regarding the health consequences of alcohol consumption is truthful and supported by scientific evidence. The information is sufficiently detailed, qualified and specific, and sets forth the health risks associated with both moderate and heavier levels of alcohol consumption. Both of these publications further set forth the categories of individuals for whom any level of alcohol consumption may pose health risks. Accordingly, these materials comply with the standards set forth in the regulations.

As ATF stated in Industry Circular 93–8, we will continue to evaluate any additional text that accompanies these materials, such as editorializing, advertising slogans, or exhortations to consume the product, to determine

whether or not the advertisement as a whole presents truthful and non-misleading information regarding the risks associated with alcohol consumption. Furthermore, the use of any buttons, shelf talkers, table tents, and similar items that excerpt any portion of the NIAAA publication or the Dietary Guidelines, or that are based on any other publication or article about the health consequences of alcohol consumption, will be closely scrutinized to determine if they tend to mislead consumers about the serious risks associated with alcohol consumption.

XVI. Are Health-Related Directional Statements Misleading?

As previously noted, the vast majority of the commenters addressed the issue of health-related directional statements, such as the ones approved by ATF in 1999, rather than the issue of substantive health claims. Approximately 355 commenters expressed support for the use of directional statements on alcohol beverage labels. Many commenters stated that directional statements are not substantive health claims and that they merely refer consumers to other sources for information about the effects on health of alcohol consumption. As such, the commenters maintain that directional statements are not misleading to consumers. On the other hand, most of the approximately 120 comments in opposition to the use of health claims also opposed the use of health-related directional statements in the labeling and advertising of alcohol beverages.

A. Comments and Testimony in Favor of the Use of Health-Related Directional Statements

Most of the comments in support of directional statements shared the view set forth in the Wine Institute's comment as follows:

> Directing consumers to consult with their doctors or to refer to the Dietary Guidelines regarding the health effects of wine consumption constitutes a responsible and neutral message. Far from misleading the public, such statements are designed to educate and empower each individual to make fully informed choices regarding the consumption of wine. (Comment 401).

The Wine Institute's comment also stated that health-related directional statements were ''certainly not misleading because they do not constitute substantive health claims in the first instance.'' They cited the CSAP survey, which concluded that the drinking patterns of 88.3% of the participants would not be influenced by directional statements, with an additional 3.9% indicating they would drink less.

In response to ATF's question of whether the negative consequences of alcohol consumption and abuse disqualified alcohol beverages from entitlement to health claims or health-related statements, the Wine Institute submitted extensive summaries of scientific studies on moderate consumption of wine and alcohol for the Dietary Guidelines Review Process. An updated compilation of that submission was attached to their comment. The Wine Institute stated that it ''fully subscribes to an open and vigorous dialogue driven by the findings of the scientific community on the health effects of alcohol consumption.''

The Wine Institute submitted a supplemental comment in which it stated that it wished ''to underscore how critical it is to make the distinction between health-related statements and those in which a substantive claim of health benefits is advanced. A substantial number of submissions you have received to date appear to blur this crucial difference and argue against directional labels by incorrectly classifying such labels as health claims.'' (Comment 401b).

Mr. John DeLuca, President and CEO of the Wine Institute, testified at both the Washington, DC and San Francisco, California hearings. Mr. DeLuca stated that he believed that wineries have a First Amendment right to use the directional label, and pointed to the CSAP survey as evidence that consumers would not increase consumption as a result of directional statements. (April 25, 2000; Washington, DC, page 32). He urged the empowerment of the public through dissemination of information, and urged that the public should be trusted ''to handle this information.'' (*Id.* at pages 32–33).

When asked about substantive health claims, Mr. DeLuca stated that ''we are not trying to sell wine as health food or as a medicine.'' (*Id.* at page 37). He said that ''we should be erring on the side of making it as hard as possible for someone to make a health claim. It really is not the province of the industry to be talking that way. We want third-party peer review journals research to be what is presented to the public, not what we put to the public.'' (*Id.* at page 38). In response to a question about whether the directional statements were perceived as health claims, Mr. DeLuca stated that the Wine Institute had withdrawn its original label submission, which included the phrase ''health benefits,'' because they ''knew it was going to lead to a cascade of criticism'' and that the phrase ''health effects'' came from the Appropriations Committee's language in appropriating funds for NIH and NIAAA to research the effects on health of moderate drinking. (*Id.* at page 40).

When asked about consumer reaction to the directional statements, Mr. DeLuca noted that only 17 companies had received approval from ATF for using directional statements before the moratorium went into effect—5 received approval for the Dietary Guidelines statement, and 12 utilized the family doctor statement. (May 23, 2000; San Francisco, CA, pages 14–15). Mr. DeLuca stressed that the Wine Institute did not encourage wineries to use the label, noting that ''[w]e always thought of this as a voluntary option for our members. They were designed primarily for public policy, not for public relations, a distinction with an enormous difference.'' (*Id.* at 15).

The AVA, a trade association of American wineries representing approximately 600 members, also noted that it had been involved on behalf of one of its members in the ATF review process for the directional statements approved in 1999. (Comment 417). AVA stated that it agreed with the applicant, Mr. Patrick Campbell, that the directional statement ''makes no claim, pro or con, therapeutic or curative, true or false. The COLA [certificate of label approval] makes no claim at all. It merely (and sensibly) encourages consumers to consult with their family doctor about their personal use of the product. * * * Since this COLA makes no claim, questions about its potential to mislead are irrelevant.'' (Comment 417). The President of AVA, Mr. Simon Siegl, testified at the public hearings in support of a winery's right to use a directional label. (April 26, 2000; Washington, DC, page 65).

Many winemakers also commented in support of the use of directional statements. Some emphasized the neutral content of the directional statements. The Associated Vintage Group asked ''what can be a better message than referring them [consumers] to our own government's nutritional guides or, even better, checking with their doctors.'' (Comment 173). Mr. Kent Rosenblum commented that ''[d]irectional labels do not constitute health claims, and government survey data indicate no changes in drinking patterns would occur.'' (Comment 151). He then went on to note that ''[t]here is a developing scientific consensus that moderate wine and alcohol consumption can be part of

a healthy diet and lifestyle for those who choose to drink.''

Other wineries specifically referenced the directional statements as providing balance to the Government warning statement, or referring to the ''benefits'' of consumption. For example, De Rose Vineyards commented that ''[t]he U.S. Dietary Guidelines for Americans constitutes a responsible and neutral message.'' The winery also stated that ''[t]here is a very substantial body of scientific data that verifies the efficacy and healthfulness of moderate wine consumption. Withholding this most helpful and beneficial information, and instead only emphasizing the harmful effects of wine consumption, is ludicrous and ultimately destructive and irresponsible. A forthright balance of both positive and negative simply educates an informed public and allows them to make responsible decisions.'' (Comment 172). Two other wine producers made similar comments (Comments 214 and 387).

Many commenters who did not identify themselves as being part of the wine industry also supported the directional statements. Some supported the general concept of directing consumers to the Dietary Guidelines or their physician for more information about the effects on health of alcohol consumption. One suggested that ''[t]he wording is neutral and *not* positive, thereby serving as education rather than propaganda.'' (Comment 332). Several commenters referred to the consumer survey conducted by CSAP as evidence that the statements did not mislead consumers.

Some commenters argued that consumers have a right to know all the scientific information available on both the positive and negative effects of various levels of alcohol consumption, and that such information allows consumers to make informed decisions regarding alcohol consumption. For example, one commenter stated that ''people are generally capable of making sensible decisions, if assisted by complete information. * * * Moreover, the small minority who do not make sensible decisions will not be deterred by suppressing the presentation of accurate, balanced information.'' (Comment 423). An individual suggested that ''in an era when we all are trying to eliminate governmental control of those areas of our lives where we can be treated as adults, it seems odd for you to be against a neutral statement that wine drinkers should consult their doctors about the possible health benefits of wine.'' (Comment 136).

Many of the commenters suggested that the directional statements or other positive health-related statements were necessary to ''balance'' the negative information provided by the Government warning statement. For example, one commenter supported the directional statements because the warning statement should be supplemented with ''equally valid'' information ''explaining the benefits and positive effects of responsible consumption.'' (Comment 296). Another individual supported the use of ''positive health related statements'' and stated that ''[t]he wine industry deserves to be afforded an opportunity to address the latest beneficial health aspects of moderate wine consumption, as outlined in the U.S. dietary guidelines, on its products. The entire thrust of Government Warning labels has been entirely negative.'' (Comment 240).

Finally, some commenters argued that the Government should encourage consumers to seek the best advice possible from the most credible sources available on any health issue. With respect to the consumption of alcohol beverages, the National Association of Beverage Retailers suggested that ''[p]hysicians and the U.S. Dietary Guidelines are among the most credible sources available to give professional, objective, responsible and balanced advice on an important health issue.'' (Comment 424).

At the hearings, several doctors testified in support of the directional labeling statements. Some specifically supported the statement encouraging consumers to consult with their physician. For example, Dr. Michael Apstein, a gastroenterologist and liver doctor, testified that advice regarding alcohol consumption should be targeted to specific populations rather than generalized for the entire population. He stated that ''[t]hese are complex issues that can't easily be summarized on a label that goes on a wine bottle. They need to be discussed with a person's physician and individualized to that person's situation. Therefore, I am in favor of a directional label that advises individuals to discuss this topic with their physicians, because I am hopeful that a directional label will stimulate another kind of educational experience, so people can use alcohol responsibly if they so desire and avoid it if they should be avoiding it.'' (April 25, 2000; Washington, DC, page 167).

Similarly, Dr. Harvey Finkel, a physician and clinical professor of medicine, testified that both directional statements should be allowed, stressing the importance of advising consumers to consult their doctors, because the public has a right to be fully informed about the health consequences of alcohol consumption. (April 26, 2000; Washington, DC, pages 30–33). Mr. George Linn, a consumer, also testified in support of the concept of referring consumers to their physicians for more individualized advice about alcohol consumption. (May 24, 2000; San Francisco, CA, page 256). On the other hand, Dr. Paul Scholten, an associate professor of obstetrics, gynecology, reproductive medicine, and nursing, testified in support of the directional statement referring consumers to the Dietary Guidelines, but expressed concerns about whether doctors were well trained to advise patients about the health consequences of alcohol consumption. (May 23, 2000; San Francisco, CA, pages 170–171).

Some individuals commented in support of the general concept of directional statements. Dr. Dwight Heath, a Professor of Anthropology, testified that while he opposed the use of substantive health claims, he favored the use of the directional statements on labels. (April 26, 2000; Washington, DC, page 13). Dr. Heath suggested that the more people know about alcohol consumption, the less likely they are to have alcohol-related problems. (*Id.* at page 5). Similarly, Professor R.L. Williams, of the Oenological Research Facility of Old Dominion University, stated that in his opinion, ''the level of scientific information regarding the positive health effects of moderate consumption of wine is now quite overwhelming. * * * This information should be made more available to the consumers in regard to the directional health statements.'' (April 26, 2000; Washington, DC, page 91). Mr. Archie Brodsky, a senior research associate in psychiatry and the law, testified in favor of the use of directional statements on alcohol beverage labels. He stated that the CSAP survey confirmed that the labels would have a ''negligible'' influence on consumers'' drinking habits. (April 26, 2000; Washington, DC, page 171).

Mr. Patrick Campbell of Laurel Glen Winery, who submitted the first directional statement to ATF for approval in 1995, testified on behalf of the Coalition for Truth and Balance. Mr. Campbell stated that discussion of the health benefits or risks of alcohol consumption was not relevant to a discussion of the directional statements, since ''the approved messages do not constitute health-related statements or make substantive claims regarding health benefits.'' (May 23, 2000; San Francisco, CA, page 75). He asserted that the message encouraging consumers to consult with their family doctors ''is neither true nor false. It makes no claim

* * * positive or negative, therapeutic or curative, pro or con.'' (*Id.* at 76). Mr. Campbell argued that the message was not misleading in that it ''presumes nothing. It presupposes nothing. It in no way directs the outcome of any consultation the consumer may or may not undertake with his or her family physician. For all the winery knows, the doctor might tell all of his or her patients never to touch the stuff * * *. It's a thoroughly neutral and impartial message.'' (*Id.* at 76–77).

Mr. Campbell expressed surprise at the controversy over the message, and said he would have expected that ''every health professional and governmental agency in the country would welcome it. * * * After all, if you can't trust your family doctor for truthful and not misleading advice on health issues who can you trust?'' (*Id.* at 78). Mr. Campbell noted that the American Heart Association ''publishes a section on alcohol in their dietary guidelines that explicitly recommends that patients consult with their personal physician on questions of alcohol use * * *.'' (*Id.* at 80).

Mr. Campbell stated that on June 3, 1999, before the moratorium on approving directional statements went into effect, ATF approved a version of the directional statement which omitted the language about ''the proud people who made this wine'' and instead read as follows: ''We encourage you to consult with your family doctor about the health effects of wine consumption.'' (*Id.* at page 74). He stated that he now preferred this version, since he believes that it fits better in the label, it's not pompous, and it was an appropriate response to the people who argued that the ''proud people'' language constituted an implicit endorsement of alcohol consumption. (*Id.* at page 87).

In response to a question from the panel, Mr. Campbell stated that he had gotten no feedback from consumers as to how they viewed the directional statements. He said that ''[n]obody's said anything, it's unbelievable. I mean, it cost a lot of money to put these on the label.'' (*Id.* at page 88).

Mr. Jack Stuart testified on behalf of the Napa Valley Vintners Association. He stated that ''we think that the directional warning is a good thing. We don't consider it to be a positive health claim. If you take out the phrase 'proud people,' certainly it's a neutral statement, it's simply a way of getting information, and we think it's a good idea for anyone who is proposing to drink, or who does drink, or who does any other thing having to do with food, their diet, their lifestyle, to consult their physician about the choices they make in that regard.'' (May 24, 2000; San Francisco, California, page 200). In response to a question from the panel, Mr. Stuart suggested that ''to have a balanced message, to me the ideal would be to somehow combine both the warning and the directional message.'' (*Id.* at page 210).

Mr. Mark Chandler, the Executive Director of the Lodi-Woodbridge Winegrape Commission, also testified in favor of the directional statements. He stated that ''[g]rowers and wineries have no intention to market their products as health food. But, unlike other food products, we are prevented by regulation from even mentioning our product's positive health attributes, thus the need for directional labels.'' (May 24, 2000; San Francisco, CA, page 250). Mr. Gordon Murchie testified on behalf of the Virginia Wineries Association in favor of the use of directional statements, calling them public service announcements that ''direct the concerned citizen to another source of professional non-biased, balanced information.'' (April 26, 2000; Washington, DC, page 78). In response to a question from the panel, Mr. Murchie said his members would be interested in using directional statements on labels, but were reluctant to do so until they saw that the statements were accepted by the Government and the public. (*Id.* at pages 86–87).

Dr. Ellen Mack, a physician and part owner of a winery, testified that ''[i]f wine were considered a medication—and I'm not at all advocating that it should be—it would be like most other medications, the dose is critical. Too little may not have the desired effect, and too much can be dangerous or even deadly.'' (May 23, 2000; San Francisco, CA, page 132). Dr. Mack suggested that ''the directional wine labels are effective agents in that the sources of information—the U.S. Dietary Guidelines and personal physicians—will clearly make the point that the beneficial health effects result from moderate consumption of alcohol, and these sources will define moderate as no more than one drink per day for women and no more than two drinks per day for men.'' *Id.*

Various other individuals testified in favor of the directional statement. For example, Ms. Annette Shafer, author of ''The Wine Sense Diet'' testified in favor of a ''more balanced message on the bottle,'' suggesting that the warning label is ''very one-sided.'' (May 24, 2000; San Francisco, CA, page 212).

B. Comments and Testimony in Opposition to Directional Statements

Public health organizations and other commenters raised the following specific objections to the use of directional health-related statements in the labeling and advertising of alcohol beverages.

1. Directional Statements Are Implicit Health Claims That Reinforce the Inaccurate Perceptions of Consumers About Alcohol and Health

CSPI commented that the directional statements were actually implied health claims. Its comment argued that the ''reference to the 'health effects of wine consumption' offers no useful information, but simply reinforces existing inaccurate knowledge about the health benefits of alcohol consumption, as spread through the media and the wine industry's misleading publicity campaign, and implies that those benefits are substantial and universal.'' (Comment 400).

The American Cancer Society noted that ''[w]ith the publicity in the past few years about the health benefits of consuming alcoholic beverages, any less-detailed claim or reference to health impacts or benefits might be interpreted by the uninformed consumer as a suggestion that people should drink alcohol for their health. Sufficient information is needed to allow consumers to make a well-educated decision regarding their risk from consumption of this product.'' (Comment 527). Accordingly, the American Cancer Society concluded that directional labels ''may mislead the general public regarding the health benefits of alcohol consumption by providing inadequate information regarding the risks.''

Senator Thurmond commented that the directional statements were inherently misleading. He stated that it was unlikely that consumers who read the directional statements would actually send for the Dietary Guidelines or consult their physicians. Instead, Senator Thurmond suggested that ''consumers may be left with the impression that these statements refer to studies that suggest drinking alcohol may have some positive health benefits.'' He noted that ''[t]his impression may reinforce inaccurate assertions about the health benefits of alcohol consumption spread through the media. These statements may also be inappropriately viewed as the government's endorsement of drinking. However, any suggestion that the government endorses drinking for health reasons is false.'' (Comment 526).

2. Directional Statements Undermine the Mandatory Government Warning Statement and May Be in Violation of the Alcoholic Beverage Labeling Act

NCADD's comment stated that the directional statements approved by ATF in 1999 ''are misleading and potentially confusing to consumers in juxtaposition to the federally mandated government warning on all alcoholic beverage containers sold in the United States.'' (Comment 15). Similarly, MADD commented that ''[t]he public and particularly youth are being given a mixed message with the inclusion of 'health messages' in alcohol advertising and on warning labels and the net result is consumer confusion.'' (Comment 20). MADD also noted that ''[w]arning labels on alcoholic beverages were created for a specific purpose—to make the consumer aware of the potential harm they could suffer as a result of the use or abuse of the product.''

The United Communities Against Drug & Alcohol Abuse commented that ''Congress has already required a warning statement on alcoholic-beverage containers. Any other reference to health impacts or benefits is likely to confuse consumers and undermine the impact of the existing warning statement.'' (Comment 31). The American Council on Alcohol Problems urged ATF ''not to contribute to confusion by allowing any insinuation of health benefits from alcohol consumption.'' (Comment 37).

Dr. Thomas Greenfield, a psychologist, testified in opposition to the use of health-related statements. He stated he was principal investigator of the Impact of Alcoholic Beverage Warning Labels Research Project from 1991–1997. He stated that research showed that the mandatory Government warning statement had ''fragile but beneficial effects'' and that ''one must be concerned that a vague health effects message, by implication positive, may wipe out the small gains in reminding the public of situational hazards of drinking when driving or pregnant, and also the health risks.'' (May 24, 2000; San Francisco, CA, pages 182–183). He suggested that in order to be truly neutral, a directional statement ''should have a tone that would be to look at the health risks and health benefits, and potential health benefits. And one would have to do it in such a way that it emphasized that—which is, we believe, strongly the case—that the health benefits [are] * * * relatively small in comparison to the health harms.'' (*Id.* at page 191).

CSPI commented that if ATF allowed any health claim or health-related statement on a label, it ''should be worded and displayed in a manner that does not overshadow, contradict, or undermine the government warning label. For example, the claim should appear in the same type size and style as the government warning label, and should not contain any claim that contradicts any of the statements in the warning label.'' (Comment 400).

Senator Thurmond testified that the purpose of the ABLA was to provide ''a clear, non-confusing reminder of the health hazards associated with alcohol consumption.'' (April 25, 2000; Washington, DC, page 17). Senator Thurmond suggested that ''the two directional statements which the ATF approved last year dilutes the required warnings and, worse, may be seen as the government's endorsement of drinking. As one of the authors of the Alcohol Beverage Labeling Act, let me stress that the intent of the legislation was to exclude such misleading statements.'' *Id.* In response to the First Amendment concerns raised by some individuals, Senator Thurmond suggested that at a minimum, ''groups supporting health-related statements should be required to prove beyond any reasonable doubt that such claims are not misleading and do not detract from the government warning.'' (*Id.* at page 18).

In addition to Senator Thurmond's comment, a letter signed by Senators Thurmond, Byrd, and Helms supported a ban on all health-related statements and directional health statements on labels. (Comment 526). In this comment, the three Senators stated that the directional statements approved by ATF in 1999 ''dilute the required government warning and mislead consumers. In fact, these labels might inappropriately be seen as the government's endorsement of alcohol consumption.'' The comment also noted the difficulty of presenting a balanced statement on the effects on health of alcohol consumption on an alcohol beverage label. The Senators stated that ''Congress has spoken clearly on this important public health issue. The purpose of the ABLA should not be subverted.''

3. Directional Statements Are Misleading Because Drinkers Are Unlikely To Seek Health Information

Many commenters suggested that the directional statements were misleading because the CSAP consumer survey established that consumers who read the directional labels were unlikely to seek additional information from their doctors or send for the Dietary Guidelines. For example, CSPI argued that ''referring consumers to a government publication which offers balanced information is only credible if there is a reasonable likelihood that such referral will in fact result.'' (Comment 400). CSPI suggested that ''according to consumer research, few people would actually look at or write for the Dietary Guidelines on the basis of the label language.'' CSPI and others questioned whether consumers would get complete information from either the Dietary Guidelines or their doctors.

Similar points were raised in the testimony of Mr. James Mosher on behalf of the California Council on Alcohol Policy, a nonprofit membership organization dedicated to promoting public health approaches to the prevention of alcohol-related problems. Mr. Mosher argued that the directional labels were inherently misleading and thus did not constitute protected commercial speech under the First Amendment. Because the directional statements themselves make no claim about the effects on health of alcohol consumption, Mr. Mosher suggested that the key to determining whether they would mislead consumers depends upon ''the sources to be consulted, the likelihood of consumers actually consulting them, and the possibility that the wording will lead to consumer confusion, misleading or deceptive impressions.'' (May 23, 2000; San Francisco, CA, page 92).

4. Directional Statements Are Misleading Because Drinkers Are Likely To Rationalize Their Consumption Patterns

As previously mentioned, several doctors who have been certified by the American Society of Addiction Medicine commented in opposition to the use of both health claims and health-related directional statements in the labeling and advertising of wines. These commenters suggested that health claims and directional statements could be misconstrued by problem drinkers in order to rationalize their own levels of consumption. For example, one doctor suggested that these statements could be misconstrued by consumers, because ''consumers, especially those with a vulnerability to alcoholism, may take the message as an endorsement of excessive drinking.'' Accordingly, he urged that ATF ''prohibit the alcoholic-beverage industry from making these misleading and potentially dangerous claims.'' (Comment 167).

Another medical doctor urged ATF to rescind approval of the directional labeling statements, stating that ''[a] brief message on any beverage container will not provide consumers with adequate information about use of alcohol for health-related reasons. Due

to the publicity in the past few years about the health benefits of moderate alcohol consumption, a brief label may be interpreted by the uninformed consumer as a government-authorized statement supporting consumption of alcohol for health benefit.'' (Comment 410).

NCADD also cited the CSAP study as establishing that focus group members were ''generally aware'' of the reports on positive effects on health of wine consumption, and that the heavier drinkers were more aware of the media reports. NCADD suggested that heavy drinkers would use these ''beliefs'' about the effects on health of wine consumption to justify their drinking levels. (Comment 15).

Ms. Joan Kiley, coordinator of the Alcohol Policy Network of Alameda County, testified in favor of a complete ban on health claims or health-related statements in the labeling or advertising of alcohol beverages. She stated that the directional statements were inherently misleading, since they were ''incomplete statements that do not put research results in their proper context.'' (May 24, 2000; San Francisco, CA, page 228). Ms. Kiley noted that ''[c]onsumers are not always aware of the effect that images and attitudes promoted in advertising have on their own desires.'' (*Id.* at page 232). In response to a question from the panel, Ms. Kiley said that in her experience, people with alcohol problems were ''very skilled at finding good reasons to drink. They * * * can use a multiple number of reasons to drink, that might just be another one.'' (*Id.* at page 239).

5. Directional Statements Could Be Interpreted as the Government's Endorsement of Alcohol Consumption

The former Surgeon General, Dr. David Satcher, testified that it was important to ''carefully consider any action, whether it involves the health warning or claims that could encourage underage drinking or mislead about the very real, adverse health consequences.'' (April 25, 2000; Washington, DC, page 73). Dr. Satcher stated he was ''concerned that references to the U.S. dietary guidelines on the labels of certain wine products could wrongly lead consumers to conclude that consumption of wine would reduce health risks or that it was recommended by guidelines or by family physicians. References to alcohol in the guidelines should not be construed as evidence of health benefits nor encouragement that consumers drink. * * * In fact, the Public Health Service does not recommend consumption of alcohol beverages.'' (*Id.* at page 74).

The Marin Institute for the Prevention of Alcohol and Other Drug Problems (Comment 324) suggested that the directional statements attributed positive effects on health to the consumption of alcohol beverages, and were thus ''misleading and potentially dangerous because media and marketing messages can be misinterpreted as public health recommendations.'' The Marin Institute stated that the ''60 Minutes'' report on the possible heart protective effects of drinking red wine led to a 44 percent increase in red wine sales. They quoted the marketing manager of a winery as stating in ''Impact'' magazine in 1997 that information about health benefits was ''increasing consumption more than anything else.'' Ms. Hilary Abramson testified on behalf of the Marin Institute at the San Francisco hearing that the so-called French Paradox (''the apparent coexistence in France of a low heart disease rate and a diet rich in saturated fat, and the belief that alcohol [red wine] is the explanation for it'') had been overestimated, and the French heart disease statistics underestimated. She stated that after the 60 Minutes Broadcast in November 1991 on the French Paradox, ''sales of red wine in the United States rocketed 44%, and a Gallup poll showed that 58% of Americans were aware of research linking moderate drinking to lower rates of heart disease.'' (May 23, 2000; San Francisco, CA, pages 115–116).

Similarly, the Greater Spokane Substance Abuse Council's Prevention Center commented that ''[a]ny statement or labeling in reference to supposed 'health benefits' could be construed by an uninformed consumer population as a government endorsement to consume a likely harmful product.'' (Comment 32). The American Council on Alcohol Problems also commented that ''[i]f health claims are allowed on labels or even implied, many uninformed consumers would interpret this as a government sanctioned statement suggesting that people drink alcohol for their health. Quite to the contrary, research clearly shows that any measure which increases the level of alcohol consumption will result in increased levels of disease and accidents.'' (Comment 37).

6. Other Testimony Against Directional Statements

Many of the medical experts who testified at the public hearings expressed concerns that the directional statements would mislead consumers about the effects on health of alcohol consumption. For example, Dr. Camargo concluded that ''with all of these variety of factors influencing the net health effect of alcohol, I think it is really quite foolhardy to believe that any one-sentence generic health claim about moderate wine consumption would serve public-health interests, or even provide reliable consumer advice. In addition to the gross simplification of a complex risk/benefit analysis, the labels will also lead to several other levels of confusion.'' (April 25, 2000; Washington, DC, page 90). In particular, he noted that few consumers would actually consult the Dietary Guidelines for information on the effects of alcohol consumption, that many people who notice the label would interpret the phrase ''health effects'' as ''healthy effects,'' that there is considerable confusion about what constitutes moderate drinking, and that if consumers do consult their family physician, ''it is very unlikely the physician will be in a position to provide accurate, up-to-date information about all of the risks and benefits of moderate drinking.'' (April 25, 2000; Washington, DC, pages 91–92). Dr. Camargo also noted that ''generic health claims are likely to be misinterpreted by those at greatest risk of alcohol problems, a group that would likely use the health claim to justify continued or increased consumption of excessive alcohol with all of its attendant health hazards.'' (*Id.* at page 92).

Dr. Criqui also testified that because of the negative health consequences associated with alcohol consumption and abuse, the directional statements are inherently misleading. (May 23, 2000; San Francisco, CA, page 60). He stated that the approved directional statements appear to implicitly endorse the value of alcohol as a pharmacological protective agent. (*Id.* at page 59). Dr. Criqui offered his opinion that consumers interpret the approved statements as substantive health claims, which means that at least for most people drinking is good and has health benefits and that the Government endorses this position. Because the directional statements are recent and come in the context of media discussion about the possible benefits of alcohol consumption, Dr. Criqui stated that the statements are likely to be interpreted as implicitly endorsing alcohol consumption as being potentially healthy, since they do not emphasize or even mention the dangers of alcohol consumption. (*Id.* at pages 59–60).

Some people suggested that consumers would interpret the directional statements as making positive health-related claims simply because of an assumption that the industry would not use the statements

unless they were positive. For example, Dr. Duke, representing the Ethics and Religious Liberty Commission, the moral concerns agency for the Southern Baptist Convention, suggested that the directional statements were misleading because they ''create an impression of endorsement of the health claims made by the alcohol industry. * * * The average person would not conclude that the alcohol industry would direct people to information damaging to their claim. Consequently, the average person will assume a doctor would agree that drinking alcohol is good for one's health.'' (April 25, 2000; Washington, DC, 154–155).

Ms. Diana Conti testified on behalf of the American Public Health Association in support of a ban on all health-related statements on labels and in advertisements, other than the required warning statement. Ms. Conti suggested that the directional statement regarding the Dietary Guidelines ''provides no specific information, no definition of moderate drinking, and no cautions to those who should not drink. The message is confusing and it's contradictory to the warning label.'' (May 23, 2000; San Francisco, CA, page 106). She stated that ''[t]he lack of substantive information creates the impression that the government says moderate wine consumption is good for your health, and few, if any, will actually read the guidelines for the more complete information.'' (*Id.* at page 107).

C. Decision

When ATF approved the directional statements in 1999, it concluded that the record did not establish that the statements would mislead consumers about the risks associated with alcohol consumption. ATF relied heavily upon the CSAP consumer survey, which concluded that the directional statements would not encourage most consumers to alter their consumption levels or patterns.

After careful consideration of the comments and testimony on this issue, it is TTB's conclusion that while the two directional statements approved in 1999 were worded in a way that was intended to represent a neutral referral to doctors or the Dietary Guidelines for additional information, the statements were capable of being interpreted in a very different fashion. In particular, the statements could be interpreted as encouraging the consumption of alcohol for health reasons.

While the CSAP survey established that the vast majority of consumers would not alter their consumption patterns after exposure to the two directional statements, it did not explore whether consumers would interpret the statements as encouraging the consumption of alcohol for health reasons. Since TTB has no consumer data on this issue, we must rely upon the secondary data that is available to us, including the opinions of medical and public health experts in the field of alcohol and health.

Initially, TTB would note that many media reports about approval of the directional statements referred to these statements as health claims or references to health benefits. *See* section VII, *infra.* We recognize that these reports only indirectly reflect consumer reactions to the directional statements, and that they may have been influenced by the industry's or the public health sector's characterizations of the statements. Nonetheless, to the extent that these media reports both reflect and shape the perceptions of consumers, we believe that these reports are persuasive evidence that the directional statements are perceived by many as making a positive claim about the effects on health of alcohol consumption.

We are also persuaded by the opinions of many of the foremost public health experts in the nation. These public health experts believe that the allegedly neutral directional statements in fact communicated a message that the Government endorsed drinking for health reasons, or that the Dietary Guidelines or a family physician would endorse the consumption of alcohol for health reasons. For example, the former United States Surgeon General testified that he was ''concerned that references to the U.S. dietary guidelines on the labels of certain wine products could wrongly lead consumers to conclude that consumption of wine would reduce health risks or that it was recommended by guidelines or by family physicians.'' (April 25, 2000; Washington, DC, page 74). Similarly, the American Cancer Society noted that ''[w]ith the publicity in the past few years about the health benefits of consuming alcoholic beverages, any less-detailed claim or reference to health impacts or benefits might be interpreted by the uninformed consumer as a suggestion that people should drink alcohol for their health'' and concluded that directional labels ''may mislead the general public regarding the health benefits of alcohol consumption by providing inadequate information regarding the risks.'' (Comment 527). Other commenters, including the American Medical Association and the Marin Institute, supported a ban on directional statements for similar reasons.

TTB also finds persuasive the testimony of many of the foremost experts on the medical research regarding alcohol and health. For example, Dr. Camargo testified that in his opinion, consumers would interpret the phrase ''health effects'' to mean ''healthy effects.'' (April 25, 2000; Washington, DC, pages 90–92). Dr. Criqui offered his opinion that the approved directional statements appear to implicitly endorse the value of alcohol as a pharmacological protective agent, and that consumers interpret the approved statements as substantive health claims meaning that at least for most people drinking is good and has health benefits and that the Government endorses this position. Because the directional statements are recent and come in the context of media discussion about the possible benefits of alcohol consumption, Dr. Criqui stated that the statements are likely to be interpreted as implicitly endorsing alcohol consumption as being potentially healthy, since they do not emphasize or even mention the dangers of alcohol consumption. (May 23, 2000; San Francisco, CA, pages 59–60).

TTB does not disregard the testimony of those medical professionals, including Dr. Apstein, Dr. Finkel, and Dr. Scholten, who testified in favor of the use of directional statements. We agree that industry members have the right to suggest, in labels or in advertisements, that consumers refer to third party sources for additional information regarding the effects on health of alcohol consumption. The question presented is how to make such referrals without misleading consumers.

We would also note that many of the comments in favor of the use of directional statements referred to the need to provide ''balance'' to the negative message of the health warning statement, and thus implicitly recognized that the directional statements were meant to convey a positive message about the effects on health of alcohol consumption. In this regard, it is noteworthy that in a comment submitted after the hearings were held, Beer Institute suggested that the position of several proponents of directional statements that such statements did not constitute health claims was inconsistent with those same proponents' attempts ''to defend the directional statements by relying on well-known published medical literature that attributes certain health benefits to the moderate consumption of alcohol beverages. Given the history of this issue and the evidence cited by supporters of the directional statements, it seems impossible to characterize the directional statements as anything but health claims subject to the automatic

qualifying provisions of the proposed new regulations.'' (Comment 396b).

After careful consideration of the comments and testimony in the rulemaking record, it is TTB's view that the directional statements approved in 1999 may be interpreted as advocating the consumption of alcohol beverages for health reasons. We recognize that producers of alcohol beverages have contended that they have a constitutionally protected right to advocate that consumers drink their products for health reasons. However, if such a claim is made on a label or in an advertisement, it must be made in a truthful and non-misleading fashion. Furthermore, such a claim would fall within the category of a specific health claim, and would be subject to the requirements in the final rule applicable to such claims. To the extent that producers instead wish to make a neutral referral to third parties for additional information regarding the effects on health of alcohol consumption, we believe that it is necessary to provide a disclaimer that clarifies that the labeling or advertising statement should not encourage consumption of alcohol for health reasons.

Accordingly, the final rule provides that directional statements will not be allowed in the labeling or advertising of alcohol beverages unless accompanied by a disclaimer. The final rule provides a model disclaimer that alcohol beverage producers may use in conjunction with a general statement that directs consumers in a neutral or other non-misleading manner to a third party for balanced information regarding the effects on health of alcohol (wine, distilled spirits, or malt beverage) consumption: ''This statement should not encourage you to drink or to increase your alcohol consumption for health reasons.'' It should be noted that in some cases, an acceptable disclaimer might be incorporated into the language of the directional statement itself; thus, if the directional statement makes it clear that it is not advocating consumption of alcohol for health reasons, then an additional disclaimer may not be necessary.

XVII. Should the Same Standards Apply to Wines, Distilled Spirits, and Malt Beverages?

A. Issue

The DISCUS comment opposed the Bureau's suggested ''case-by-case'' approach, noting that the effects on health of alcohol consumption apply across the board to all beverage alcohol products. Accordingly, DISCUS suggested that public policy and regulatory policy require fair and equal treatment for each form of beverage alcohol, and any label statement for a beverage alcohol container should apply equally to each type of beverage alcohol. (Comment 530).

B. Decision

Both the proposed and final rules make it clear that the same standards apply to wine, distilled spirits, and malt beverages. The rulemaking record does not provide a basis for setting forth different standards for these types of alcohol beverages. The two directional statements approved by ATF in 1999 were both submitted by wineries, and thus both referred to the effects on health of ''wine consumption.'' To the extent that a directional statement complies with the standards set forth in this final rule, it may be used in the labeling of a wine, distilled spirit, or malt beverage product.

XVIII. Should TTB Adopt the Procedures Set Forth in FDA's Regulations?

A. Issue

Several commenters suggested that ATF should adopt the substantive standards already in place in FDA's regulations governing the use of health claims in the labeling of foods. FDA also raised several concerns about consistency between ATF's proposed regulations and its own health claim regulations.

FDA (Comment 327) commented that it was ''imperative that [ATF] regulate these claims in a manner consistent with the provisions of the Federal Food, Drug, and Cosmetic Act (FFDC Act) to ensure the meaningful and non-misleading use of such claims.'' FDA pointed out that pursuant to the Nutrition Labeling and Education Act (NLEA), a manufacturer may make a health claim on a food label only if FDA determines ''based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.'' 21 U.S.C. 343(r)(3)(B)(i).

FDA also noted that the use of claims for foods that may have a negative health impact generally is not appropriate under the NLEA. The statute provides that a health claim may not be made for a food that contains, as determined by regulation, any nutrient in an amount that increases to persons in the general population the risk of a disease or health-related condition that is diet-related. 21 U.S.C. 343(r)(3)(A)(ii). FDA may grant an exception to allow foods with disqualifying nutrient levels to bear a health claim if the claim is accompanied by a disclosure statement regarding the disqualifying nutrient and FDA has determined by regulation that such a claim would assist consumers in maintaining healthy dietary practices. 21 U.S.C. 343(r)(3)(A)(ii) and 343(r)(2)(B). FDA requires rigorous evidence to support a conclusion that a health claim on a food with a disqualifying nutrient level would assist consumers in maintaining healthy dietary practices.

FDA expressed the following concern about the use of health claims on alcohol beverage labels:

> Alcohol beverages are foods for which there is evidence of a substantial number of undisputed negative health effects. FDA has not evaluated the evidence supporting the putative health benefits of alcohol beverages. Therefore, we cannot say whether health claims for an alcohol beverage would be prohibited under FDA's existing health claim authorization process, or if not prohibited, could be authorized with a disclosure statement of the type required by 21 U.S.C. 343(r)(2)(B). We are concerned, however, that the evidence for the well-known direct causative relationships between alcohol and numerous health risks would be a significant hurdle to our concluding that label information about a relationship between consumption of alcohol and a health claim could assist consumers in maintaining healthy dietary practices.

FDA also noted that the absence of any significant nutritive value of alcohol products would be another obstacle to FDA authorizing a health claim for alcohol beverages.

FDA stated that it was concerned that ''certain therapeutic or curative claims sought by manufacturers of alcohol beverages may in fact be claims that would require regulation of the alcohol beverages as drugs.'' It noted that FDA has authority and responsibility under the FFDC Act to regulate all products bearing drug claims, and that the term ''drug'' is defined by statute to include an article ''intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease.'' 21 U.S.C. 321(g)(1)(B). FDA concluded that ''[a]lcohol beverages could fall within this definition if their labeling contains drug claims.''

FDA expressed a concern that certain health claims that would be allowed under ATF's proposed rule might render the product a drug subject to regulation under the FFDC Act. The FFDC Act

provides that any drug that is not generally recognized by qualified experts as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling, or that has not been used to a material extent or for a material time under such conditions, is a ''new drug.'' 21 U.S.C. 321(p). A new drug may not be legally marketed unless FDA has approved a new drug application for such a drug. 21 U.S.C. 331(d) and 355(a). FDA noted that the FFDC Act requires substantial evidence of effectiveness and evidence that the drug is safe for its intended use before FDA will approve a new drug application. 21 U.S.C. 355(d). FDA suggested that this standard differed from the ''not misleading'' standard proposed by the ATF notice of proposed rulemaking.

FDA advised that ATF should explicitly articulate in its regulations the processes by which it would review claims intended for alcohol beverages. It stated that it was unable to determine, based on the proposed rule, whether the proposed process for a review of health-related statements would be consistent with FDA's statutory and regulatory authorities. Accordingly, FDA urged ATF to clarify the process and criteria it intends to use to substantiate the validity of any health claims or other health-related statements before finalizing the proposed rule.

The former Surgeon General, Dr. David Satcher, also testified in support of adopting standards ''consistent with that relied upon by the Food and Drug Administration or for regulated health claims for foods and drugs.'' (April 25, 2000; Washington, DC, page 77). Accordingly, ''[c]laims should be based on significant scientific agreement, and they should be qualified to identify those categories of persons for whom the claims are relevant, as well as to identify those for whom the negative consequences would outweigh any positive effect.'' (*Id.* at page 78). In response to a question from the panel, Dr. Satcher agreed that there were problems with consumers self-medicating without knowing all the facts, noting that ''with alcohol, you also have the added effect that you are dealing with an addictive drug.'' (*Id.* at page 80). Senator Thurmond also commented that ''[a]pplication of the FFDC Act to this issue would appear to prohibit any health-related statements on alcohol beverage labels. It is absurd that the government would prevent whole milk from making health-related claims but allow such claims by alcohol beverages.'' (Comment 526).

CSAP commented that ''[a]lcohol abuse and alcoholism continue to be among the most vexing public health problems facing the United States. Indeed, alcohol is the nation's number one drug problem among youth.'' While CSAP did not take a position on any of the issues on which comment was sought, it noted that ''[o]ne of the key issues challenging our efforts is the mixed or misleading messages that consumers receive from a variety of sources. The addition of health related information on beverage alcohol labels must be carefully considered in relation to the general public's understanding of alcohol-related health risk.'' (Comment 430).

CSPI suggested that ATF adopt regulations similar to FDA's regulations under the NLEA, noting that USDA did so on a voluntary basis for health claims on meat and poultry. CSPI stated that under regulations similar to those of FDA, health claims would be prohibited because alcohol consumption increases the risk of other diseases, noting that ''[t]o allow health claims for alcohol, America's most devastating drug, while health claims for foods such as whole milk are prohibited, would be indefensible and would make a mockery of the federal government's health-claim regime.''

CSPI also noted that if an alcohol beverage label or advertisement claims that alcohol may reduce the risk of disease, the beverage may be regulated as a drug by FDA. CSPI argued that, ''aside from its regulatory classification, alcohol is a drug. Depending on a variety of factors such as dose and schedule of use, individual metabolism, personality factors, and situation, alcohol is variously a stimulant and depressant, euphorigan and soporific, irritant and anxiety reducer. Alcohol, like other intoxicants, can produce such dependency phenomena as persistent search behavior, withdrawal, relapse, and loss of control.''

B. Decision

After giving careful consideration to these comments, and consulting with FDA, TTB does not agree that its health claim regulations should be identical to those of FDA. FDA regulations were promulgated pursuant to a very specific grant of authority by Congress under the NLEA. Because of the differences in statutory authority, as well as the differences in the products regulated under these two statutes, TTB's regulatory scheme for health claim labeling will differ from FDA's regulatory scheme.

However, TTB agrees with the FDA comment in several respects. Most importantly, we agree that it is important to ensure that alcohol beverage producers do not violate the new drug provisions of the FFDC Act when seeking to use specific health claims on alcohol beverage labels. It would be where the use of that claim would render the product subject to FDA's jurisdiction over drugs. Furthermore, FDA's authority over new drugs has significant public health and safety consequences. TTB does not wish to create any confusion on the part of industry members regarding their obligations to comply with FDA's requirements over drug claims.

In the past, ATF merely advised industry members that they should be aware of the fact that the use of a health claim on an alcohol beverage label may subject the product to FDA's jurisdiction. However, after reviewing the comments on this issue, we met with FDA to discuss a process whereby TTB and FDA could consult on the use of specific health claims on alcohol beverage labels. In this way, FDA would have an opportunity to object to the use of a specific health claim, based on its jurisdiction over drugs, prior to any TTB action.

Accordingly, the final rule now provides that TTB will consult with FDA, as needed, on the use of specific health claims on labels. If FDA determines that a specific health claim is a drug claim that is not in compliance with the requirements of the FFDC Act, TTB will not approve the use of such statement on a label. There is no similar provision in the advertising regulations, since advertisers are not required to obtain prior approval from TTB. We will of course consult with FDA, as appropriate, if the question arises as to whether an advertisement is in violation of the FFDC Act.

XIX. Is the Final Rule Consistent With the First Amendment?

A. Issue

As previously noted, many commenters suggested that the proposed rule did not comply with the protection accorded truthful and non-misleading commercial speech under the First Amendment. CEI and CA argued that ATF is precluded from placing any restrictions on the dissemination of truthful information about health benefits in the labeling and advertising of alcohol beverages. Beer Institute, DISCUS, and NABI suggested that the proposed advertising regulations would restrict protected commercial speech. Mr. Rex Davis, representing the President's Forum of the Beverage Alcohol Industry, testified that he believes the proposed rule violates the First Amendment because it would

restrict the industry from communicating the benefits of alcohol consumption through labels and advertisements. (April 26, 2000; Washington, DC, pages 133–141). Many other commenters defended the constitutionality of a complete ban on the use of health-related statements in the labeling and advertising of alcohol beverages.

Some of the comments that (or commentators who) addressed the First Amendment issue suggested that while ATF would have authority to restrict the use of misleading health claims, a complete ban on the use of health-related statements would be unconstitutional. For example, the Washington Legal Foundation concluded that an outright ban on the use of truthful health claims would be unconstitutional, but stated that the proposed regulations, ''if properly implemented, strike the appropriate balance in ensuring the First Amendment rights of industry and consumers, and the dissemination of important information regarding the health benefits proven to flow from moderate consumption of alcohol beverages.'' (Comment 390). A comment submitted on behalf of the Oregon Winegrower's Association also stated that a ban on the use of health claims on labels or in advertisements would be unconstitutional; however, the comment stated that the agency should instead ''adhere to a policy of allowing labeling and advertising claims about such health-related benefits to be fairly and objectively evaluated for substantiation, balance and qualification.'' (Comment 380).

A comment from Mr. Erik Bierbauer (Comment 395) attached a copy of a note that he wrote for the New York University Law Review as a third-year law student, entitled ''Liquid Honesty: The First Amendment Right to Market the Health Benefits of Moderate Alcohol Consumption,'' 74 N.Y.U.L. Rev. 1057 (1999). The note concludes that alcohol producers have a First Amendment right to market the health benefits of moderate drinking, as long as they do so accurately and include certain limited disclaimers. Mr. Bierbauer suggested that while such limited disclaimers would be constitutionally authorized, ''the sort of disclosure described in ATF's Industry Circular 93–8 probably would be too burdensome to comply with the First Amendment.'' However, Mr. Bierbauer's comment suggested that ''[t]he Constitution would permit the government to require health-related alcohol advertisements and labels to mention lesser-known risks that are present at moderate levels of drinking. For example, the government might legitimately require a disclaimer warning consumers of the possible link between moderate drinking and breast cancer, and also a statement warning certain vulnerable consumers not to drink at all.'' Mr. Bierbauer concluded that ''[a]ds and labels that merely direct the consumer to other sources of information, such as the wine labels approved by ATF in February 1999, clearly would enjoy First Amendment protection.''

B. Decision

As set forth in this final rule, TTB is not imposing a complete ban on the use of health claims or other health-related statements in the labeling and advertising of alcohol beverages. Accordingly, it is not necessary to consider whether such a ban would be constitutional. Instead, the final rule requires TTB to evaluate health claims on a case-by-case basis to determine if such claims would tend to mislead the consumer.

The final rule codifies ATF's longstanding position that any substantive health benefit claim is considered misleading unless it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. The final rule clarifies that the identified health risks must include those associated with both moderate and higher levels of consumption. Thus, the rule would require any such claim to include appropriate qualifications and disclaimers about the health risks associated with alcohol consumption. In addition, health-related directional statements that are not substantive health claims must nonetheless include a disclaimer to clarify that the statement does not advocate the consumption of alcohol beverages for health reasons, or some other appropriate disclaimer to avoid misleading consumers. The rule's requirements for appropriate disclaimers and qualifications in order to avoid consumer deception about a health issue comport completely with the safeguards articulated by the Supreme Court to protect non-misleading commercial speech.

Commercial speech is defined as speech that proposes a commercial transaction. *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 762 (1976). Information on alcohol beverage labels is considered commercial speech. *Rubin* v. *Coors Brewing Co.,* 514 U.S. 476, 481 (1995). Commercial speech is generally protected by the First Amendment; however, it enjoys a more limited measure of protection. *Florida Bar* v. *Went For It, Inc.,* 515 U.S. 618 (1995). Nonetheless, the Government bears the burden of justifying a restriction on commercial speech. *See Greater New Orleans Broadcasting Ass'n* v. *United States,* 527 U.S. 173, 183 (1999).

In order to regulate commercial speech, the Government must satisfy a 4-prong test. *Central Hudson Gas & Electric Corp.* v. *Public Serv. Comm'n,* 447 U.S. 557, 563–566 (1980). First, the expression is protected by the First Amendment only if it concerns lawful activity and is not misleading. Second, the Government must establish a substantial interest. Third, the regulation must directly advance the governmental interest asserted. Finally, the regulation must be no more extensive than necessary to serve the interest asserted.

In two recent cases involving alcohol beverages, the Supreme Court has struck down bans on truthful and non-misleading commercial speech. In *Rubin* v. *Coors Brewing Co.,* 514 U.S. 476, 491 (1995), the Supreme Court applied the *Central Hudson* analysis in striking down the FAA Act's prohibition against statements of alcohol content on malt beverage labels unless required by State law. In *44 Liquormart, Inc.* v. *Rhode Island,* 517 U.S. 484 (1996), the Supreme Court struck down Rhode Island's ban on advertising the price of alcohol beverages on First Amendment grounds. More recently, in *Lorillard Tobacco Co.* v. *Reilly,* 533 U.S. 525 (2001), the Supreme Court struck down certain restrictions imposed by the State of Massachusetts on the advertisement of tobacco products on First Amendment grounds. However, none of these decisions restricts the Government's authority to regulate misleading or potentially misleading commercial speech.

If commercial speech is actually misleading, then it is not protected by the First Amendment. If commercial speech is potentially misleading, the Government may regulate such commercial messages if the restrictions are ''no broader than reasonably necessary to prevent the deception.'' *In re R.M.J.,* 455 U.S. 191, 203 (1982). Potentially misleading speech cannot be banned ''if the information also may be presented in a way that is not deceptive'' through the use of ''disclaimers or explanation.'' *Id.* Requirements for disclaimers have been

upheld as long as the disclaimers are ''reasonably related to the State's interest in preventing deception'' and do not constitute an undue burden on the advertiser. *Zauderer* v. *Office of Disciplinary Counsel,* 471 U.S. 626, 651–53 (1985).

TTB recognizes that under the commercial speech doctrine, there is a preference for disclosure over suppression. *See e.g., Zauderer* and *Pearson* v. *Shalala,* 164 F.3d 650 (D.C. Cir. 1999). In *Pearson,* the Court of Appeals for the D.C. Circuit required the Food and Drug Administration to consider appropriate disclaimers for health claims on dietary supplement labels. The Court noted that ''the government's interest in preventing the use of labels that are true but do not mention adverse effects would seem to be satisfied—at least ordinarily—by inclusion of a prominent disclaimer setting forth those adverse effects.'' 164 F.3d at 659.

Consistent with the Supreme Court cases cited above, as well as the DC Circuit's ruling in the *Pearson* case, the final rule requires any industry member who wishes to make an explicit or implicit health claim on a label or in an advertisement to make a more complete disclosure of the adverse effects on health caused by alcohol consumption. The final rule does not impose any additional requirements on industry members who do not wish to make such claims. However, given the very serious health risks associated with alcohol consumption, TTB believes that the use of health claims without such qualifications and disclaimers would be misleading to consumers.

The final rule is completely consistent with the preference expressed by the courts for disclosure over suppression in the commercial speech arena. The Supreme Court has held that more speech, not less, is the preferred means of ensuring that consumers have sufficient information to make informed choices in the commercial arena. *In re R.M.J.,* 455 U.S. at 203. The final rule does not ''ban'' any type of speech regarding health claims or health-related statements in the labeling or advertising of alcohol beverages. Instead, the rule simply requires disclaimers for specific health claims and health-related directional statements.

CEI and CA suggested that there is no need for disclaimers in connection with health claims in the labeling or advertising of alcohol beverages. They point to the fact that the Government warning statement required on alcohol beverage containers already advises consumers that ''Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.'' CEI and CA further suggest that consumers are well aware of the health risks associated with alcohol abuse, and there is no need to remind them of such risks.

TTB does not agree with this comment. The administrative record contains overwhelming evidence of the serious health risks associated with alcohol consumption. These risks are not merely hypothetical; they are well documented. Among other things, the comments established that over 8 million American adults are alcoholics; alcohol is a known human carcinogen; and alcohol contributes to the deaths of more than 100,000 Americans each year. Furthermore, alcohol abuse has devastating effects on innocent third parties. In 1998, 15,935 people were killed in alcohol-related traffic crashes, and an estimated 850,000 were injured. Mothers Against Drunk Driving commented that the NIH estimated that the overall societal costs of alcohol abuse and alcoholism in 1995 ($167 billion) were more than 50 percent higher than the costs to society of illegal drug use ($110 billion). The health risks associated with alcohol consumption are not simply hypothetical; on the contrary, they present a serious public health problem in this country. Accordingly, the record supports a conclusion that a health claim that does not include information about these serious health risks would tend to mislead consumers about the health consequences of alcohol consumption.

TTB also disagrees with the suggestion by CEI and CA that health-related statements presented a necessary ''balance'' to the warning presented by the mandatory Government warning statement. The warning statement was intended by Congress to present a clear and nonconfusing reminder of the health hazards associated with consumption or abuse of alcohol beverages. *See* 27 U.S.C. 213. The use of health claims or other health-related statements without qualification or disclosure of adverse effects to ''balance'' the mandatory warning statement not only undermines the intent of the ABLA; it also tends to confuse consumers about the very real health risks associated with alcohol consumption.

The administrative record contains significant evidence that truthful statements about certain health benefits associated with moderate consumption of alcohol beverages for certain individuals will tend to mislead consumers unless such statements are truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately disclose the health risks associated with both moderate and heavier levels of alcohol consumption; and outline the categories of individuals for whom any levels of alcohol consumption may cause health risks. Most consumers are unable to conduct or verify health research for themselves to determine whether a health claim is valid as to their own alcohol consumption, and are ill equipped to interpret the medical data, evaluate the potential benefits, or identify and weigh the other medical factors that may bear upon their individual decision to use alcohol for therapeutic reasons. *See In re R.M.J.,* 455 U.S. at 202 (the public's comparative lack of knowledge regarding the product being advertised is an important factor in determining whether speech is misleading). A requirement for disclaimers of this nature in such a situation is clearly directly related to the Government's interest in ensuring that consumers are not misled by health statements on alcohol beverage labels.

Some commenters suggested that the types of disclaimers and qualifications required by the proposed regulations would overly burden industry members who wish to make health claims about alcohol consumption, making such requirements unconstitutional. CEI and CA suggested that ''summary'' health claims for alcohol consumption are just as truthful as other short health claims allowed by FDA for diets low in saturated fat and cholesterol, as well as diets low in sodium. Other commenters suggested that because an alcohol beverage label is not large enough to include the volume of information necessary in order to give consumers a complete picture of the effects on health of alcohol consumption, such statements should be banned completely from alcohol beverage labels.

TTB agrees that the regulations make it difficult to present a substantive health claim (for example, one involving cardiovascular benefits associated with moderate alcohol consumption) on an alcohol beverage label, because of the level of qualification and explanation that would be necessary to set forth the risks associated with such consumption. TTB would also note that there seems to be an overwhelming lack of interest on the part of the alcohol beverage industry in using such health claims on alcohol beverage labels. The comments from major trade associations representing wineries, importers, brewers, and distillers did not indicate a concrete

interest in using substantive health claims in the labeling or advertising of alcohol beverages. One lawyer testified in support of a 664-word labeling statement regarding effects on health and asserted that members of the wine industry had the right to make such statements; however, in response to questioning, he conceded that such a long statement would not be likely to be used on a label.

In the absence of any concrete indications of industry interest in using substantive health claims on alcohol beverage labels, there is no reason for TTB to draft a model health claim for use by industry members. Discussions of whether the regulations would unduly burden the industry's ability to use qualified and truthful health claims in the labeling of alcohol beverages will be better informed if and when industry members submit such statements to TTB for review. Nothing in the regulation itself indicates that the requirements for qualification and balance are unduly burdensome. Furthermore, it must be concluded that the length of any required disclaimers and qualifications are directly related to the serious health risks associated with alcohol consumption, rather than any desire by the Government to suppress speech. In particular, the comparison made by CEI and CA with claims regarding diets low in saturated fat and cholesterol or diets low in sodium is not persuasive in the absence of any suggestion that such diets are associated with the types of documented health risks associated with alcohol consumption. Accordingly, TTB concludes that the requirements of the regulations do not unduly burden speech about the effects on health of alcohol consumption.

Because the directional statements do not make substantive health claims, but instead have been interpreted as implicitly encouraging the consumption of alcohol for health reasons, TTB does not believe it is necessary to require the same level of detail in the disclaimers required to ensure that such statements do not mislead consumers. In addition, there clearly is interest on the part of several industry members in using the directional statements. Accordingly, we have provided a model disclaimer that may be used by industry members in conjunction with such directional statements in order to avoid misleading consumers. This one-sentence disclaimer is not overly burdensome, and complies with the court cases allowing the Government to mandate disclosures necessary to prevent consumer deception. TTB will consider other disclaimers on a case-by-case basis.

Accordingly, the final rule is in accordance with the case law under the commercial speech doctrine. Because the rule does not ban any speech, but merely sets forth the type of qualification, detail, and disclosure required in order to set forth a non-misleading health-related statement in the labeling or advertising of alcohol beverages, the rule is completely consistent with the First Amendment protection accorded truthful and non-misleading commercial speech. On the other hand, the rule is also consistent with TTB's statutory responsibility to protect consumers from misleading commercial speech regarding the serious effects on health of alcohol consumption.

XX. Final Rule

Accordingly, this final rule amends the regulations to provide that labels and advertisements may not contain any health-related statement, including a specific health claim, that is untrue in any particular or tends to create a misleading impression. A specific health claim on an alcohol beverage label or advertisement will be considered misleading unless it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any alcohol consumption poses risks. This information must appear as part of the specific health claim and, in the case of advertising, must also appear as prominent as the specific health claim. In addition, TTB will consult with FDA, as needed, on the use of specific health claims on labels. If FDA determines that a specific health claim is a drug claim that is not in compliance with the requirements of the FFDC Act, TTB will not approve the use of such statement on a label.

The final rule provides that a health-related statement that is not a specific health claim or a health-related directional statement will be allowed in the labeling or advertising of alcohol beverages only if TTB determines that the claim is not untrue in any particular and does not tend to create a misleading impression as to the effects on health of alcohol consumption. We will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or other qualifying statement to dispel any misleading impression created by the health-related statement.

With regard to the ''directional'' statements approved by ATF in 1999, we recognize that the producers of alcohol beverages may have a protected right under the First Amendment to convey the message on labels and in advertisements that consumers should refer to their doctors or the Government's Dietary Guidelines for additional information about the effects on health of alcohol consumption, as long as that message is conveyed in a fashion that does not mislead consumers about the health consequences of alcohol consumption. As discussed above, TTB has also determined that without disclaimers, the directional statements approved in 1999 tended to mislead consumers about the health consequences of alcohol consumption.

Accordingly, the final rule provides that a health-related directional statement is presumed misleading unless it directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of alcohol consumption and includes as part of the health-related directional statement a brief disclaimer stating that the statement should not encourage consumption of alcohol for health reasons, or some other appropriate disclaimer to avoid misleading consumers.

As a clarifying change, the final rule uses the term ''health-related statement'' instead of ''curative or therapeutic claim.'' However, the definition of a ''health-related statement'' in the final rule incorporates ATF's historic position on what constitutes a statement of a curative or therapeutic nature, as set forth in the preamble of it's final rule concerning the labeling and advertising regulations under the FAA Act (T.D. ATF–180, 49 FR 31667; August 8, 1984). Accordingly, a health-related statement includes any claim of a curative or therapeutic nature that, expressly or by implication, suggests a relationship between the consumption of alcohol, wine, distilled spirits, malt beverages, or any substance found within the alcohol beverage, and health benefits or effects on health. The term ''health-related statement'' also includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, wine, distilled spirits, malt beverages, or any substance found within the alcohol beverage, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming wine, distilled spirits, or

malt beverages, as well as statements and claims of nutritional value. Statements concerning caloric, carbohydrate, protein, and fat content of alcohol beverages are not considered nutritional claims about the product. However, statements of vitamin content are considered nutritional value claims, and will be prohibited if presented in a fashion that tends to mislead consumers as to the nutritional value of the product.

The term ''specific health claim'' is defined as a type of health-related statement that, expressly or by implication, characterizes the relationship of the alcohol beverage (*e.g.*, wine, distilled spirits, or malt beverage), alcohol, or any substance found within the alcohol beverage, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between the alcohol beverage (wine, distilled spirits, or malt beverages), alcohol, or any substance found within the alcohol beverage, and a disease or health-related condition.

The term ''health-related directional statement'' is defined as a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of alcohol consumption.

The definitions in the final rule also clarify that TTB is not expanding its traditional interpretation of a curative or therapeutic claim to cover, for example, advertisements in which people are shown relaxing in an enjoyable setting while consuming alcohol beverages. Accordingly, the final rule in no way impinges on the right of industry members to advertise their products in a truthful and non-misleading fashion.

XXI. Applications for and Certificates of Label Approval

Upon the effective date of this final rule, applications for certificates of label approval must be in compliance with the regulations. In accordance with the provisions of 27 CFR 13.51 and 13.72(a)(2), upon the effective date of this final rule, certificates of label approval that are not in compliance with the regulations will be revoked by operation of regulation. Certificate holders must voluntarily surrender all certificates that are no longer in compliance and submit new applications for certificates that are in compliance with the new requirements.

XXII. Notes Appearing in Text of Supplementary Information

1. Hennekens, C.H., ''Alcohol and Risk of Coronary Events,'' Research Monograph No. 31, ''Alcohol and the Cardiovascular System'' at 15 (National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD, 1996).

2. *See, e.g.,* Boffetta, P. & Garfinkel, L., ''Alcohol drinking and mortality among men enrolled in an American Cancer Society prospective study,'' ''Epidemiology'' 1(5):342–348, 1990; Stampfer, M.J.; Colditz, G.A.; Willett, W.C.; Speizer, F.E. & Hennekens, C.H., ''A prospective study of moderate alcohol consumption and the risk of coronary disease and stroke in women,'' ''New England Journal of Medicine,'' 319(5):267–273, 1988; Klatsky, A.L.; Armstrong, M.A.; and Friedman, G.D., ''Alcohol and Mortality,'' ''Annals of Internal Medicine,'' 117(8):646–654, 1992. See generally National Institute on Alcohol Abuse and Alcoholism, ''Moderate Drinking,'' ''Alcohol Alert,'' No. 16, April 1992, at 2, and studies cited therein.

3. *See, e.g.,* Criqui, M.H., ''Moderate Drinking: Benefits and Risks,'' ''Alcohol and the Cardiovascular System,'' at 117–118 (''Clearly, younger persons cannot possibly benefit much from alcohol consumption, at least in the short term, because their risk of ischemic CVD events is low.'')

4. DuFour, M.C., ''Risks and Benefits of Alcohol Use Over the Life Span,'' ''Alcohol Health & Research World,'' Vol. 20, No. 3:145–150 at 147, 1996.

5. *See, e.g.,* Hennekens, C.H., ''Alcohol and risk of coronary events,'' Research Monograph No. 31, ''Alcohol and the Cardiovascular System'' at 20 (National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 1996) (''while the health risks of excessive drinking are clear, there may also be hazards associated with moderate intake that must be weighed, on an individual basis, against the apparent protection against CHD.'').

6. Thun, M.J.; Peto, R.; Lopez, A.D.; Monaco, J.H.; Henley, S.J.; Heath, C.W.; and Doll, R; ''Alcohol Consumption and Mortality Among Middle-Aged and Elderly U.S. Adults,'' ''The New England Journal of Medicine,'' 337(24):1705–1714 at 1705, 1997.

7. *Id.* at 1712.

8. Manson, J.E.; Tosteson, H.; Ridker, P.M.; Satterfield, S; Hebert, P.; O'Connor, G.T.; Buring, J.E.; and Hennekens, C.H.; ''The Primary Prevention of Myocardial Infarction,'' ''The New England Journal of Medicine,'' 326(21):1406–1416 at 1412, 1992.

9. Fuchs, C.S.; Stampfer, M.J.; Colditz, G.A.; Giovannucci, E.L.; Manson, J.E.; Kawachi, I.; Hunter, D.J.; Hankinson, S.E.; Hennekens, C.H.; Rosner, B; Speizer, F.E.; and Willett, W.C.; ''Alcohol Consumption and Mortality Among Women,'' ''The New England Journal of Medicine,'' 332(19):1245–1250 at 1245, 1995.

10. *Id.* at 1246.

11. *Id.* at 1249.

12. Grabbe, L; Demi, A; Camann, M.A.; *et al.* ''The health status of elderly persons in the last year of life; A comparison of deaths by suicide, injury, and natural causes.'' ''American Journal of Public Health'' 87(3):434–437, 1997.

13. Stampfer, M.J.; Rimm, E.B.; Walsh, D.C.; ''Commentary: Alcohol, the Heart, and Public Policy,'' ''American Journal of Public Health,'' 83(6): 801–804 at 803, 1993.

XXIII. How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

TTB has determined that this final rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. TTB has certified that this final rule will not have a significant economic impact on a substantial number of small entities. In general, the final regulations merely clarify TTB's existing policy concerning the use of health claims in the labeling and advertising of alcohol beverages and impose no burdens on the industry. With respect to health-related statements, TTB believes that the burden imposed by the additional wording required by a disclaimer or other qualifying statement is minimal. Accordingly, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

Copies of the notice of proposed rulemaking, all comments, the hearing transcripts, and this final rule will be available for public inspection by appointment during normal business hours at: TTB Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC; 202–927–7890.

Drafting Information

The originating drafter of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

However, personnel from other offices of the Bureau participated in developing this Treasury decision.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

27 CFR Part 7

Advertising, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance

For the reasons discussed in the preamble, TTB amends 27 CFR Parts 4, 5, and 7 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Section 4.39 is amended by revising paragraph (h) to read as follows:

§ 4.39 Prohibited practices.

* * * * *

(h) *Health-related statements.* (1) *Definitions.* When used in this paragraph (h), terms are defined as follows:

(i) *Health-related statement* means any statement related to health (other than the warning statement required by § 16.21 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, wine, or any substance found within the wine, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, wine, or any substance found within the wine, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the wine, as well as statements and claims of nutritional value (*e.g.*, statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the wine, alcohol, or any substance found within the wine, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between wine, alcohol, or any substance found within the wine, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption.

(2) *Rules for labeling.* (i) *Health-related statements.* In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(ii) *Specific health claims.* (A) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a wine label. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on a wine label.

(B) TTB will approve the use of a specific health claim on a wine label only if the claim is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of wine or alcohol consumption; and

(B)(*1*) Includes as part of the health-related directional statement the following disclaimer: ''This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;'' or

(*2*) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

* * * * *

3. Section 4.64 is amended by revising paragraph (i) to read as follows:

§ 4.64 Prohibited practices.

* * * * *

(i) *Health-related statements.* (1) *Definitions.* When used in this paragraph (i), terms are defined as follows:

(i) *Health-related statement* means any statement related to health and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, wine, or any substance found within the wine, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, wine, or any substance found within the wine, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the wine, as well as statements and claims of nutritional value (*e.g.*, statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the wine, alcohol, or any substance found within the wine, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between wine, alcohol, or any substance found within the wine, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related

statement that directs or refers consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption.

(2) *Rules for advertising.* (i) *Health-related statements.* In general, advertisements may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement. Such disclaimer or other qualifying statement must appear as prominent as the health-related statement.

(ii) *Specific health claims.* A specific health claim will not be considered misleading if it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim and in a manner as prominent as the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of wine or alcohol consumption; and

(B)(*1*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, the following disclaimer: ''This statement should not encourage you to drink or increase your alcohol consumption for health reasons;'' or

(*2*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

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PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

4. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

5. Section 5.42 is amended by revising paragraph (b)(8) to read as follows:

§ 5.42 Prohibited practices.

* * * * *

(b) * * *

(8) *Health-related statements.* (i) *Definitions.* When used in this paragraph (b)(8), terms are defined as follows:

(A) *Health-related statement* means any statement related to health (other than the warning statement required by § 16.21 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the distilled spirits, as well as statements and claims of nutritional value (*e.g.*, statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(B) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the distilled spirits, alcohol, or any substance found within the distilled spirits, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between distilled spirits, alcohol, or any substance found within the distilled spirits, and a disease or health-related condition.

(C) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption.

(ii) *Rules for labeling.* (A) *Health-related statements.* In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(B) *Specific health claims.* (*1*) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a distilled spirits label. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on a distilled spirits label.

(*2*) TTB will approve the use of a specific health claim on a distilled spirits label only if the claim is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(C) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption is presumed misleading unless it—

(*1*) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of distilled spirits or alcohol consumption; and

(*2*)(*i*) Includes as part of the health-related directional statement the following disclaimer: ''This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;'' or

(*ii*) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading

impression conveyed by the health-related directional statement.

* * * * *

Par. 6. Section 5.65 is amended by revising paragraph (d) to read as follows:

§ 5.65 Prohibited practices.

* * * * *

(d) *Health-related statements.* (1) *Definitions.* When used in this paragraph (d), terms are defined as follows:

(i) *Health-related statement* means any statement related to health and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the distilled spirits, as well as statements and claims of nutritional value (*e.g.,* statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the distilled spirits, alcohol, or any substance found within the distilled spirits, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between distilled spirits, alcohol, or any substance found within the distilled spirits, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption.

(2) *Rules for advertising.* (i) *Health-related statements.* In general, advertisements may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement. Such disclaimer or other qualifying statement must appear as prominent as the health-related statement.

(ii) *Specific health claims.* A specific health claim will not be considered misleading if it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim and in a manner as prominent as the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of distilled spirits or alcohol consumption; and

(B)(*1*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, the following disclaimer: ''This statement should not encourage you to drink or increase your alcohol consumption for health reasons;'' or

(*2*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

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

Authority: 27 U.S.C. 205.

8. Section 7.29 is amended by revising paragraph (e) to read as follows:

§ 7.29 Prohibited practices.

* * * * *

(e) *Health-related statements.* (1) *Definitions.* When used in this paragraph (e), terms are defined as follows:

(i) *Health-related statement* means any statement related to health (other than the warning statement required by § 16.21 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, malt beverages, or any substance found within the malt beverage, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, malt beverages, or any substance found within the malt beverage, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the malt beverage, as well as statements and claims of nutritional value (*e.g.,* statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the malt beverage, alcohol, or any substance found within the malt beverage, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between malt beverages, alcohol, or any substance found within the malt beverage, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption.

(2) *Rules for labeling.* (i) *Health-related statements.* In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading

impression conveyed by the health-related statement.

(ii) *Specific health claims.* (A) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a malt beverage label. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on a malt beverage label.

(B) TTB will approve the use of a specific health claim on a malt beverage label only if the claim is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of malt beverage or alcohol consumption; and

(B)(*1*) Includes as part of the health-related directional statement the following disclaimer: ''This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;'' or

(*2*) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

* * * * *

9. Section 7.54 is amended by revising paragraph (e) to read as follows:

§ 7.54 Prohibited statements.

* * * * *

(e) *Health-related statements.* (1) *Definitions.* When used in this paragraph (e), terms are defined as follows:

(i) *Health-related statement* means any statement related to health and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, malt beverages, or any substance found within the malt beverage, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, malt beverages, or any substance found within the malt beverage, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the malt beverage, as well as statements and claims of nutritional value (*e.g.*, statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the malt beverage, alcohol, or any substance found within the malt beverage, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between malt beverages, alcohol, or any substance found within the malt beverage, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption.

(2) *Rules for advertising.* (i) *Health-related statements.* In general, advertisements may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement. Such disclaimer or other qualifying statement must appear as prominent as the health-related statement.

(ii) *Specific health claims.* A specific health claim will not be considered misleading if it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim and in a manner as prominent as the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of malt beverage or alcohol consumption; and

(B)(*1*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, the following disclaimer: ''This statement should not encourage you to drink or increase your alcohol consumption for health reasons;'' or

(*2*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

* * * * *

Signed: February 13, 2003.

Arthur J. Libertucci,

Administrator.

February 25, 2003,

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 03–4836 Filed 2–28–03; 8:45 am]

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Part III

Department of Transportation

Federal Railroad Administration

49 CFR Parts 219, 225, and 240

Conforming the Federal Railroad Administration's Accident/Incident Reporting Requirements to the Occupational Safety and Health Administration's Revised Reporting Requirements; Other Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219, 225, and 240

[Docket No. FRA–2002–13221, Notice No. 2]

RIN 2130–AB51

Conforming the Federal Railroad Administration's Accident/Incident Reporting Requirements to the Occupational Safety and Health Administration's Revised Reporting Requirements; Other Amendments

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

ACTION: Final rule.

SUMMARY: FRA conforms, to the extent practicable, its regulations on accident/incident reporting to the revised reporting regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor (DOL). This action permits the comparability of data on occupational fatalities, injuries, and illnesses in the railroad industry with such data for other industries, allows the integration of these railroad industry data into national statistical databases, and enhances the quality of information available for railroad casualty analysis. In addition, FRA makes certain other amendments to its accident reporting regulations unrelated to conforming to OSHA's revised reporting regulations. Finally, FRA makes minor changes to its alcohol and drug regulations and locomotive engineer qualifications regulations in those areas that incorporate concepts from its accident reporting regulations.

EFFECTIVE DATE: May 1, 2003.

FOR FURTHER INFORMATION CONTACT: For technical issues, Robert L. Finkelstein, Staff Director, Office of Safety Analysis, RRS–22, Mail Stop 17, Office of Safety, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6280). For legal issues, Anna L. Nassif, Trial Attorney, or David H. Kasminoff, Trial Attorney, Office of Chief Counsel, RCC–12, Mail Stop 12, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6166 or 202–493–6043, respectively).

SUPPLEMENTARY INFORMATION: In addition to revising its regulations in the *Code of Federal Regulations,* FRA has revised its *Guide for Preparing Accident/Incident Reports (Guide or FRA's Guide).* Instructions for electronically submitting monthly reports to FRA are available in the 2003 companion guide: *Guidelines for Submitting Accident/Incident Reports by Alternative Methods.* The *2003 Guide* and companion guide are posted on FRA's Web site at *http://safetydata.fra.dot.gov/guide.*

For more detailed information on OSHA's revised reporting regulations, see *http://safetydata.fra.dot.gov/OSHA-materials.*

Also, note that for brevity, all references to CFR parts will be parts in 49 CFR, unless otherwise noted.

Privacy Act Statement: 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.*

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I. Overview of OSHA's Revised Reporting Regulations and FRA's Final Rule

On January 19, 2001, OSHA published revised regulations entitled, ''Occupational Injury and Illness Recording and Reporting Requirements; Final Rule,'' including a lengthy preamble that explains OSHA's rationale for these amendments. *See* 66 FR 5916, to be codified at 29 CFR parts 1904 and 1952; *see also* 66 FR 52031 (October 12, 2001) and 66 FR 66943 (December 27, 2001) (collectively, OSHA's Final Rule). A side-by-side comparison of OSHA's previous reporting and recordkeeping provisions with OSHA's new requirements appears at *http://safetydata.fra.dot.gov/OSHA-materials.* With the exception of three

provisions, OSHA's final rule became effective on January 1, 2002. *See* 66 FR 52031; *see also* 67 FR 44037 (July 1, 2002) and 67 FR 44124 (July 1, 2002).

FRA's railroad accident/incident reporting regulations, which are codified at part 225, include, among other provisions, sections that pertain to railroad occupational fatalities, injuries, and illnesses; these sections are consistent with prior OSHA regulations, with minor exceptions. These sections of FRA's accident/incident regulations that concern railroad occupational casualties should be maintained, to the extent practicable, in general conformity with OSHA's recordkeeping and reporting regulations to permit comparability of data on occupational casualties between various industries, to allow integration of railroad industry data into national statistical databases, and to improve the quality of data available for analysis of casualties in railroad accidents/incidents. Accordingly, through this final rule, FRA makes conforming amendments to its existing accident/incident reporting regulations and *Guide.* Further, FRA makes minor amendments to its alcohol and drug regulations (part 219) and locomotive engineer qualifications regulations (part 240) in those areas that incorporate terms from part 225.

Note: Throughout this preamble to the final rule, excerpts from OSHA regulations are provided for the convenience of the reader. The official version of the OSHA regulations appears in 29 CFR part 1904.

In addition, FRA will draft a memorandum of understanding (MOU) between FRA and OSHA to address specific areas that are unique to the railroad industry, and where it was not practical for FRA's regulations to be maintained in conformity with OSHA's final rule. Such divergence from OSHA's Final Rule is permitted under a provision of the rule:

> If you create records to comply with another government agency's injury and illness recordkeeping requirements, *OSHA will consider those records as meeting OSHA's Part 1904* recordkeeping requirements *if OSHA accepts the other agency's records under a memorandum of understanding* with that agency, *or if the other agency's records contain the same information* as this Part 1904 requires you to record.

Emphasis added. *See* 29 CFR 1904.3. Specific provisions of part 225 that do not conform to OSHA's final rule are discussed in detail in the preamble.

Finally, FRA makes other miscellaneous amendments to part 225 and the *Guide*, including revisions not solely related to railroad occupational casualties, such as the telephonic reporting of a train accident that fouls a main line track used for scheduled passenger service.

II. Proceedings and Summary of Issues Addressed by the Working Group

A. The Development of the Railroad Safety Advisory Committee (RSAC) Accident/Incident Reporting Working Group

FRA developed the Notice of Proposed Rulemaking (NPRM), published October 9, 2002, and this final rule through its Railroad Safety Advisory Committee (RSAC). *See* 67 FR 63022. RSAC was formed by FRA in March of 1996 to provide a forum for consensual rulemaking and program development. The Committee has representatives from all of the agency's major interest groups, including railroad carriers, labor organizations, suppliers, manufacturers, and other interested parties. FRA typically proposes to assign a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. If a working group is unable to reach consensus on recommendations for action, FRA will move ahead to resolve the issue through traditional rulemaking proceedings.

On April 23, 2001, FRA presented task statement 2001–1, regarding accident/incident reporting conformity, to the full RSAC. When FRA presented the subject of revising its accident reporting regulations and *Guide* to RSAC, the agency stated that the purpose of the task was to bring FRA's regulations and *Guide* into conformity with OSHA's final rule, and to make certain other technical amendments. The task was accepted, and a working group was established to complete the task.

Members of the Working Group, in addition to FRA, include representatives of the following 26 entities: the American Public Transportation Association (APTA); the National Railroad Passenger Corporation (Amtrak); the Association of American Railroads (AAR); The American Short Line and Regional Railroad Association (ASLRRA); the Brotherhood of Locomotive Engineers (BLE); the Brotherhood of Railroad Signalmen (BRS); Transportation Communications International Union/Brotherhood Railway Carmen (TCIU/BRC); Canadian National Railway Company (CN) and Illinois Central Railroad Company (IC); the Sheet Metal Workers International Association; the Brotherhood of Maintenance of Way Employes (BMWE); The Burlington Northern and Santa Fe Railway Company (BNSF); Canadian Pacific Railway Company (CP); Consolidated Rail Corporation-Shared Assets (CR); CSX Transportation, Inc. (CSX); Norfolk Southern Railway Company (NS); Union Pacific Railroad Company (UP); The Long Island Rail Road (LIRR); Maryland Transit Administration (MARC); Southern California Regional Rail Authority (Metrolink); Virginia Railway Express (VRE); Trinity Rail (TR); North Carolina Department of Transportation (NCDOT); Northeast Illinois Regional Commuter Rail Corp. (Metra); the United Transportation Union (UTU); and Wisconsin Central Ltd. (WC).

B. The Working Group's Resolution of Issues Prior to Publication of the NPRM

Prior to the publication of the NPRM, the Working Group held a total of eight meetings related to this task statement. As a result of these meetings, the Working Group developed consensus recommendations proposing to change the FRA regulations and *Guide* with respect to all issues presented except for one. Consensus could not be reached on whether railroads should be required to report deaths and injuries of the employees of railroad contractors who are killed or injured while off railroad property. Prior to this rulemaking, FRA had interpreted part 225 as not requiring the reporting of such cases. After the last Working Group session before publication of the NPRM, FRA developed a compromise position, proposing that railroads not be required to report deaths or injuries to persons who are not railroad employees that occur while off railroad property unless they result from a train accident, a train incident, a highway-rail grade crossing accident/incident, or a release of a hazardous material or other dangerous commodity related to the railroad's rail transportation business. To accomplish this result, FRA proposed a three-tier definition of the term ''event or exposure arising from the operation of a railroad.'' *See* proposed § 225.5.

The NPRM intended to reflect a Working Group consensus on all other issues that were summarized in the preamble. With regard to part 225, the Working Group recommended

amending § 225.5, which contains definitions; § 225.9, which pertains to telephonic reporting of certain accidents/incidents; and § 225.19(d), which pertains to reporting deaths, injuries, and occupational illnesses. To make certain other miscellaneous conforming changes, the Working Group recommended amending § 225.21, which pertains to forms; § 225.23(a), which pertains to joint operations; § 225.33, which pertains to internal control plans; and § 225.35, which pertains to access to records and reports. To address occupational illnesses and injuries that are privacy concern cases, claimed occupational illnesses, and other issues, the Working Group also recommended amending § 225.25, pertaining to recordkeeping. Finally, the Working Group recommended adding a new § 225.39, pertaining to FRA's policy on how FRA will maintain and make available to OSHA certain data FRA receives pertaining to cases that meet the criteria as recordable injuries or illnesses under OSHA's regulations and that are reportable to FRA, but that would not count towards the data in totals compiled for FRA's periodic reports on injuries and illnesses.

With regard to the *Guide*, the Working Group proposed to revise Chapter 1, pertaining to an overview of accident/incident reporting and recordkeeping requirements; Chapter 2, containing definitions; Chapter 4, pertaining to Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record''; Chapter 6, pertaining to Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet)''; and Chapter 7, pertaining to Form FRA F 6180.54, ''Rail Equipment Accident/Incident Report''; and to create a new Chapter 12, pertaining to reporting by commuter railroads, and a new Chapter 13, pertaining to new Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to Be Work-Related.'' The Working Group also proposed changing various codes used in making accident/incident reports to FRA. These codes are listed in appendices of the *Guide*. The Working Group supported revising Appendix C, ''Train Accident Cause Codes''; Appendix E, ''Injury and Illness Codes,'' including revising codes related to the nature of the injury or illness, and the location of the injury; and Appendix F, ''Circumstance Codes.'' The latter included revising codes related to the physical act the person was doing when hurt; where the person was located when injured; what, if any, type of on-track equipment was involved when the person was injured or became ill; what event was involved that caused the person to be injured or become ill; what tools, machinery, appliances, structures, or surfaces were involved when the person was injured or became ill; and the probable reason for the injury or illness. Further, the Working Group advocated revising Appendix H, pertaining to accident/incident reporting forms, particularly Form FRA F 6180.78, ''Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor [and] Employee Statement Supplementing Railroad Accident Report,'' and Form FRA F 6180.81, ''Employee Human Factor Attachment.'' Finally, the Working Group recommended making additional conforming changes to the *Guide*.

With regard to part 219, FRA decided that two terms used in that part, ''reportable injury'' and ''accident or incident reportable under Part 225 of this chapter,'' should be given a slightly different meaning. In particular, the terms would be defined for purposes of part 219 as excluding accidents or incidents that are classified as ''covered data'' under proposed § 225.5 (*i.e.*, accidents or incidents that are reportable solely because a physician or other licensed health care professional recommended in writing that a railroad employee take one or more days away from work, that the employee's work activity be restricted for one or more days, or that the employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the medication was taken). In part 240, the term ''accidents or incidents reportable under part 225'' is used in § 240.117(e)(2). Instead of creating a separate definition of the term for purposes of part 240, an explicit exception for covered data would be added to § 240.117(e)(2) itself.

Each of these issues is described in greater detail in the next sections of the preamble. The full RSAC accepted the recommendations of the Working Group as to those changes that were proposed for part 225 and the *Guide* on which consensus was reached. With regard to the one issue on which consensus was not reached, and with regard to the minor proposed revisions to parts 219 and 240, not presented to the Working Group, the full RSAC accepted FRA staff recommendations. In turn, FRA's Administrator adopted the recommendations embodied in the proposal, and the NPRM was subsequently published.

C. Comments Received and Post-NPRM Working Group Meeting

After publication of the NPRM on October 9, 2002, FRA received comments on the proposed rule and *Guide* from AAR [1] and a private citizen.[2] On December 4, 2002, the Working Group held a meeting in Washington, DC to discuss the comments on the NPRM. Because the majority of AAR's comments focused on clarifying the *Guide*, many of the issues were able to be resolved at the meeting. RSAC consensus on those issues and the summary of the Working Group meeting was confirmed by ballot on January 29, 2003. For those issues where consensus could not be reached, AAR sent FRA a post-meeting letter further explaining its views. The unresolved issues were outlined and presented to the Deputy Administrator, who acted on the rulemaking under a delegation from the Administrator, along with copies of the comments and responses, for resolution.

III. Issues Addressed by the Working Group

A. Applicability of Part 225—§ 225.3

OSHA's Final Rule states, ''(1) If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless OSHA or the BLS [Bureau of Labor Statistics] informs you in writing that you must keep records under § 1904.41 or § 1904.42.'' 29 CFR 1904.1(a). FRA's accident reporting regulations do not have such an exemption from the central reporting requirements for railroads with ten or fewer employees at all times during the last calendar year. Rather, the extent and exercise of FRA's delegated statutory safety jurisdiction are addressed fully in part 209, Appendix A, and the applicability of part 225 in particular is addressed in § 225.3. Under § 225.3(a), the central provisions of part 225 apply to:

All railroads except—

(1) A railroad that operates freight trains only on track inside an installation which is

[1] AAR's comments on the NPRM will be discussed throughout this preamble. After the publication of the NPRM and a discussion of the comments at the final Working Group meeting, AAR submitted a letter, dated December 13, 2002, and a supplemental response that was e-mailed to FRA on January 3, 2003.

[2] FRA has reviewed the comments from the private citizen, which did not specifically address any of the proposed amendments and vaguely asserted that FRA was not fulfilling its duty to carry out statutory mandates. Although the commenter did not provide specific recommendations to FRA on how to revise the NPRM, FRA believes that the provisions in the final rule will improve the overall quality and integrity of FRA's accident/incident data.

not part of the general railroad system of transportation or that owns no track except for track that is inside an installation that is not part of the general railroad system of transportation and used for freight operations.

(2) Rail mass transit operations in an urban area that are not connected with the general railroad system of transportation.

(3) A railroad that exclusively hauls passengers inside an installation that is insular or that owns no track except for track used exclusively for the hauling of passengers inside an installation that is insular. An operation is not considered insular if one or more of the following exists on its line:

(i) A public highway-rail grade crossing that is in use;

(ii) An at-grade rail crossing that is in use;

(iii) A bridge over a public road or waters used for commercial navigation; or

(iv) A common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

Section 20901 of title 49, U.S. Code (superseding 45 U.S.C. 38 and re-codifying provisions formerly contained in the Accident Reports Act, 36 Stat. 350 (1910), as amended), requires each railroad to file a monthly report of railroad accidents. *See* Public Law 103–272. Accordingly, FRA will apply its accident reporting regulations to all railroads under FRA's jurisdiction, unless the entity meets one of the exceptions noted in § 225.3. FRA will address the difference as to which entities are covered by the reporting requirements, in an MOU with OSHA.

B. Revisions and Additions to Definitions in the Regulatory Text—§ 225.5

Proposal

FRA proposed to amend and add certain definitions to conform to OSHA's final rule or to achieve other objectives. Specifically, FRA proposed to revise the definitions of ''accident/incident,'' ''accountable injury or illness,'' ''day away from work,'' ''day of restricted work activity,'' ''medical treatment,'' and ''occupational illness.'' As previously mentioned, FRA proposed to remove the term ''arising from the operation of a railroad'' and its definition and add the term ''event or exposure arising from the operation of a railroad'' and its definition. FRA proposed to create definitions of ''covered data,'' ''general reportability criteria,'' ''medical removal,'' ''musculoskeletal disorder,'' ''needlestick or sharps injury,'' ''new case,'' ''occupational hearing loss,'' ''occupational tuberculosis,'' ''privacy concern case,'' ''significant change in the number of reportable days away from work,'' ''significant illness,'' and ''significant injury.''

Comments and Final Rule/Decision

These changes will be discussed in context later in the section-by-section analysis or elsewhere in this preamble.

C. Revisions to Provision on Telephonic Reporting—§ 225.9

Proposal

The Working Group agreed to propose certain amendments to § 225.9, pertaining to telephonic reporting, and the corresponding instructions related to telephonic reporting in the Guide. Prior to this final rule, FRA had required immediate telephonic reporting of accidents/incidents to FRA through the National Response Center (NRC) in only a limited set of circumstances, *i.e.*, the occurrence of an accident/incident arising from the operation of a railroad that results in the death of a rail passenger or employee or the death or injury of five or more persons. *See* 1997's § 225.9(a). In contrast, under OSHA's final rule,

> Within eight (8) hours after the death of any employee from a work-related incident or the *in-patient hospitalization* of *three or more employees* as a result of a work-related incident, you must orally report the fatality/multiple hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, that is nearest to the site of the incident.

Emphasis added. 29 CFR 1904.39(a). Further, OSHA's final rule states,

> Do I have to report a fatality or hospitalization that occurs long after the incident?
>
> No, you must only report each fatality or multiple hospitalization incident that occurs *within (30) days of an incident.*

Emphasis added. 29 CFR 1904.39(b)(6). Finally, OSHA's final rule states,

> *Do I have to report a fatality or multiple hospitalization incident that occurs on a commercial or public transportation system? No,* you do not have to call OSHA to report a fatality or multiple hospitalization incident if it involves a commercial airplane, train, subway or bus accident. * * *

Emphasis added. 29 CFR 1904.39(b)(4). This provision would seem to exempt railroads from telephonically reporting to OSHA all but a very few railroad accidents/incidents. The extent of the exemption from OSHA's telephonic reporting requirement depends on how broadly ''commercial or public transportation system'' is interpreted.

As recommended by the Working Group, FRA proposed to broaden the set of circumstances under which a railroad would be required to report an accident/incident telephonically to the NRC, and to make certain other refinements to the rule. Specifically, FRA first proposed to add requirements for telephonic reporting when there is a death to any employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad. Railroads are increasingly using contractors to perform work previously performed by railroad employees. When those workers are exposed, the hazards are often unique to the railroad environment or otherwise involve conditions under FRA's responsibility. Receiving these reports will assist FRA in discharging its responsibility for monitoring the safety of railroad operations.

FRA also proposed to require the telephonic reporting of certain train accidents that are relevant to the safety of railroad passenger service, including otherwise reportable collisions and derailments on lines used for scheduled passenger service and train accidents that foul such lines. These events are potentially quite significant, since they may indicate risks which affect passenger service (*e.g.*, poor track maintenance or operating practices). Further, these events often cause disruption in intercity and commuter passenger service. Major delays in commuter trains, for instance, have direct economic effects on individuals and businesses.

FRA also proposed to incorporate provisions similar to the National Transportation Safety Board's (NTSB) requirements for telephonic reporting (part 840) into its own regulations and *Guide*. The key provisions of NTSB's requirements, excerpted in the NPRM for the convenience of the reader, can be found at §§ 840.3 and 840.4. See also 67 FR 63025–26.

The reason FRA proposed to incorporate requirements similar to NTSB's standards for telephonic reporting into its own regulations and *Guide* is that, unlike NTSB, FRA can enforce these requirements through the use of civil penalties. FRA has long relied upon reports required to be made to NTSB as a means of alerting its own personnel who are required to respond to these events. Although most railroads are quite conscientious in making telephonic reports of significant events, including some not required to be reported, from time to time FRA does experience delays in reporting that adversely affect response times. In this regard, it should be noted that FRA conducts more investigations of railroad accidents and fatalities than any other public body, and even in the case of the

relatively small number of accidents that NTSB selects for major investigations, FRA provides a substantial portion of the technical team participating from the public sector. Accordingly, it is appropriate that FRA take responsibility for ensuring that timely notification is provided. As can be seen by comparing the referenced NTSB regulations to § 225.9, FRA has not adopted NTSB's standards wholesale, but extracted necessary additions to FRA's existing requirements (*e.g.*, train accident requiring evacuation of passengers), used terminology from FRA regulations to describe the triggering events (*e.g.*, ''train accident'' as defined in § 225.5), and slightly modified the contents of the required report (*e.g,* ''available estimates'' instead of ''estimate'').

Some members of the Working Group expressed concern about which railroad should be responsible for making the telephonic report in the case of joint operations. The Working Group agreed that for purposes of telephonic reporting, the dispatching railroad, which controls the track involved, would be responsible for making the telephonic report.

There was much discussion in the Working Group regarding whether railroads should be required to telephonically report certain incidents to the NRC ''immediately.'' One suggestion was to set a fixed period, such as three or four hours, to report an accident/incident, or in any event, to provide a reasonable amount of time in which to report. Prompt reporting permits FRA and (where applicable) NTSB to dispatch personnel quickly, thereby making it possible for them to arrive on scene before re-railing operations and track reconstruction begin and key personnel become unavailable for interview. Decades of experience in accident investigation have taught FRA that the best information is often available only very early in the investigation, before physical evidence is disturbed and memories cloud.

In addition, there was a suggestion that railroads be permitted to immediately report certain incidents by several methods other than by a telephone call, including use of a facsimile, or notification by e-mail. Railroad representatives indicated that telephonic reporting is sometimes burdensome, particularly when a busy manager must wait to speak to an emergency responder for extended periods of time. FRA rejected this suggestion, and is requiring that immediate notification be done by telephone, and only by telephone, because FRA is concerned that if notification is given by other methods, such as facsimile or e-mail, it is possible that no one will be available to immediately receive the facsimile or e-mail message. Conversely, with a telephone call to an emergency response center, a railroad should be able to speak immediately to a person, or at the very least, should hear a recording that would immediately direct the caller to a person.

Some members of the Working Group expressed concern that continued use of the term ''immediate'' in conjunction with a broadening of the events subject to the FRA rule might produce harsh results, due to the need to address emergency response requirements for the safety and health of those affected and to determine the facts that are predicates for reporting. The proposed rule addressed this concern by stating that,

> [t]o the extent the necessity to report an accident/incident depends upon a determination of fact or an estimate of property damage, a report would be considered immediate if made as soon as possible following the time that the determination or estimate is made, or could reasonably have been made, whichever comes first, taking into consideration the health and safety of those affected by the accident/incident, including actions to protect the environment.

§ 225.9(d).Since FRA and the Working Group believe that immediate telephonic reporting raises issues related to emergency response unique to the railroad industry, the Working Group agreed not to conform in some respects to OSHA's oral or in-person reporting requirements. Accordingly, to the extent that OSHA's requirements regarding oral reports by telephone or in person apply to the railroad industry and that part 225 diverges from those requirements, FRA will include in the MOU with OSHA a provision specifying how and why FRA has departed from OSHA's requirements in this area.

Comments and Final Rule/Decision

No specific comments were received on this issue. For the reasons stated above, FRA has adopted the language as proposed in the NPRM for this final rule.

D. Revisions to Criteria for Reporting Occupational Fatalities, Injuries, and Illnesses—§ 225.19(d)

1. FRA's Reporting Criteria Applicable to Railroad Employees

Proposal

Section 225.19(d), as in effect until May 1, 2003, reads as follows:

> Group III-Death, injury, or occupational illness. Each event arising from the operation of a railroad shall be reported on Form FRA F 6180.55a if it results in:
>
> (1) Death to any person;
>
> (2) Injury to any person that requires medical treatment;
>
> (3) Injury to a railroad employee that results in:
>
> (i) A day away from work;
>
> (ii) Restricted work activity or job transfer; or
>
> (iii) Loss of consciousness; or
>
> (4) Occupational illness of a railroad employee.
>
> * * * * *

The comparable provisions of OSHA's Final Rule, excerpted in the NPRM for the convenience of the reader, can be found at 29 CFR 1904.4(a) and 1904.7(b). See also 67 FR 63026–27. As indicated in the NPRM and in the above-referenced rule text, OSHA's final rule has specific recording criteria for cases described in 29 CFR 1904.8 through 1904.12. These cases involve work-related needlestick and sharps injuries, medical removal, occupational hearing loss, work-related tuberculosis, and independently reportable work-related musculoskeletal disorders. *See* Web site for OSHA regulations located in the **SUPPLEMENTARY INFORMATION** section.

Comments and Final Rule/Decision

No specific comments were received on the definitions of work-related ''needlestick or sharps injury'' and ''occupational tuberculosis.'' FRA has adopted these definitions as proposed. Although no specific comments were received on the definition of ''medical removal,'' and FRA has adopted this definition almost exactly as proposed, this term will be discussed later in this section of the preamble, in context with the discussion of the ''float vs. fixed'' issue. Before addressing the comments received on occupational hearing loss and work-related musculoskeletal disorders, it is necessary to provide an overview of OSHA's evolved position on these issues, since OSHA had not yet adopted its position at the time that the Working Group had reached consensus.

Overview of OSHA's Position on Occupational Hearing Loss and Musculoskeletal Disorders

In response to several comments received after publication of its Final Rule, which was scheduled to take effect on January 1, 2002, OSHA delayed the effective date of three of the rule's provisions until January 1, 2003, so as to allow itself further time to evaluate 29 CFR 1904.10, regarding occupational hearing loss, and 29 CFR

1904.12 and 1904.29(b)(7)(vi),[3] regarding musculoskeletal disorders (''MSDs''). *See* 66 FR 52031. On July 1, 2002, OSHA published a final rule establishing a new standard for the recording of occupational hearing loss cases for calendar year 2003. *See* 67 FR 44037. However, because OSHA was still uncertain about how to craft an appropriate definition for musculoskeletal disorders, and whether or not it was necessary to include a separate column on the OSHA log for the recording of these cases and occupational hearing loss cases, OSHA simultaneously published a proposed delay of the effective dates of these provisions, from January 1, 2003 to January 1, 2004, and requested public comment on the provisions. *See* 67 FR 44124. On December 17, 2002, OSHA published a final rule adopting the proposed delay. *See* 67 FR 77165.

Prior to OSHA's final rule, the recordkeeping rule had no specific threshold for recording hearing loss cases. *See* 67 FR 44038. The Final Rule established a new 10-dB standard at 29 CFR 1904.10:

> If an employee's hearing test (audiogram) reveals that a Standard Threshold Shift (STS) has occurred, you must record the case on the OSHA 300 Log by checking the ''hearing loss'' column. * * * A standard Threshold Shift, or STS, is defined in the occupational noise exposure standard at 29 CFR 1910.95(c)(10)(i) as a change in hearing threshold, relative to the most recent audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz in one or both ears.

See 66 FR 6129 (January 19, 2001). On October 12, 2001, OSHA delayed the provision until January 1, 2003, in order to seek comments on what should be the appropriate hearing loss threshold. *See* 66 FR 52031. As an interim policy for calendar year 2002, OSHA added a new paragraph (c) to 29 CFR 1904.10 that adopted the 25-dB standard set forth in OSHA's enforcement policy, which had been in effect since 1991, and which was FRA's approach at the time of this rulemaking.[4] The enforcement policy stated that OSHA would cite employers for failing to record work-related shifts in hearing of an average of 25 dB or more at 2000, 3000, and 4000 Hz in either ear. Thus, the hearing loss of an employee would be tested by measuring the difference, or shift, between the employee's current audiogram and the employee's original baseline audiogram. *See* 67 FR 44037, 44038. If the shift was 25 dB or more, OSHA required that it be recorded. The employee's original baseline audiogram is one of two starting points, or baselines, from which you can measure a Standard Threshold Shift (STS), the other being audiometric zero.

Audiometric zero represents the statistical average hearing threshold level of young adults with no history of aural pathology, thus it is not specific to the employee. This is the starting point from which the American Medical Association (AMA) measures a 25-dB permanent hearing impairment. The employee's original baseline audiogram, on the other hand, is taken at the time the worker was first placed in a hearing conservation program.[5] This starting point, which has been enforced by OSHA since 1991 and is the starting point in use by FRA until the effective date of this final rule, fails to take into account any hearing loss that the employee has suffered in previous jobs and can present a problem if the employee has had several successive employers at high-noise jobs.

Thus, if an individual employee has experienced some hearing loss before being hired, a 25-dB shift from the employee's original baseline would be a larger hearing loss than the 25-dB shift from audiometric zero that the AMA recognizes as a hearing impairment and disabling condition. For example, if an employee experienced a 20-dB shift from audiometric zero prior to being hired in a job where he later suffered a 15-dB shift hearing loss from his original baseline audiogram, the AMA would count this as a 35-dB shift, a serious hearing impairment, but under OSHA's enforcement policy (and FRA's approach prior to this final rule), this would only have counted as a 15-dB shift that is not recordable under OSHA's enforcement policy or 29 CFR 1904.10 for calendar year 2002. In order for it to become recordable, the employee would have had to suffer an additional 10-dB shift, which would mean that the employee would have suffered a 45-dB shift from audiometric zero—almost twice the amount that the AMA considers to be a permanent hearing impairment.

After considering several comments demonstrating that a 25-dB shift from an employee's original baseline audiogram was not protective enough and that a 10-dB shift from an employee's original baseline audiogram was overly protective (and more appropriate as an early warning mechanism that should trigger actions under the Occupational Noise Exposure Standard[6] to prevent impairment from occurring), OSHA adopted a compromise position that made a 10-dB shift from an employee's original baseline audiogram recordable in those cases where this shift also represented a 25-dB shift from audiometric zero.

Proposal

As OSHA's new approach to defining and recording occupational hearing loss cases was not before the Working Group when consensus was reached, FRA sought comment on whether FRA should adopt OSHA's new (2003) approach as FRA's fixed approach, beginning on the effective date of FRA's final rule, or whether FRA should diverge from OSHA and continue to enforce OSHA's 2002 approach (which was approved by the Working Group and the RSAC and was the same as FRA's approach at the time of this rulemaking) as a fixed approach beginning on the effective date of FRA's final rule. *See* proposed *Guide* at Ch. 6, pp. 27–28, and Appendix E, p. 4.

Comments

In its written comment, AAR strongly opposed the adoption of OSHA's new policy ''without any discussion of the wisdom of the policy by the RSAC working group considering the issues posed in this proceeding.'' AAR also noted that the policy would result in a greater number of hearing loss cases being reported by the railroad industry and result in an adverse trend in the occurrence of railroad injuries

[3] The effective date of the second sentence of § 1904.29(b)(7)(vi), which states that musculoskeletal disorders are not considered privacy concern cases, was delayed until January 1, 2003 in OSHA's October 12, 2001, final rule. On July 1, 2002, OSHA proposed to delay the effective date of this same provision until January 1, 2004. *See* 67 FR 44124. On December 17, 2002, OSHA adopted this proposed delay. *See* 67 FR 77165. This provision will be discussed in the context of privacy concern cases in the section-by-section analysis at ''III.G.1.'' of this preamble.

[4] *See 1997 Guide* at Appendix E, p. 4. FRA's Occupational Illness Code #1151 in the *1997 Guide,* concerning noise-induced hearing loss, provides in part: ''An STS is a change in hearing threshold relative to a baseline audiogram that averages 10 dB or more at 2000, 3000, and 4000 hertz in either ear. Documentation of a 10 dB shift is not, of and by itself, reportable. There must be a determination by a physician * * * that environmental factors at work were a significant cause of the STS. However, if an employee has an overall shift of 25 dB or more above the original baseline audiogram, then an evaluation must be made to determine to what extent it resulted from exposure at work.''

[5] Not all employees are placed in a hearing conservation program. OSHA only requires such a program to be in place in general industry when the noise exposure exceeds an 8-hour time-weighted average of 85 dB.

[6] Under 29 CFR 1910.95, employers must take protective measures (employee notification, providing hearing protectors or refitting of hearing protectors, referring employee for audiological evaluation where appropriate, etc.) to prevent further hearing loss for employees who have experienced a 10-dB shift from the employee's original baseline audiogram. *See* 67 FR at 44040–41.

regardless of the railroads' actual performance.

At the post-NPRM working group meeting, FRA replied that the RSAC Working Group was able to consider only one approach at the Working Group meeting: whether or not to adopt OSHA's *old* enforcement policy (that was finally put into rule form), which was essentially the same as FRA's policy at that time. In contrast, OSHA was able to consider this issue in more detail and over a greater period of time than was FRA, as is evident from the overview of OSHA's evolved position on this issue.

AAR acquiesced in accepting the criteria for reporting, but was concerned that there would be increases in reportables for the first few years, as OSHA had estimated that this new change would result in a significant increase in cases. AAR asked FRA to consider reporting the hearing loss cases under covered data, spread over three years. After the meeting, AAR sent a letter to FRA dated December 13, 2002, echoing the concerns expressed at the meeting.

Final Rule/Decision

OSHA also noted concern among employers because the application of the new criteria in 29 CFR 1904.10 would result in an increase in recorded hearing loss cases. *See* 67 FR 44038–40. However, after recognizing that the new criteria will capture more hearing loss cases, and that caution must be used when comparing the future data with prior years, OSHA emphasized that by requiring an employer to record only those STSs that exceed 25 dB from audiometric zero, the regulation ''assures that all recorded hearing losses are significant illnesses.'' *See* 67 FR 44040. In the discussion of its decision, OSHA concluded that it would be inappropriate to adopt a policy of recording only 25-dB shifts from the employee's baseline audiogram as this would ''clearly understate the true incidence of work-related hearing loss.'' *See* 67 FR 44040–41. Additionally, aligning the recording threshold with the STS criterion in OSHA's Noise Standard will provide more opportunities for employer intervention and prevention of future hearing loss cases. *See* 67 FR 44046. Thus, OSHA was fully aware of the expected increase in occupational hearing loss cases, but nevertheless concluded that it was very important that this data be collected. FRA agrees. The importance of capturing the true magnitude of work-related hearing loss, is justification alone for adopting these criteria; however, it is important to note that the increase in the number of reportables will be partially offset by OSHA's reclassification as non-reportable many events that previously were reportable.[7] Because the Working Group could not reach full consensus, the issue was presented to FRA for resolution. Upon careful consideration and review of AAR's comments and letter, FRA has decided not to include occupational hearing loss cases under covered data. Note that, for clarification and simplicity, the rule text definition has been amended to reflect the actual recording criteria used by OSHA (for calendar year 2003 and beyond) rather than the citation to the relevant section of OSHA's regulation. This amendment does not represent a substantive change from OSHA's criteria.

Proposal

As noted above, OSHA is reconsidering the definition of musculoskeletal disorder and the requirement of having a separate column on the OSHA 300 log for the recording of MSD and occupational hearing loss cases, having delayed these provisions until January 1, 2004. *See* 67 FR 77165. As the issue of OSHA's proposed delay was not before the Working Group when consensus was reached and the delay had not been adopted by OSHA prior to the publication of FRA's NPRM, FRA sought comment on whether or not the definition and column requirements should be adopted if OSHA's proposed January 1, 2004 delay took effect. It was noted in the NPRM that if FRA were to go forth with the provisions as approved by the Working Group, FRA would be adopting these provisions in advance of OSHA, a result that may not have been contemplated by the Working Group when it agreed to follow OSHA on these issues prior to the proposed delays.

In the event that OSHA chose not to delay the effective date of these provisions, FRA sought comment on whether or not to diverge from OSHA by not adopting the definition or column requirements, since FRA already had its own forms and methods in place to collect this data for OSHA's purposes. Instead of requiring railroads to record cases and check boxes on the OSHA 300 log, FRA requires railroads to report these cases using assigned injury codes on the FRA Form F 6180.55a. Code 1151, for example, is the code for occupational hearing loss cases, thus no additional column would be necessary. Similarly, the different kinds of injuries that could qualify as an MSD are given separate codes. Once OSHA decides what types of injuries are appropriate to include in the category or definition of an MSD, OSHA would be able to identify the MSD cases by their respective code numbers, thereby allowing OSHA to use FRA's data for national statistical purposes. Although it is not practical for FRA's injury codes to be as extensive as OSHA's codes, it would be possible to amend the *Guide* so as to reflect the major codes recognized by OSHA and to add a category such as ''Other MSDs, as defined by OSHA in § 1904.12.''

FRA also sought comment on whether or not a definition of an MSD was necessary, since FRA had no special criteria in its regulations beyond the general recording criteria for determining which MSDs to record, and because OSHA's definition appeared to be used primarily as guidance for when to check the MSD column on the 300 Log. *See* 66 FR 6129–6130.

Comments

AAR believes no purpose would be served by having separate columns, since OSHA would still be able to use FRA's data for statistical purposes without adoption of this requirement. Although no specific comments were received regarding the adoption of a definition of an MSD, FRA raised the issue at the post-NPRM Working Group meeting. FRA pointed out that there were no special reporting criteria for MSDs and that there may be more problems in trying to delete the definition than to leave it in. Because MSDs must be independently reportable, there seemed to be little or no effect on the regulated community by retaining the proposed definition. AAR indicated that it was inclined to leave the definition in, but might reconsider the issue and provide FRA with a position on the issue after the meeting. However, no further comments were received.

Final Rule/Decision

Since FRA already has its own forms and methods in place to collect data on occupational hearing loss and MSD cases for OSHA's statistical purposes, and because OSHA has not yet adopted the column requirement, FRA has not adopted the column requirement for the reporting of occupational hearing loss and MSD cases in its final rule. Additionally, for the reasons stated above, FRA has adopted the MSD definition as proposed. *See also* the discussion of deleting the exclusion of MSDs from the definition of ''privacy concern case.'' This difference will be

[7] *See* later discussion concerning the definitions of ''medical treatment'' and ''first aid'' at section ''III.J.3.'' of this preamble.

addressed in the MOU with OSHA, as appropriate.

Proposal

FRA also sought comment on whether the definitions of terms in its regulations should ''float,'' *i.e.*, change automatically anytime OSHA revises the definition of the term in its regulations, since the main purpose of this rulemaking was to bring FRA's rule into general conformity with OSHA's regulations (which are developed by OSHA after a full opportunity for notice and comment), or whether FRA's adoption of a fixed and certain approach to the definitions of terms could better serve FRA's safety objectives and the needs of the regulated community. This issue was particularly relevant for the proposed definition of ''medical removal.'' Because medical removal is such a complex issue, and one that is rarely, if at all, encountered in the railroad environment, FRA sought comment on whether this particular definition should ''float'' with OSHA's. That is, should we word our definition so that it is tied to OSHA's standard anytime OSHA might change that standard? Since the proposed definition [8] referenced OSHA's standard without restating it within the rule text or preamble, this would appear to reflect the intent of the Working Group.

Comments

AAR commented that it was opposed to the concept of floating regulations, stating that there should be an opportunity for FRA's regulated community to comment on the suitability of any changes in OSHA's regulations since there is sometimes a need to differ from OSHA.

Final Rule/Decision

FRA still believes that with respect to issues that are not unique to railroading, AAR would have a full opportunity for notice and comment through OSHA's rulemaking in the event that OSHA decides to change its regulations. However, FRA recognizes AAR's concerns and has decided not to float the definition of ''medical removal'' or any other terms. Accordingly, any definitions that have been modeled on OSHA's wording have been adopted by using the same or similar wording; any definitions that incorporate OSHA's regulations by reference are noted as adopting the year-specific version of such regulations.

Proposal

Finally, OSHA added another category of reportable cases: ''significant injuries or illnesses.'' With regard to the reportability of illnesses and injuries of railroad employees, there were at least three primary differences between OSHA's reporting criteria and FRA's reporting criteria at the time of this rulemaking, at least as stated in § 225.19(d). First, FRA required that all occupational illnesses of railroad employees be reported. *See* §§ 225.5 and 225.19(d)(4). By contrast, under OSHA's Final Rule, only certain occupational illnesses are to be reported, namely those that: result in death, medical treatment, days away from work, or restricted work or job transfer; constitute a ''significant illness''; or meet the ''application to specific cases of [29 CFR] 1904.8 through 1904.12.'' Second, for the reason that FRA's interpretation of part 225 was already very inclusive, FRA's § 225.19(d) criteria did not use the term ''significant injuries,'' which is incorporated in OSHA's Final Rule. While FRA did not use the phrase ''significant injuries'' in its 1997 rule text, the *1997 Guide* did require the reporting of conditions similar to OSHA's ''significant injuries.''

> The distinction between medical treatment and first aid depends not only on the treatment provided, but also on the severity of the injury being treated. First aid * * * [i]nvolves treatment of only *minor* injuries * * * An injury is not minor if * * * [i]t impairs bodily function (*i.e.*, normal use of senses, limbs, etc.); * * * [or] [i]t results in damage to the physical structure of a nonsuperficial nature (*e.g.* fractures); * * *

1997 *Guide*, Ch. 6, p. 6. Accordingly, under the 1997 *Guide*, fractures were considered not to be minor injuries, and a punctured eardrum was likewise not considered a minor injury because it would involve impairment of ''normal use of senses.'' *Id.* Third, FRA did not have ''specific cases'' reporting criteria for occupational injuries of railroad employees.

FRA proposed to conform part 225 to OSHA's Final Rule with regard to these three differences by amending its regulations at § 225.19(d) and related definitions at § 225.5. FRA would, however, distribute the specific conditions specified under OSHA's ''significant'' category (§ 1904.7(b)(7)) into injuries and illnesses, subcategories that OSHA could, of course, aggregate, and FRA would omit the note to OSHA's description of ''significant illnesses and injuries,'' which did not appear to be necessary for a proper understanding of the concept and which might have been read as open-ended, a result FRA did not intend. The text of the note is excerpted below:

> Note to § 1904.7: OSHA believes that most significant injuries and illnesses will result in one of the criteria listed in § 1904.7(a) * * * . In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of the diagnosis but are likely to be recommended as the disease progresses. OSHA believes that cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

29 CFR 1904.7(b)(7). FRA believed that the note was intended to reference a statutory issue not present in the case of FRA's reporting system and could be omitted from FRA's rule as not relevant and to avoid potential ambiguity. FRA also proposed to explain these new reporting requirements in the *2003 Guide*. *See* later discussion of Chapter 6 of the *2003 Guide*.

Comments and Final Rule/Decision

No specific comments were received on this issue. For the reasons stated above, FRA has adopted the amendments to the rule and *Guide* as proposed.

2. FRA's Reporting Criteria Applicable to Employees of a Contractor to a Railroad

Proposal

As previously noted, under the 1997 rule's § 225.19(d), ''Each event arising from the operation of a railroad shall be reported * * * if it results in * * * (1) Death to any person; (2) Injury to any person that requires medical treatment * * *.'' Under the ''definitions'' section of the accident reporting regulations, ''person'' included an independent contractor to a railroad. *See* 1997's § 225.5. Reading these regulatory provisions together, deaths to employees of railroad contractors that arose from the operation of a railroad, and injuries to employees of railroad contractors that arose from the operation of a railroad and required medical treatment would appear to be reportable to FRA. (The 1997 *Guide*, however, narrowed the requirement through its reading of ''arising from the operation of a railroad.'') FRA did not require reporting of occupational illnesses of contractors; under 1997's § 225.19(d)(4), only the occupational illnesses of

[8] The proposed definition read: ''*Medical removal* means medical removal under the medical surveillance requirements of an Occupational Safety and Health Administration standard in 29 CFR part 1910, even if the case does not meet one of the general reporting criteria.''

railroad employees were required to be reported.

By contrast, under OSHA's Final Rule, the reporting entity is required to report work-related injuries and illnesses, including those events or exposures meeting the special recording criteria for employees of contractors, only if the employee of the contractor is under the day-to-day supervision of the reporting entity.

> If an employee in my establishment is a contractor's employee, must I record an injury or illness occurring to that employee? If the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

29 CFR 1904.31(b)(3).

In the Working Group meetings, APTA noted that it was difficult to comply with FRA's 1997 rule, read literally, with respect to an employee of a contractor to a railroad while he or she is off railroad property. Many commuter railroads often do not know whether an employee of a contractor to the railroad is injured or sickened if the event occurred on property other than property owned, leased, or maintained by the commuter railroad; it was difficult to follow up on an injury or illness suffered by such an employee. For example, ABC Railroad contracts with XYZ Contractor to repair ABC's railcars at XYZ's facilities. An employee of XYZ Contractor, while repairing ABC's railcar at XYZ's facility, receives an injury resulting in medical treatment. ABC Railroad notes that it may not know about the injury and, therefore, could not report it. Furthermore, no information is lost in the national database since the contractor must report the injury to OSHA even if ABC Railroad does not report the injury. The Working Group could not reach consensus on whether to require reporting of injuries to employees of railroad contractors while off railroad property.

A similar difficulty with reporting occurred in the context of fatalities to employees of contractors to a railroad. With respect to whether to require that railroads report fatalities of employees of contractors that arose out of the operation of the railroad but occurred off railroad property, the Working Group also could not reach consensus. AAR noted that for the reasons stated above related to injuries and illnesses, it was difficult for railroads to track fatalities of persons who were not employed by the railroad. Rail labor representatives noted on the other hand, that fatalities were the most serious cases on the spectrum of reportable incidents and that it would be important that those cases be reported to FRA. In addition, rail labor representatives noted that railroads often contract for taxi services to deadhead railroad crews to their final release point and that if a driver died in a car accident transporting a railroad crew, FRA should know about those cases. FRA noted that as a practical matter, those types of cases occurred infrequently, and that FRA data showed only two possible fatal car accidents occurring off railroad property that involved employees of contractors to a railroad. As a compromise, rail labor representatives proposed that only fatalities that involved transporting or deadheading railroad crews be reportable, but that all other fatalities to employees of contractors to a railroad that occur off railroad property, not be reportable, even if the incident arose out of the operation of the railroad.

Since the Working Group could not reach consensus on the issue of reporting injuries, illnesses, or fatalities of contractors to a railroad that arose out of the operation of the railroad but occurred off railroad property, FRA drafted a proposal based upon its reasoned consideration of the issue. In this regard, FRA attempted to balance its need for comprehensive safety data concerning the railroad industry against the practical limitations of expecting railroads to be aware of all injuries suffered by contractors off of railroad property.

FRA recognized that certain types of accident/incidents occurring off of railroad property involved scenarios in which the fact that the contractor was performing work for a railroad was incidental to the accident or incident, and would offer no meaningful safety data to FRA, *e.g.*, ordinary highway accidents involving an on-duty contractor to a railroad.

FRA proposed deleting the term ''arising from the operation of a railroad'' and its definition from § 225.5. The definition read as follows: ''*Arising from the operation of a railroad* includes all activities of a railroad that are related to the performance of its rail transportation business.'' The new term ''event or exposure arising from the operation of a railroad'' would be added to § 225.5's list of defined terms and given a three-tier definition. First, ''event or exposure arising from the operation of a railroad'' would be defined broadly with respect to any person on property owned, leased, or maintained by the railroad, to include any activity of the railroad that relates to its rail transportation business and any exposure related to that activity. Second, the term would be defined broadly in the same way with respect to an employee of the railroad, but without regard for whether the employee is on or off railroad property. Third, the term would be defined narrowly with respect to a person who is neither on the railroad's property nor an employee of the railroad, to include only certain enumerated events or exposures, *i.e.*, a train accident, a train incident, or a highway-rail crossing accident/incident involving the railroad; or a release of hazardous material from a railcar in the railroad's possession or a release of another dangerous commodity if the release is related to the railroad's rail transportation business.

When read together with the rest of proposed § 225.19(d), the new definition of ''event or exposure arising from the operation of a railroad'' would mean that a railroad would not have to report to FRA the death or injury to an employee of a contractor to the railroad who is off railroad property (or deaths or injuries to any person who is not a railroad employee) unless the death or injury results from a train accident, train incident, or highway-rail grade crossing accident involving the railroad; or from a release of a hazardous material or some other dangerous commodity in the course of the railroad's rail transportation business. In addition, FRA would require railroads to report work-related illnesses only of railroad employees and under no circumstances the illness of employees of a railroad contractor. These proposed reporting requirements diverge from the OSHA standard, which would require the reporting of the work-related death, injury, or illness of an employee of a contractor to the reporting entity if the contractor employee is under the day-to-day supervision of the reporting entity. 29 CFR 1904.31(b)(3).

Comments

Although no specific comments were received on the proposal itself, AAR commented that the *Guide's* discussion of contractors did not reflect FRA's proposed approach and should be amended to do so.

Final Rule/Decision

For the reasons stated above, FRA has adopted the proposal as stated and has amended the *Guide* to reflect this new approach. FRA intends to address the divergence from OSHA on the employee of a contractor issue in the MOU.

3. Reporting Criteria Applicable to Illnesses

Proposal

At a pre-NPRM meeting of the Working Group, AAR proposed that major member railroads would file, with their FRA annual report, a list of claimed but denied occupational illnesses not included on the Form FRA F 6180.56, ''Annual Railroad Report of Employee Hours and Casualties by State,'' because the railroads found the illnesses not to be work-related. The list would be organized by State, and would include the name of the reporting contact person. FRA and other Working Group members had expressed appreciation for this undertaking. It was agreed that this was appropriate for implementation on a voluntary basis, and no comment was sought on this matter.

Comments and Final Rule/Decision

No specific comments were received on this issue. The list, as an attachment to the annual report (FRA F 6180.56), will be adopted on a voluntary basis. Note, however, that after discussing the disadvantages of failing to capture data concerning claimed illnesses and injuries on a standard FRA form, the Working Group agreed to the mandatory recording of this data on a new form (FRA F 6180.107). *See* discussion of recording claimed illnesses in section ''III.G.2.'' of the preamble, below.

E. Technical Revision to § 225.21, ''Forms''

Proposal

The Working Group agreed to add a new subsection § 225.21(j) to create a new form (Form FRA F 6180.107), which would be labeled ''Alternative Record for Illnesses Claimed to Be Work-Related.'' This form would call for the same information that is included on the Form FRA F 6180.98 and would have to be completed to the extent that the information is reasonably available. A further discussion of the nature of this new form is discussed under the revisions to § 225.25, later in this preamble.

Comments and Final Rule/Decision

No specific comments were received on this issue. The changes to this form have been adopted as proposed.

F. Technical Revision to § 225.23, ''Joint Operations''

Proposal

The Working Group agreed to propose certain minor changes to the regulatory text (specifically, to § 225.23(a), concerning joint operations) simply to bring it into conformity with the other major changes to the regulatory text that are proposed. Note that for purposes of telephonic reporting in joint operations, the dispatching railroad would be required to make the telephonic report. *See* proposed § 225.9.

Comments and Final Rule/Decision

No specific comments were received on this issue. The regulatory text amendments have been adopted as proposed.

G. Revisions to § 225.25, ''Recordkeeping''

1. Privacy Concern Cases

Proposal

The Working Group agreed to propose changes to the regulatory text under § 225.25, concerning recordkeeping, by revising § 225.25(h) to address a class of cases described by OSHA as ''privacy concern cases.'' OSHA requires an employer to give its employees and their representatives access to injury and illness records required by OSHA, such as the OSHA 300 Log, with some limitations that apply to privacy concern cases. 29 CFR 1904.35(b)(2), 1904.29(b). A ''privacy concern case'' is defined by OSHA in 29 CFR 1904.29(b)(7); one type of a privacy concern case is, *e.g.*, an injury or illness to an intimate body part. FRA proposed to define the term similarly in § 225.5. In privacy concern cases, OSHA prohibits recording the name of the injured or ill employee on the Log. The words ''privacy case'' must be entered in lieu of the employee's name. The employer must ''keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so.'' 29 CFR 1904.29(b)(6). In addition, if the employer has a reasonable basis to believe that the information describing the privacy concern case may be personally identifiable even though the employee's name has been left out, the employer may use discretion in describing the injury or illness. The employer must, however, enter enough information to identify the cause of the incident and the general severity of the injury or illness, but need not include details, *e.g.*, a sexual assault case may be described as an injury from assault.

By contrast, FRA required that an employee have access to information in the FRA-required Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) regarding his or her own injury or illness, not the FRA-required records regarding injuries or illnesses of other employees. 1997's § 225.25(a), (b), (c). This rendered the FRA-required log of reportables and accountables with its information on the name and Social Security number of the employee, inaccessible to other employees. *Id.* Additionally, FRA proposed to amend the requirement that the record contain an employee's Social Security Number, opting to allow a railroad to enter an employee's identification number instead. *See* 2003's § 225.25(b)(6). Therefore, FRA considered this difference a sufficient reason not to adopt OSHA's privacy requirements with regard to the reportable and accountable log.

Comments and Final Rule/Decision

No specific comments were received on this issue. For the reasons stated above, the regulatory text amendments have been adopted as proposed. FRA intends to address its variation from OSHA's privacy requirements with regard to the reportable and accountable log in the MOU.

Proposal

Although FRA has not allowed wide access to the reportable and accountable log, FRA requires, however, the posting in a conspicuous place in each of the employer's establishments, certain limited information on reportable accidents/incidents that occurred at the establishment, thereby making this information accessible to all those working at the establishment and not simply the particular employee who suffered the injury or illness. § 225.25(h). That limited information that must be posted includes the incident number used to report the case, the date of the injury or illness, the regular job title of the employee involved, and a description of the injury or condition. Even though the name of the employee is not required to be listed, the identity of the person might in some cases be determined, particularly at small establishments. Under 1997's § 225.25(h)(15), FRA permitted the railroad not to post an injury or illness at the establishment where it occurred if the ill or injured employee requested in writing to the railroad's reporting officer that the injury or illness not be posted. The proposed revision of the rule concerning the posting of injuries or illnesses would be consistent with OSHA's requirements with regard to its Log, but more expansive than those requirements. FRA would also give railroads discretion not to provide details of the injury or condition that constitutes a privacy case.

Comments and Final Rule/Decision

No comments were received on these proposed changes. For the reasons stated above, the amendments have been adopted as proposed. FRA intends to address these slight variations from OSHA's privacy requirements in the MOU.

Proposal

Another issue relevant to reporting privacy concern cases arose in § 1904.29(b)(7)(vi) of OSHA's January 19, 2001, Final Rule, which stated that musculoskeletal disorders were not considered privacy concern cases. OSHA delayed the effective date of this exclusion until January 1, 2003, in its October 12, 2001, final rule. On July 1, 2002, OSHA proposed to delay the effective date of this same provision until January 1, 2004, and requested comment on the provision. *See* 67 FR 44124. On December 17, 2002, OSHA published a final rule adopting the proposed delay. *See* 67 FR 77165. As the issue of OSHA's proposed delay of this provision was not before the Working Group when consensus was reached, FRA sought comment on whether or not this exclusion should be adopted if OSHA's proposed January 1, 2004, delay took effect. It was noted that if FRA were to adopt the exclusion as approved by the Working Group, FRA would be doing so in advance of OSHA's adoption of it and in advance of OSHA's defining the very term that is supposed to be excluded, a result that may not have been contemplated by the Working Group when it agreed to the proposed rule text on this issue prior to OSHA's issuance of the proposed delay. *See* discussion concerning reporting criteria for MSDs at section ''III.D.1.'' of the preamble, above. Even if OSHA chose not to delay the effective date of this provision and to give it effect on January 1, 2003, FRA sought comment on whether or not FRA should diverge from OSHA by not adopting the exclusion.

Comments

Although no specific comments were received regarding the adoption of OSHA's proposed exclusion of MSDs from the definition of ''privacy concern case,'' FRA raised this issue at the post-NPRM Working Group meeting. FRA noted that because OSHA had not yet adopted this exclusion and had not even adopted a definition of MSDs that would indicate what should be excluded, it would not make sense for FRA to adopt this exclusion. When presented with the issue at the meeting, there seemed to be general agreement by all concerned to have this exclusion in the definition of ''privacy concern case'' deleted from the revised part 225 and the FRA *Guide*.

Final Rule/Decision

Because OSHA has not yet adopted the exclusion of MSDs from its definition of ''privacy concern case,'' and since FRA has not been provided with a justification for departing from OSHA on this issue, FRA has *not* adopted the exclusion of MSDs from the definition of ''privacy concern case'' in its final rule.

Finally, the question was raised in the Working Group whether FRA's proposed regulations conformed to the Health Insurance Portability and Accessibility Act of 1996 (Pub. L. 104–191 (HIPAA)) and to the Department of Health and Human Services' regulations implementing HIPAA with regard to the privacy of medical records. *See* ''the Standards for Privacy of Individually Identifiable Health Information.'' 65 FR 82462 (Dec. 28, 2000), codified at 45 CFR parts 160 and 164. Since it appears that OSHA's regulations conform to HIPAA, and FRA proposes to conform to OSHA in all essential respects with regard to the treatment of medical information, FRA believes that its final regulations will not conflict with HIPAA requirements.

2. Claimed Illnesses for Which Work-Relatedness Is Doubted

a. Recording Claimed Illnesses

Proposal

Under the 1997 FRA rule, all accountable or reportable injuries and illnesses were required to be recorded on Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record,'' or an equivalent record containing the same information. The subset of those cases that qualified for reporting were then reported on the appropriate forms. *See* 1997's § 225.25(a), (b). If the case was not reported, the railroad was required to state a reason on Form FRA F 6180.98 or the equivalent record. *See* 1997's § 225.25(b)(26). Although this system has generally worked well, problems have arisen with respect to accounting of claimed occupational illnesses. As further explained below, railroads are subject to tort-based liability for illnesses and injuries that arise as a result of conditions in the workplace. By their nature, many occupational illnesses, particularly repetitive stress cases, may arise either from exposures outside the workplace, inside the workplace, or a combination of the two. Accordingly, issues of work-relatedness become very prominent. Railroads evaluate claims of this nature using medical and ergonomic experts, often relying upon job analysis studies as well as focusing on the individual claims.

With respect to accounting and reportability under part 225, railroad representatives stated their concern that mere allegations (*e.g.*, receipt of a complaint in a tort suit naming a large number of plaintiffs) not give rise to a duty to report. They added that many such claims are settled for what amounts to nuisance values, often with no admission of liability on the part of the railroad, so even the payment of compensation is not clear evidence that the railroad viewed the claim of work-relatedness as valid.

Although sympathetic to these concerns, FRA was disappointed in the quality of data provided in the past related to occupational illnesses. Indeed, in recent years the number of such events reported to FRA has been extremely small. FRA has an obligation to verify, insofar as possible, whether the railroad's judgments rest on a reasonable basis, and discharging that responsibility requires that there be a reasonable audit trail to verify on what basis the railroad's decisions were made. While the basic elements of the audit trail are evident within the internal control plans of most railroads, this is not universally the case.

Accordingly, FRA asked the Working Group to consider establishing a separate category of claimed illnesses. This category would be comprised of (1) illnesses for which there is insufficient information to determine whether the illness is work-related; (2) illnesses for which the railroad has made a preliminary determination that the illness was not work-related; and (3) illnesses for which the railroad has made a final determination that the illness is not work-related. These records would contain the same information as the Form FRA F 6180.98, but might at the railroad's election—

- Be captioned ''alleged'';
- Be retained in a separate file from other accountables; and
- If accountables are maintained electronically, be excluded from the requirement to be provided at any railroad establishment within 4 hours of a request.

This would permit the records to be kept at a central location, in either paper or electronic format.

The railroad's internal control plan would be required to specify the custodian of these records and where they could be found. For any case determined to be reportable, the

designation ''alleged'' would be removed, and the record would be transferred to the reporting officer for retention and reporting in the normal manner. In the event the narrative block (Form FRA F 6180.98, block 39) indicated that the case was not reportable, the explanation contained in that block would record the reasons the railroad determined that the case was not reportable, making reference to the ''most authoritative'' information relied upon. Although the Form FRA F 6180.107 or equivalent would not require a railroad to include all supporting documentation, such as medical records, it would require a railroad to note where the supporting documentation was located so that it would be readily accessible to FRA upon request.

FRA believes that the system of accounting for contested illness cases described above will focus responsibility for these decisions and provide an appropriate audit trail. In addition, it will result in a body of information that can be used in the future for research into the causes of prevalent illnesses. Particularly in the case of musculoskeletal disorders, it is entirely possible that individual cases may appear not to be work-related due to an imperfect understanding of stressors in the workplace. Review of data may suggest the need for further investigation, which may lead to practical solutions that will be implemented either under the industrial hygiene programs of the railroads or as a result of further regulatory action. Putting this information ''on the books'' is a critical step in sorting out over time what types of disorders have a nexus to the workplace. *See* amendments to §§ 225.21, 225.25, 225.33, and 225.35 and new Chapter 13 of the *2003 Guide*.

Comments and Final Rule/Decision

No specific comments were received on this issue. For the reasons stated above, FRA has adopted the amendments and new form as proposed.

b. FRA Review of Railroads' Work-Relatedness Determinations

Proposal

Concern arose within the Working Group regarding how FRA planned to review a reporting officer's determination that the illness was not work-related. As discussed below in section ''III.P.3.'' of the preamble, it is the railroad's responsibility to determine whether an illness is work-related. In connection with an inspection or audit, FRA's role will be to determine whether the reporting officer's determination was reasonable. Even if FRA disagrees with the reporting officer's determination not to report, FRA will not find that a violation has been committed as long as the determination was reasonable. FRA understands that this is consistent with the approach OSHA is employing under its revised rule, and in any event it is most appropriate given the assignment of responsibility for reporting to the employing railroad. FRA plans to establish access to appropriate expert resources (medical, ergonomic, etc.) as necessary to evaluate the reasonableness of railroad decisions not to report particular cases.

Comments and Final Rule/Decision

No specific comments were received on this issue. FRA has adopted the policy as proposed.

3. Technical Amendments

Proposal

The Working Group also agreed to propose certain minor changes to subsections 225.25(b)(16), (b)(25), (e)(8), and (e)(24), simply to bring these subsections into conformity with the other major changes to the regulatory text that are proposed.

Comments and Final Rule/Decision

No specific comments were received on these changes. For the reasons stated above, the amendments have been adopted as proposed.

H. Addition of § 225.39, ''FRA Policy Statement on Covered Data''

Proposal

FRA proposed to add a new section to the regulatory text that would include a policy statement on covered data. Specifically, § 225.39 would state that FRA will not include in its periodic summaries of data for the number of occupational injuries and illnesses, reports of a case, not otherwise reportable under part 225, involving (1) one day away from work when in fact the employee returned to work, contrary to the written recommendation to the employee by the treating physician or other licensed health care professional; (2) one day of restricted work when in fact the employee was not restricted, contrary to the written recommendation to the employee by the treating physician or other licensed health care professional; or (3) a written over-the-counter medication prescribed at prescription strength, whether or not the medication was taken.

Comments

AAR commented that the *Guide* needed to be clearer in its discussion of covered data so as to include: a definition of that term; instructions on how to report such cases; and clarification of the treatment of these cases in the questions and answers section of the *Guide* and in the instructions for Form FRA F 6180.55a. In its comments on the NPRM, verbal comments at the post-NPRM Working Group Meeting, and post-meeting letter and e-mail, AAR expressed concern regarding the sharp increase in the number of reportables that would result upon adoption of the proposed changes. In order to soften the impact of these changes on railroad industry data, AAR requested that the covered data classification be extended to three other areas of reporting:

1. One Time Dosage of Prescription Medication

In the revised OSHA regulation, a one-time dosage of a prescription medication, regardless of whether it is a topical medication or a drug that is taken orally, is now considered a reportable event. Multiple treatments or an injection have always been reportable. AAR requested that all one-time dosages be classified as ''covered data.''

2. Oxygen Therapy

The administration of oxygen is often a matter of routine, *e.g.*, a pre-hospital protocol performed by an Emergency Medical Technician (EMT). The administration of oxygen, in and of itself, is *not* reportable. However, when oxygen is provided in response to ''signs or symptoms,'' the case becomes reportable. Previously, oxygen administered for a short period of time was classified as ''first aid'' and *not* reportable, but OSHA has now removed that distinction. AAR requested that oxygen therapy for a short time be classified as a ''covered data'' case.

3. Hearing Loss

OSHA has revised its reporting rules for hearing loss, and the Working Group acquiesced in adopting OSHA's new standard in FRA's regulation. AAR, however, requested that the occupational illness cases involving hearing loss under the new OSHA regulation be classified as ''covered data.''

Final Rule/Decision

Because the Working Group could not reach full consensus on whether to extend covered data to include these additional three areas, the issues were

presented to the Administrator for resolution.

With respect to one-time dosages of a prescription medication, FRA concluded that the one-time treatment of *topical* medication should be a ''covered data'' case, because prescription strength Neosporin is often what is available to, and applied by, the treating medical professional, even when over-the-counter Neosporin would likely suffice. Prescription medication that is ingested is a different matter. Since the original OSHA regulation, major advances have been made with designer drugs and time-release medications. The single dosage prescription medicines have replaced medicine that previously would have required multiple dosages. Accordingly, FRA has concluded that medication *ingested,* even as a *single* dosage not be listed as a ''covered data'' case. The definition of ''covered data'' in § 225.39 and the corresponding discussion of ''covered data'' in the *Guide* have been amended to address AAR's concerns regarding clarity and to reflect the addition of one-time dosages of *topical* prescription medication.

With respect to the administration of oxygen issue, FRA has determined that the administration of oxygen should not be treated as ''covered data'' cases, even if such administration was for a short time, if there were ''signs and symptoms'' that triggered the administration of oxygen. This is consistent with other parts of the OSHA/FRA reporting requirements, such as the administration of a vaccine due to exposure to a contagious disease. If the employee does not exhibit any ''signs or symptoms,'' then the case is not reportable; however, if the employee does exhibit signs, then the administration of the vaccine becomes reportable.

As discussed earlier in section ''III.D.1.'' of the preamble, FRA decided *not* to classify new hearing loss cases as ''covered data.'' FRA has an interest in maintaining the integrity and value of its database.

I. Revisions to Chapter 1 of the Guide, ''Overview of Accident/Incident Reporting and Recordkeeping Requirements'

Proposal

Chapter 1 of the *Guide* was revised to reflect the major changes to part 225 and the rest of the *Guide,* such as important definitions, the revision of the telephonic reporting requirement, and the revision of the reportability criteria in § 225.19(d). In addition, Chapter 1 has been revised to change the closeout date for the reporting year. Under FRA's reporting requirements, in effect since 1997, railroads were permitted until April 15 to close out their accident/incident records for the previous reporting year. *1997 Guide,* Ch. 1, p. 11. FRA has amended its *Guide* to extend the deadline for completing such accident/incident reporting records until December 1, and will extend the deadline even beyond that date on a case-by-case basis for individual records or cases, if warranted.

Comments and Final Rule/Decision

Comments received will be discussed in context with the issues as stated elsewhere in this preamble.

J. Revisions to Chapter 6 of the Guide, Pertaining to Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet)''

FRA has amended its *Guide* to bring it, for the most part, into conformity with OSHA's recently published Final Rule on recordkeeping and reporting. The Working Group also wanted to make it clear, by noting in Chapter 6, that railroads are not required to report occupational fatalities, injuries, and illnesses to OSHA if FRA and OSHA have entered into an MOU that so provides.

Under OSHA's Final Rule, reporting requirements have changed in many ways, several of which are described below. *See also* § 225.39 regarding FRA's treatment of cases reportable under proposed part 225 solely because of, *e.g.*, recommended days away from work that are not actually taken.

1. Changes in How Days Away from Work and Days of Restricted Work Are Counted

Proposal

Under OSHA's Final Rule, if a doctor orders a patient to rest and not return to work for a number of days, or recommends that an employee engage only in restricted work, for purposes of reporting days away from work or restricted work, an employer must report the actual number of days that the employee was ordered not to return to work or ordered to restrict the type of work performed, even if the employee decides to ignore the doctor's orders by opting to return to work or to work without restriction. Specifically, under OSHA's Final Rule,

> If a physician or other licensed health care professional recommends days away, you should encourage your employee to follow that recommendation. However, the days away must be recorded whether the injured or ill employee follows the physician or licensed health care professional's recommendation or not.

29 CFR 1904.7(b)(3)(ii). FRA agrees with the position taken by OSHA, that the employee should be encouraged to follow the doctor's advice about not reporting to work and/or taking restricted time to allow the employee to heal from the injury.

OSHA states a similar rule with respect to reporting the number of days of recommended restricted duty. Specifically, OSHA's final rule states,

> May I stop counting days if an employee who is away from work because of an injury or illness retires or leaves my company? Yes, if the employee leaves your company for some reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restricted/job transfer. If the employee leaves your company because of the injury or illness, you must estimate the number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

29 CFR 1904.7(b)(3)(viii). In contrast, under FRA's *1997 Guide,* a railroad was only required to report the actual number of days that the employee did not return to work or was on restricted work duty due to a work-related injury or illness: ''A record of the actual count of these days must be maintained for the affected employee.'' *See 1997 Guide,* Ch. 6, pp. 13–14.

There was much discussion at the Working Group meetings as to whether FRA should conform to OSHA's final rule with respect to reporting the number of days away from work or number of days of restricted duty. Some Working Group members wanted to leave FRA's current reporting system in place, while others saw merit in OSHA's approach. FRA representatives met with OSHA representatives to address this issue. OSHA insisted that since it tracks an index of the severity of injuries, with days away from work being the most severe non-fatal injuries and illnesses, it was important to OSHA to maintain a uniform database and have those types of injuries captured in its statistics.

A compromise was reached on the issue of reporting the number of days away and number of days of restricted work activity that was acceptable both to the Working Group and, preliminarily, to OSHA. Specifically, FRA proposed that if no other reporting criteria apply but a doctor orders a patient to rest and not to report to work for a number of days because of a work-related injury or illness, the railroad must report the case under a special category called ''covered data.'' The *Guide* would explain how this covered data would be coded. The principal

purpose of collecting covered data is so that this information can be provided to DOL for inter-industry comparison. The general rule is as follows: Where a doctor orders days of rest for an employee because of a work-related injury or illness, the railroad must report the resulting actual days away from work unless the employee misses no days of work because of the injury or illness, in which case, the railroad must report one day. Note: If the employee takes more days than the doctor ordered, the railroad must still report actual days away from work unless the railroad can show that the employee should have returned to work sooner. The following examples illustrate the application of this principle in combination with existing requirements that would be carried forward.

- If the doctor orders the patient to five days of rest, and the employee reports to work the next day and takes no other days off as a result of the injury or illness, the railroad must report one day away from work. (This case would be separately coded and not included in FRA accident/incident aggregate statistics.)
- If, on the other hand, the employee takes three days of rest, when the doctor ordered five days of rest, then the railroad must report the actual number of days away from work as three days away from work.
- Of course, if the doctor orders five days of rest and the employee takes five days of rest, then the railroad must report the full five days away from work.
- Finally, if the doctor orders five days of rest, and the employee takes more than the five days ordered, then the railroad must report the actual number of days away from work, unless the railroad can show that the employee should have returned to work sooner than the employee actually did.

FRA noted that it may be appropriate to take into consideration special circumstances in determining the appropriate reporting system for the railroad industry. While compensation for injuries and illnesses in most industries is determined under state-level worker compensation systems, which provide recovery on a ''no-fault'' basis with fixed benefits, railroad claims departments generally compensate railroad employees for lost workdays resulting from injuries or occupational illnesses. In the event a railroad employee is not satisfied with the level of compensation offered by the railroad, the injured or ill employee may seek relief under FELA (Federal Employer's Liability Act), which is a fault-based system and subject to full recovery for compensatory damages. Further, railroad employees generally are subject to a federally-administered sickness program, which provides benefits less generous than under some private sector plans. Although it is not readily apparent in any quantitative sense how this combination of factors influences actual practices with respect to medical advice provided and employee decisions to return to work, clearly the external stimuli are different than one would expect to be found in a typical workplace. Accordingly, it seemed appropriate that the Working Group found it wise to recommend that FRA adopt a compromise approach that blends the new OSHA approach with the traditional emphasis on actual outcomes. The approach described above will foster continuity in rail accident/incident trend analysis while permitting inter-industry comparability, as well.

Comments

In its comments, AAR sought clarification as to whether the same principles that applied to counting days away from work applied to counting days of restricted work. AAR also commented that the Guide needed to be clearer in its discussion of covered data. At the post-NPRM Working Group meeting, FRA confirmed that the same principles that applied to counting days away from work would also apply to counting days of restricted work and vice versa.

Final Rule/Decision

With some slight modifications in accordance with AAR's request for greater clarity, FRA has adopted the proposed method for counting days away from work and days of restricted work. FRA will address the slight variations on this issue in its MOU with OSHA.

2. Changes in the ''Cap'' on Days Away From Work and Days Restricted; Including All Calendar Days in the Count of Days Away From Work and Days of Restricted Work Activity

Proposal

In addition, to conform to OSHA's Final Rule, FRA proposed amendments to its Guide that lower the maximum number of days away or days of restricted work activity that must be reported, from 365 days to 180 days, and change the method of counting days away from work and days of restricted work activity. The Working Group noted that counting calendar days is administratively simpler for employers than counting scheduled days of work that are missed. Using this simpler method of counting days away from work provides employers who keep records some relief from the complexities of counting days away from work under FRA's former system. Moreover, the calendar day approach makes it easier to compare an injury/illness date with a return-to-work date and to compute the difference between those two dates. The calendar method also facilitates computerized day counts. In addition, calendar day counts are a better measure of severity, because they are based on the length of disability instead of being dependent on the individual employee's work schedule. Accordingly, FRA proposed to adopt OSHA's approach of counting calendar days because this approach was easier than the former system and provided a more accurate and consistent measure of disability duration resulting from occupational injury and illness and thus would generate more reliable data. Under FRA's *1997 Guide,* days away from work and days of restricted work activity were counted only if the employee was scheduled to work on those days. In the *2003 Guide,* because it is a preferred approach, and to be consistent with OSHA's Final Rule, days away from work includes all calendar days, even a Saturday, Sunday, holiday, vacation day, or other day off, after the day of the injury and before the employee reports to work, even if the employee was not scheduled to work on those days.

Comments

Although there were no specific comments directly related to the proposed 180-day cap amendment, there was a comment with respect to an alleged disparity between the time period of the proposed cap and the time period of a pre-existing requirement for updating reports. AAR commented that there was a disparity between the proposed *Guide's* discussion of updating reports and the discussion that took place in the RSAC meetings. The proposed *Guide* stated that railroads were required to monitor employee illnesses and injuries for 180 days after the occurrence of the injury or the diagnosis of the illness and update accident/incident reports during that period. *See* Question and Answer No. 91 in the proposed *Guide,* Ch. 6, pp. 34–35. AAR concluded that this policy was inconsistent with FRA's requirement that a railroad file late reports for up to five years after the end of the calendar year to which the reports relate. *See* proposed *Guide,* Ch. 1, p. 12. It appears there was some confusion on what had actually been agreed upon related to this

comment and the difference in the requirement to update an injury versus an occupational illness, since occupational illnesses become reportable on the date of diagnosis.

At the post-NPRM meeting, FRA explained that the requirements were not inconsistent. There is a difference between *monitoring* (for 180 days) an illness or injury about which the railroad had prior knowledge, or already reported or listed as an accountable, versus having to file a *late report* for injuries or illnesses that were *never reported in any form* but should have been. With respect to the cases being *monitored,* the five-year reporting obligation would only hold the railroad responsible for failing to report a change in an employee's illness or injury that occurred within the 180-day monitoring period. Thus, if a change occurred on the 180th day, and the railroad did not discover its error in failing to report until two years later, an obligation to file a late report would still exist, but if a change occurred on the 181st day, the railroad is no longer under an obligation to *actively monitor or investigate* the case and would not be held accountable for failing to report such a *change* one day, one year, or five years later. If a railroad is provided with information or documentation of consequences that the employee claims is related to an injury that occurred more than 180 days ago, the railroad would have to handle the injury as it would a new case.

Final Rule/Decision

FRA has adopted the 180-day cap as proposed. The new cap reflects Working Group agreement that reportable and accountable injuries are tracked for 180 days from the date of the incident. However, if an injury becomes reportable *during that monitoring/tracking period,* the carrier will report it when it becomes known, even after the 180 days. This approach differs slightly from OSHA's approach, which appears to require an employer to continue counting days until the 180-day maximum is reached, regardless of whether those days were consecutive or intermittent. Thus, an employer may have to monitor or track an injury for more than 180 days. In contrast, FRA's cap of 180 days will only be reached if the employee misses those days consecutively. It has generally been FRA's experience that a reportable injury will meet one or more of the general reportability criteria within the 180-day time frame and that only a few cases continue to result in missed days beyond this time frame. Additionally, this difference would not likely have a substantial effect on the data for purposes of OSHA's severity index, since under that index 120 days away from work missed intermittently over a 180-day period would be comparable in severity to 180 days missed consecutively, or 180 days missed intermittently over a two-year period. Thus, FRA has concluded that the burden on the employer of having to monitor a case for as long a period as necessary to compile 180 days away from work outweighs the benefit of capturing more days in a few cases by adopting an intermittent 180-day cap.

FRA has added to the *2003 Guide* an explanation of the difference in occupational illness reporting versus injury and has clarified the discussion concerning the required time period for monitoring and how it relates to updating reports. FRA will address the differences in the 180-day cap in its MOU with OSHA.

3. Definitions of ''Medical Treatment'' and ''First Aid''

Proposal

FRA's *1997 Guide* indicated what constituted ''medical treatment'' and what constituted ''first aid'' and how to categorize other kinds of treatment. *See 1997 Guide,* Ch. 6, pp. 6–9. As stated in the *1997 Guide,* ''medical treatment'' rendered an injury reportable. If an injury or illness required only ''first aid,'' the injury was not reportable, but was, instead, accountable. Under OSHA's final rule, a list is provided of what constitutes ''first aid.'' 29 CFR 1904.7(b)(5). If a particular procedure is not included on that list, and does not fit into one of the two categories of treatments that are expressly defined as not medical treatment (diagnostic procedures and visits for observation or counseling), then the procedure is considered to be ''medical treatment.'' *Id.* FRA proposed to amend its regulations and *Guide* to conform to OSHA's definition and new method of categorizing what constitutes medical treatment and first aid. Specifically, FRA proposed to amend its regulations and the *Guide* to address the following four items:

a. Counseling. Under FRA's ''definitions'' section of its regulations,

> * * * Medical treatment also does *not* include preventive emotional trauma counseling provided by the railroad's employee counseling and assistance officer *unless* the participating worker has been diagnosed as having a mental disorder that was significantly caused or aggravated by an accident/incident and this condition requires a regimen of treatment to correct.

See § 225.5. In contrast, under OSHA's final rule, ''medical treatment does not include: (A) Visits to a physician or other licensed health care professional solely for observation or *counseling.* * * *'' Emphasis added. *See* 29 CFR 1904.7(b)(5)(i). Accordingly, to conform to OSHA's final rule, FRA proposed to amend its definition of ''medical treatment'' to exclude counseling as a type of medical treatment. *See* proposed § 225.5.

b. Eye patches, butterfly bandages, Steri-Strips™, and similar items. Under FRA's *1997 Guide,* use of an eye patch, butterfly bandage, Steri-Strip™, or similar item was considered medical treatment, rendering the injury reportable. Under OSHA's final rule, however, use of an eye patch, butterfly bandage, or Steri-Strip™ is considered to be first aid and, therefore, not reportable. In order to conform *FRA's Guide* to OSHA's Final Rule, FRA proposed to amend the *Guide* so that use of an eye patch, butterfly bandage, or Steri-Strip™ would be considered first aid.

c. Immobilization of a body part. Under FRA's *1997 Guide,* immobilization of a body part for transport purposes was considered medical treatment. Given, however, that OSHA's final rule considers immobilization of a body part for transport to be first aid, FRA proposed to amend its *Guide* so that immobilization of a body part solely for purposes of transport would be considered first aid.

d. Prescription versus non-prescription medication. Under FRA's *1997 Guide,* a doctor's order to take over-the-counter medication was not considered medical treatment even if a doctor ordered a dosage of the over-the-counter medication at prescription strength. Under OSHA's final rule, however, a doctor's order to take over-the-counter medication at prescription strength is considered medical treatment rather than first aid. For example, under OSHA's final rule, if a doctor orders a patient to take simultaneously three 200 mg. tablets of over-the-counter Ibuprofen, this case would be reportable, since 467 mg. of Ibuprofen is considered to be prescription strength.

The Working Group struggled with this issue. On the one hand, it is a legitimate concern that reportability not be manipulated by encouraging occupational clinics to substitute a non-prescription medication when a prescription medication is indicated. That result, however, may be more humane than a circumstance in which the medical provider is wrongly encouraged not to order an appropriate dosage.

Further, in some cases, physicians may direct the use of patent medicines simply to save the employee the time of filling a prescription or simply to hold down costs to the insurer. Also, the physician may find the over-the-counter preparation to be more suitable in terms of formulation, including rate of release and absorption.

As in the case of recommended days away from work not taken (discussed above), the Working Group settled on recommending a compromise position. Where the treating health care professional directs in writing the use of a non-prescription medication at a dose equal to or greater than that of the minimum amount typically prescribed, and no other reporting criterion applies, the railroad would report this as a special case (''covered data'' under §§ 225.5 and 225.39). FRA explored whether it was practical to add to Chapter 6 of the *2003 Guide,* a list of commonly used over-the-counter medications, including the prescription strength for those medications. FRA has concluded that this list would be helpful to the regulated community; thus, a list of over-the-counter medications that conforms to OSHA's published standards has been added to Chapter 6. If OSHA revises its list of over-the-counter medications in the future, the revised list will be posted on FRA's Web site at *http://safetydata.fra.dot.gov/guide.* As covered data, the case would be included in aggregate data provided to DOL, but would not be included in FRA's periodic statistical summaries. FRA would have the data available to reference, and if a pattern of apparent abuse emerged, FRA could examine both the working conditions in question and also review possible further amendments to these reporting regulations.

Comments and Final Rule/Decision

No specific comments were received concerning the above-proposed changes to the definitions of ''medical treatment'' and ''first aid.'' For the reasons stated above, the changes have been adopted as proposed. However, the issue was raised with respect to the classification of the administration of oxygen and one-time dosages of prescription medication. These issues were resolved by FRA, and the provisions have been amended accordingly. For a more detailed discussion, please see section ''III.H.'' of the preamble, above.

K. Revisions to Chapter 7 of the Guide, ''Rail Equipment Accident/Incident Report''

Proposal

To allow for better analysis of railroad accident data, FRA proposed to amend Chapter 7 of the *Guide* to include the new codes for remote control locomotive operations, and for reporting the location of a rail equipment accident/incident using longitude and latitude variables. *See also* sections ''III.M.'' and ''III.P.1.'' of the preamble, below.

Comments and Final Rule/Decision

No specific comments were received. For the reasons stated above, the amendments have been adopted as proposed.

L. New Chapter 12 of the Guide on Reporting by Commuter Railroads

Proposal

FRA has been faced with a number of commuter rail service reporting issues. For example, in reviewing accident/incident data using automated processing routines, FRA could not distinguish Amtrak's commuter activities from its intercity service, and could not always distinguish between a commuter railroad that ran part of its operation and contracted for another part of its operation with a freight railroad. FRA developed alternative strategies with the affected railroads for collecting these data to ensure that commuter rail operations accurately reflected the entire scope of operations, yet did not increase the burden of reporting for affected railroads. This issue also arose in the context of an NTSB Safety Recommendation, R–97–11, following NTSB's investigation of a collision on February 16, 1996, in Silver Spring, Maryland, between an Amtrak passenger train and a MARC commuter train. During the accident investigation, NTSB requested from FRA a five-year accident history for commuter railroad operations. FRA was not, however, able to provide a composite accident history for some of the commuter railroad operations because they were operated under contract with Amtrak and other freight railroads, and the accident data for some commuter railroads were commingled with the data of Amtrak and the other contracted freight railroads. Accordingly, NTSB's Safety Recommendation R–97–11 addressed to FRA read as follows: ''Develop and maintain separate identifiable data records for commuter and intercity rail passenger operations.''

When RSAC Task Statement 2001–1 was presented, FRA determined that a new chapter in the *Guide* was needed to address NTSB's and FRA's concerns regarding commuter railroad reporting. At the initial May 2001 meeting, FRA representatives presented the issue to the Working Group. FRA representatives were tasked to develop a chapter specifically dealing with commuter rail reporting. In the August 2001 Working Group meeting, FRA presented a draft of the new chapter. A task group was formed that included representatives of Amtrak, Metra, APTA, and FRA. The new Chapter 12 was presented in November of 2001 to the entire Working Group, and the Working Group accepted the chapter in its entirety.

Comments and Final Rule/Decision

No specific comments were received. For the reasons stated above, Chapter 12 has been adopted as proposed.

M. Changes in Reporting of Accidents/Incidents Involving Remote Control Locomotives

Proposal

An FRA notice entitled, ''Notification of Modification of Information Collection Requirements on Remote Control Locomotives,'' stated that the Special Study Blocks on the rail equipment accident report and highway-rail crossing report, as well as special codes in the narrative section of the ''Injury and Illness Summary Report (Continuation Sheet),'' were for only temporary use until part 225 and the *Guide* were amended. 65 FR 79915, Dec. 20, 2000. At the November 2001 Working Group meeting, some members raised the issue of addressing this statement in FRA's notice and the need to craft regular means for reporting accidents/incidents involving remote control locomotives (RCL). In response, a special task group was formed to study the reporting of RCL-related rail equipment accidents, highway-rail crashes, and casualties.

In December of 2001, the task group initially decided to recommend modifying the ''Rail Equipment Accident/Incident Report Form'' (FRA F 6180.54) and the ''Highway-Rail Grade Crossing Accident/Incident Report Form'' (FRA F 6180.57) to add an additional block to capture RCL operations, but the task group was not able to reach consensus on the ''Injury and Illness Summary Report (Continuation Sheet)'' (FRA F 6180.55a).

Railroad representatives were concerned about modifying the accident/incident database with additional data elements. The FRA

representatives proposed a new, modified coding scheme that utilized the Probable Reason for Injury/Illness Code field in the set of Circumstance Codes and also included some additional Event Codes and two special Job Codes.

During a subsequent Working Group meeting, a new element was added as Item 30a, ''Remote Control Locomotive,'' on the ''Rail Equipment Accident/Incident Report'' form to allow entry of one of four possible values:

''0''—Not a remotely controlled operation;

''1''—Remote control portable transmitter;

''2''—Remote control tower operation; and

''3''—Remote control portable transmitter—more than one remote control transmitter.

For the ''Highway-Rail Grade Crossing Accident/Incident Report'' form to capture RCL operations, the ''Rail Equipment Involved'' block was modified to add three additional values:

''A''—Train pulling—RCL;

''B''—Train pushing—RCL; and

''C''—Train standing—RCL.

These recommendations were accepted by the Working Group, as well as the changes in the Job Codes and Circumstance Codes for the ''Injury and Illness Summary Report (Continuation Sheet).''

Comments and Final Rule/Decision

No specific comments were received regarding the changes in the reporting of accidents/incidents involving remote control locomotives. The amendments have been adopted as proposed. *See also* discussion concerning changes in Circumstance Codes in section ''III.N.'' of this preamble, below.

N. Changes in Circumstance Codes (Appendix F of the Guide)

Prior to 1997, the ''Injury and Illness Summary Report (Continuation Sheet)'' contained a field called ''Occurrence Code.'' The field attempted to describe what the injured or ill person was doing at the time he or she was injured or became ill. Often the action of the individual was the same, but the equipment involved was different, so a different Occurrence Code was needed for each situation, *e.g.*, getting off locomotive, getting off freight car, getting off passenger car. Another problem with the Occurrence Code was that the code did not provide the information necessary to explain the incident, *e.g.*, if the injury was electric shock, the Occurrence Code was ''using hand held tools,'' so FRA could not tell from the report if the electrical shock was from the hand tool, the third rail, lightning, or drilling into a live electric wire.

To address these concerns, the Occurrence Code field was replaced in 1997 with the Circumstance Code field. The change allowed for more flexibility in describing what the person was doing when injured or made ill. Under the broad category of Circumstance Codes, FRA had developed five subsets of codes: Physical Act; Location; Event; Tools, Machinery, Appliances, Structures, Surfaces (etc.); and Probable Reason for Injury/Illness.

During the next five years, FRA and the railroad reporting officers realized that there were still gaps in the codes. FRA proposed expanding the list of Circumstance Codes and determined that some injuries and fatalities should always be reported using a narrative. Also, some Circumstance Codes required the use of narratives. At the July 2001 Working Group meeting, the railroads noted that expanded Circumstance Codes would assist in reporting and analysis. FRA asked the railroads to provide an expanded list of Circumstance Codes for the next meeting, with the understanding that a narrative would be required when the codes did not adequately describe the incident. By the September 2001 meeting, the railroads had produced many new codes, which FRA compiled and presented at the November 2001 meeting. At that meeting, rail labor representatives discussed RCL reporting. In the January 2002 Working Group meeting, the members reviewed the compiled list, including the special RCL codes. The Working Group made recommendations to move some of the codes to other areas. At the March 2002 Working Group meeting, a task group was formed to resolve the remaining issues with respect to codes. Specifically, the Working Group started by referring to proposed codes that pertained to switching operations. These codes were Probable Reason codes that came out of a separate FRA Working Group on Switching Operations Fatality Analysis (SOFA). The task group revised the SOFA codes and added them to Appendix F. The entire Working Group then reviewed and voted to approve all of the task force's proposed codes.

Comments and Final Rule/Decision

Although no specific comments were received with respect to Circumstance Codes during the comment period, FRA was later alerted to several errors in the Circumstance Codes by a representative of BNSF. A copy of BNSF e-mails concerning Circumstance codes have been placed in the docket. The proposed *Guide* did not reflect the codes as updated by a 1997 FRA memo. Accordingly, other than the edits incorporating the codes from the 1997 memo into Appendix F of the *2003 Guide,* FRA has adopted the amendments to the codes as proposed.

O. Changes in Three Forms (Appendix H of the Guide)

Proposal

The Working Group converted the Form FRA F 6180.78, ''Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor [and] Employee Statement Supplementing Railroad Accident Report,'' and Form FRA F 6180.81, ''Employee Human Factor Attachment'' to question-and-answer format, and simplified the language so that they are easier to understand. One issue raised was whether a specific warning related to criminal liability for falsifying the form should be included on the form. Some Working Group members believed that a warning would only serve to intimidate employees from filling out the form. FRA noted that it was important to put the warning on the form to deter employees from falsifying information on the forms. FRA also noted that the same warning would be included on the form for reporting officers. In deference to the fact that rail labor representatives felt strongly that the language was too intimidating, it was agreed that a general warning would be included on the back of the form, which would not specifically state the penalties for falsifying information on the form. In addition, the Working Group agreed to modification of Form FRA F 6180.98 to include an item for the county in which the accident/incident occurred.

Comments and Final Rule/Decision

No specific comments were received. For the reasons stated above, the amendments have been adopted as proposed.

P. Miscellaneous Issues Regarding Part 225 or the Guide

1. Longitude and Latitude Blocks for Two Forms

Proposal

Following discussion of this issue, the Working Group agreed that provision could be made for voluntarily reporting the latitude and longitude of a rail equipment accident/incident, a trespasser incident, and an employee

fatality. FRA proposed to add blocks to Form FRA F 6180.54 and Form FRA F 6180.55a for this information. The reason FRA is seeking to gather this information is to better determine if there is a pattern in the location of certain rail equipment accidents/incidents, trespasser incidents, and employee fatalities. Geographic information systems under development in the public and private sectors provide an increasingly capable means of organizing information. Railroads are mapping their route systems, and increasingly accurate and affordable Global Positioning System (GPS) receivers are available and in widespread use.

Comments and Final Rule/Decision

No specific comments were received. For the reasons stated above, the blocks have been adopted as proposed.

2. Train Accident Cause Code ''Under Investigation'' (Appendix C of the Guide)

Proposal

One of the tasks addressed by the Working Group was to define ''under investigation,'' as that term is used in Cause Code M505, ''Cause under investigation (Corrected report will be forwarded at a later date),'' and to put that definition in Chapter 7 of the Guide under subpart C, ''Instructions for Completing Form FRA F 6180.54,'' block 38, ''Primary Cause Code'' and Appendix C of the Guide. Currently, many accidents/incidents of a significant nature, *e.g.*, ones that are involved in private litigation for many years, are coded as ''under investigation.'' Even if FRA and the railroad think that they know the primary cause of an accident, some railroads will not assign a specific cause code to the accident, either for liability reasons, or because the railroad or a local jurisdiction (or some other authority) is still investigating the accident.

To provide finality to the process of investigating an accident/incident, the Working Group agreed that ''under investigation'' would mean under active investigation by the railroad. When the railroad has completed its own investigation and received all laboratory results, the railroad must make a ''good faith'' determination of the primary cause of the accident, any contributing causes, and their proper codes. The railroad must not wait for FRA or NTSB to complete their investigations before assigning the most applicable cause code(s) available. After FRA or NTSB completes its investigation, the railroad may choose to amend the cause code on the accident report. Accordingly, FRA proposed to revise the *Guide* to demonstrate that the meaning of the cause code in question has been changed to ''Cause under active investigation by reporting railroad (Amended report will be forwarded when reporting railroad's active investigation has been completed).''

In addition, the Working Group agreed to add a new code ''M507'' to denote accidents/incidents in which the investigation is complete but the cause of the accident/incident could not be determined. If a railroad uses this code, the railroad is required to include in the narrative block an explanation for why the cause of the accident/incident could not be determined.

Comments and Final Rule/Decision

No specific comments were received. For the reasons stated above, the amendments have been adopted as proposed.

3. ''Most Authoritative'': Determining Work-Relatedness and Other Aspects of Reportability

Proposal

The duty to report work-related illnesses under the current rule has occasioned concern and disagreement about not only whether an illness exists, but, more importantly and more controversially, whether the illness is work-related. Often an employee's doctor's opinion is that an employee's illness is work-related, while the railroad's doctor's opinion is that the illness is not work-related. In providing guidance as to how a reporting officer determines whether an illness is work-related, OSHA's final rule states,

> [the employer] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in Sec. 1904.5(b)(2) applies.

29 CFR 1904.5(a). In addition, the preamble to OSHA's final rule states,

> Accordingly, OSHA has concluded that the determination of work-relatedness is best made by the employer, as it has been in the past. Employers are in the best position to obtain the information, both from the employee and the workplace, that is necessary to make this determination. Although expert advice may occasionally be sought by employers in particularly complex cases, the final rule provides that the determination of work-relatedness ultimately rests with the employer.

66 FR 5950.

Following publication of this final rule, the National Association of Manufacturers (NAM) filed a First Amended Complaint challenging portions of the final rule. As part of the NAM–OSHA settlement agreement, published in the **Federal Register**, the parties agreed to the following:

> Under this language [29 CFR 1904.5(a)], a case is presumed work-related if, and only if, an event or exposure in the work environment is a *discernable* cause of the injury or illness or of a *significant* aggravation to pre-existing condition. The work event or exposure need only be one of the discernable causes; it need not be the sole or predominant cause.
>
> Section 1904.5(b)(2) states that a case is not recordable if it ''involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment.'' This language is intended as a restatement of the principle expressed in 1904.5(a), described above. Regardless of where signs or symptoms surface, a case is recordable only if a work event or exposure is a *discernable* cause of the injury or illness or of a *significant* aggravation to a pre-existing condition.
>
> Section 1904.5(b)(3) states that if it is not obvious whether the precipitating event or exposure occurred in the work environment or elsewhere, *the employer* ''must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment caused or contributed to the resulting condition or *significantly* aggravated a pre-existing condition.'' This means that *the employer* must make a determination whether it is *more likely than not* that work events or exposures were a cause of the injury or illness, or a *significant* aggravation to a pre-existing condition. If the employer decides the case is not work-related, and OSHA subsequently issues a citation for failure to record, the Government would have the burden of proving that the injury or illness was work-related.

(Emphasis added.) 66 FR 66944. FRA proposed to conform to this language, particularly with respect to making reference to the terms ''discernable'' and ''significant'' to qualify the type of causation and aggravation, respectively. *See* definition of ''accident/incident'' and proposed reportability criteria at proposed § 225.19(d).

The other part of the problem of determining whether an injury or illness is work-related is ''who decides.'' The Working Group proposed to adopt OSHA's final rule definition of ''most authoritative'' stated in OSHA's final rule. In the context of discussing how to determine whether or not a case is new, OSHA's final rule states,

> If you receive recommendations from two or more physicians or other licensed health care professionals, you must make a decision

as to which recommendation is the most authoritative (best documented, best reasoned, or most [persuasive]) and record the case based upon that recommendation.

29 CFR 1904.6(b)(3). (Note: the preamble to OSHA's final rule uses the word ''persuasive'' while the rule text uses the word ''authoritative'' where FRA put the word ''persuasive'' in brackets. FRA chose to use the language from the preamble, instead of that in the rule text, to avoid redundancy.)

The question of who is the ''most authoritative'' physician or other licensed health care professional arises in a number of contexts when there is a conflict of medical opinion. Conflicting medical opinions, often between an employee's physician and a railroad's company physician, arise regarding the following questions: whether an injury or illness is work-related; whether an employee needs days away from work (or days of restricted work) to recuperate from a work-related injury or illness, and if so, how many days; and whether a fatality is work-related, or arose from the operation of a railroad. FRA proposed to adopt in its *Guide* OSHA's definition in its Final Rule of ''most authoritative,'' and to adopt the language from the NAM–OSHA settlement agreement in order to resolve this issue. *See also* discussion of FRA review of work-relatedness determinations under section ''III.G.2.b.'' of the preamble.

Comments

Although no specific comments were received on this issue, a discussion occurred at the post-NPRM Working Group meeting, where representatives from AAR and TRE (Trinity Railway Express) expressed concern that FRA might adopt what they perceived as OSHA's position, namely, that work-relatedness was presumed in hearing loss cases unless the physician stated otherwise. After reviewing OSHA's final rule, FRA explained that although OSHA had originally proposed a presumption of work-relatedness, OSHA later determined that it was not appropriate to include this presumption in its final rule. See 67 FR 44045 (July 1, 2002). Consequently, OSHA decided that there are no special rules for determining work relationship with respect to hearing loss cases, rather the general approach would apply; thus, a hearing loss would be work-related ''if one or more events or exposures in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing hearing loss.'' *Id.*

Final Rule/Decision

FRA has adopted its proposed policy concerning work-relatedness. However, based on the foregoing discussion of OSHA's rejection of the presumption of work-relatedness for hearing loss cases, Question and Answer No. 74 in the *2003 Guide* has been amended to reflect OSHA's changed position.

4. Job Title versus Job Function

Proposal

An additional issue resolved by the Working Group was to propose amending the Guide's instructions for completing blocks 40–43 of FRA Form F6180.54 to make it clear that the job function of the employee, rather than the employee's job title, would be used to determine the employee's job title for reporting purposes when the railroad gives the employee a job title other than ''engineer,'' ''fireman,'' ''conductor,'' or ''brakeman.''

Comments and Final Rule/Decision

No specific comments were received. The amendments have been adopted as proposed.

5. ''Recording'' versus ''Reporting''

Proposal

Under OSHA's final rule, the term ''recording'' is used. Under FRA's regulations and *Guide,* the term ''reporting'' is used. Since FRA has always used the term ''reporting'' in its regulations and *Guide,* and since one of the statutes authorizing part 225 uses the term ''reporting,'' FRA proposed to continue to use the term ''reporting'' instead of ''recording.'' *See* 49 U.S.C. 20901(b)(1) (''In establishing or changing a monetary threshold for the reporting of a railroad accident or incident * * * .'')

Comments and Final Rule/Decision

No specific comments were received. FRA will continue to use the term ''reporting'' instead of ''recording'' as proposed.

IV. Section-by-Section Analysis

Section 219.5 Definitions

Proposal

For purposes of FRA's rule on alcohol and drugs (part 219), the term ''accident or incident reportable under Part 225'' was redefined to exclude a case that is classified as ''covered data'' under § 225.5 of this chapter (*i.e.,* employee injury/illness cases exclusively resulting from a written recommendation to the employee by a physician or other licensed health care professional for time off when the employee instead returned to work, or for a work restriction when the employee instead worked unrestricted, or for a non-prescription medication recommended in writing to be taken at a prescription dose, whether or not the medication was taken). The term ''accident or incident reportable under Part 225'' appears in § 219.301(b)(2), in the description of an event that authorizes breath testing for reasonable cause:

* * * * *

The employee has been involved in an *accident or incident reportable under Part 225 of this chapter,* and a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident;

* * * * *

[Emphasis added.] It should also be noted that § 219.301(b)(2) is incorporated by reference in § 219.301(c) as a basis for ''for cause drug testing.''

In addition, the definition of ''reportable injury'' for purposes of part 219 was revised to mean an injury reportable under part 225 of this chapter except for an injury that is classified as ''covered data'' under § 225.5 of this chapter. The term ''reportable injury'' appears in three provisions of part 219, each of which describes an event that triggers the requirement for post-accident toxicological testing: (i) A ''major train accident'' that includes a release of hazardous material lading with a ''reportable injury'' resulting from the release; (ii) an ''impact accident'' involving damage above the current reporting threshold and resulting in a ''reportable injury''; and (iii) a passenger train accident with a ''reportable injury'' to any person. §§ 219.201(a)(1)(ii)(B), 219.201(a)(2), and 219.201(a)(4).

The reason that ''accident or incident reportable under Part 225'' and ''reportable injury'' does not, for purposes of part 219, include covered data cases is that while these cases are of importance from the standpoint of rail safety analysis and therefore reportable, they are, nevertheless, comparatively less severe than fatalities, other injuries and illnesses and, as such, should not trigger alcohol and drug testing or related requirements and sanctions.

Comments and Final Rule/Decision

No specific comments were received on this section. Note, however, that comments were received on the definition of ''covered data'' and that the category of covered data has been expanded to include another subset of

cases. See § 225.39 and above discussion of covered data at section ''III.H.'' of this preamble. The definitions have been adopted as proposed, except for the modifications made to the description of covered data cases.

Section 225.5 Definitions

Proposal

''Accident/incident'' for purposes of FRA's accident/incident reporting rule was redefined to conform to OSHA's final rule. Under FRA's 1997 rule, ''accident/incident'' is defined in part as,

(3) Any event arising from the operation of a railroad which results in:
(i) Death to any person;
(ii) Injury to any person that requires medical treatment;
(iii) Injury to a railroad employee that results in:
(A) A day away from work;
(B) Restricted work activity or job transfer; or
(C) Loss of consciousness; or
(4) Occupational illness.

(The designation ''(4)'' in the definition above should read ''(iv).'' *See* § 225.19(d)(3).) The parallel language in FRA's proposed definition read as follows:

''Accident/incident'' means:

* * * * *

(3) Any event or exposure arising from the operation of a railroad, if the event or exposure is a discernable cause of one or more of the following outcomes, and this outcome is a new case or a significant aggravation of a pre-existing injury or illness:
(i) Death to any person;
(ii) Injury to any person that results in medical treatment;
(iii) Injury to a railroad employee that results in:
(A) A day away from work;
(B) Restricted work activity or job transfer; or
(C) Loss of consciousness;
(iv) Occupational illness of a railroad employee that results in any of the following:
(A) A day away from work;
(B) Restricted work activity or job transfer;
(C) Loss of consciousness; or
(D) Medical treatment;
(v) A significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;
(vi) An illness or injury that meets the application of the following specific case criteria:
(A) A needlestick or sharps injury to a railroad employee;
(B) Medical removal of a railroad employee;
(C) Occupational hearing loss of a railroad employee;
(D) Occupational tuberculosis of a railroad employee; or
(E) An occupational musculoskeletal disorder of a railroad employee that is independently reportable under one or more of the general reporting criteria.

The phrase ''discernable cause'' was included in the proposed definition, and the words ''or exposure'' were added before the word ''arising.'' The addition of the word ''discernable'' was intended to take into account the OSHA–NAM settlement agreement, which also uses ''discernable'' to describe ''cause.'' As defined in *Webster's Third New International Dictionary, Unabridged* (1971), ''discernable'' means ''capable of being discerned by the senses or the understanding: distinguishable (a ~ trend) (there was ~ the outline of an old trunk-Floyd Dell).'' FRA understands why some Working Group members requested this change as a matter of conformity and to emphasize that the employer is not required to speculate regarding work-relatedness. By the same token, FRA emphasizes that when confronted with specific claims regarding work-relatedness, it is the employer's responsibility to fairly evaluate those claims and opt for reporting if an event, exposure, or series of exposures in the workplace likely contributed to the cause or significantly aggravated the illness.

The Working Group agreed that the definition of ''accident/incident'' also needed to include that the case had to be a new case, or a significant aggravation of a pre-existing condition. This reference to a ''new case'' was added to conform to 29 CFR 1904.4(a)(2) of OSHA's final rule, and the reference to ''significant'' aggravation of a pre-existing condition was added to conform to the OSHA–NAM settlement agreement.

The inclusion of ''death to any person'' remained the same. ''[I]njury to any person which requires medical treatment'' was changed to ''Injury to any person that results in medical treatment''; no substantive change was proposed. Injury to a railroad employee that results in ''(A) A day away from work; (B) Restricted work activity or job transfer; or (C) Loss of consciousness' was not changed. FRA did, however, propose a change to the 1997 rule that all occupational illnesses of railroad employees are to be reported and required that they be reported only under certain enumerated conditions. This also made it clear that an occupational illness of an employee to a contractor to a railroad is not to be reported. Further, FRA proposed to add to its criteria for reportability ''significant injuries or illnesses,'' ''needlestick or sharps injuries,'' ''medical removal,'' ''occupational hearing loss,'' ''occupational tuberculosis,'' and an independently reportable ''occupational musculoskeletal disorder'' to railroad employees to track OSHA's Final Rule. Finally, as previously discussed, a three-tier definition of ''event or exposure arising from the operation of a railroad'' was added.

Comments and Final Rule/Decision

No specific comments were received on this definition. For the reasons stated above, the amendments have been adopted as proposed.

Proposal

The definition of ''accountable injury or illness'' was revised by substituting the words ''railroad employee'' for ''railroad worker,'' and by adding the word ''discernably'' before the word ''associated.'' These were technical changes to bring the language into conformity with the rest of the regulatory text.

Comments and Final Rule/Decision

No specific comments were received on this definition. For the reasons stated above, the amendments have been adopted as proposed.

Proposal

Under the 1997 rule, the definition of ''day away from work'' meant ''any day subsequent to the day of the injury or diagnosis of occupational illness that a railroad employee does not report to work for reasons associated with his or her condition.'' § 225.5. Under the *1997 Guide,* ''If the days away from work were entirely unconnected with the injury (*e.g.*, plant closing or scheduled seasonal layoff), then the count can cease at this time.'' *1997 Guide,* Ch. 6, p. 31, question 34. FRA proposed to come closer to following OSHA's general recording criteria under 29 CFR 1904.7 of ''day away from work'' by proposing that the definition be ''any calendar day subsequent to the day of the injury or the diagnosis of the illness that a railroad employee does not report to work, or was recommended by a physician or other licensed health care professional not to return to work, as applicable, even if the employee was not scheduled to work on that day.'' Under the 1997 rule, if a doctor recommended that an employee not return to work, but the employee ignored the doctor's advice and returned to work anyway, this would not count as a day away from work. Under OSHA's Final Rule, however, the

reporting entity would still have to count all the days the doctor recommended that the employee not work. As a compromise, FRA proposed that the railroad be required to report as covered data one day away from work, even if the employee did not actually miss a day of work subsequent to the day of the injury or diagnosis of the illness, as discussed previously in the preamble. The revision of the definition of ''day away from work'' was intended to take into account the new rule for reporting the number of days away from work.

The definition of ''day of restricted work activity'' was revised for the same reason that FRA revised the definition of ''day away from work.''

Comments and Final Rule/Decision

No specific comments were received on these definitions, however in its comments with respect to covered data cases, AAR sought clarification as to whether the same principles that applied to counting days away from work would apply to counting days of restricted work. At the post-NPRM Working Group meeting, FRA explained that the same principles would apply and agreed to edit the *Guide* to clarify that these cases are to be handled in the same manner. Upon further review of the *Guide* and the rule text definitions, FRA concluded that although all of the information concerning the reporting of days away from work and days of restricted work were present in the *Guide* and rule text collectively, the rule text definitions were not as clear as they could be in setting forth FRA's interpretation, as agreed upon by the Working Group. In an effort to avoid confusion and misinterpretation, FRA has amended the rule text definitions of ''day away from work'' and ''day of restricted work activity,'' and the corresponding discussions in the *Guide,* for clarification. *See also* comments and related discussion on change in method of counting days and 180 day cap at sections ''III.J.1.'' and ''III.J.2.'' of this preamble.

Proposal

The definition of ''event or exposure arising from the operation of a railroad'' was added to include the following: (1) With respect to a person who is on property owned, leased, or maintained by the railroad, an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; (2) with respect to an employee of the railroad (whether on or off property owned, leased, or maintained by the railroad), an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; and (3) with respect to a person who is not a railroad employee and not on property owned, leased, or maintained by the railroad—(i) a train accident; a train incident; a highway-rail crossing accident/incident involving the railroad; or (ii) a release of a hazardous material from a railcar in the railroad's possession or a release of other dangerous commodity that is related to the performance of the railroad's rail transportation business. Accordingly, with respect to a person who is not a railroad employee and not on property owned, leased, or maintained by the railroad, the definition of ''event or exposure arising from the operation of a railroad'' is more narrow, covering a more limited number of circumstances than for persons who are either on railroad property, or for railroad employees whether on or off property owned, leased or maintained by the railroad. The justification for narrowing the set of circumstances in which a railroad is required to report certain injuries and illnesses for events that occur off railroad property is that it is difficult for railroads to know about, and follow up on, injuries off railroad property to persons who are not railroad employees, including employees of railroad contractors. Railroads simply have more limited opportunity to know about injuries and illnesses to persons other than those who are injured on their property or who are employed by the railroad. Accordingly, injuries to such persons are not to be considered for reporting purposes as events or exposures arising from the operation of the railroad.

Comments

Although no specific comments were received on the substance of the definition or proposal itself, AAR commented that the *Guide's* discussion of contractors did not reflect FRA's proposed approach and should be amended to do so.

Final Rule/Decision

FRA has adopted the proposal as stated and has amended the *Guide* to reflect this new approach. FRA intends to address the divergence from OSHA on the issue of the employee of a contractor in the MOU. *See also* earlier discussion of this issue at section ''III.D.2.'' of this preamble.

Proposal

The definition of ''medical treatment'' was revised, as discussed earlier in the preamble, to conform generally to OSHA's new definition under 29 CFR 1904.7(b)(5)(i) of ''medical treatment.'' The proposed definition read,

> any medical care or treatment beyond ''first aid'' regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does *not* include counseling.

FRA proposed that any type of counseling, in and of itself, is not considered to be medical treatment. If, for example, a locomotive engineer witnesses a grade crossing fatality and subsequently receives counseling after being diagnosed as suffering from Post Traumatic Stress Syndrome, the case is not reportable. The only factors that would make the case reportable would be if, in addition to the counseling, the employee receives prescription medication (such as tranquilizers) has a day away from work, is placed on restricted work, is transferred to another job, or meets one of the other criteria for reportability in § 225.19(d). In addition to the general objective of inter-industry conformity, this change is supported by the absence of meaningful interventions available to prevent such disorders. Although involvement in highway-rail grade crossing and trespass casualties is a known cause of stress in the railroad industry, FRA and the regulated community are already aware of that fact and are making every effort to prevent these occurrences. Further, the industry is actively engaged in preventive post-event counseling.

Comments and Final Rule/Decision

No specific comments were received concerning the definition of ''medical treatment.'' The definition of ''medical treatment'' has been adopted as proposed. However, the issue of what constitutes medical treatment was raised with respect to the classification of the administration of oxygen and one-time dosages of prescription medication. These issues were resolved by FRA, and the provisions have been amended accordingly. For a more detailed discussion, please see sections ''III.J.3.'' and ''III.H.'' of the preamble, above.

Proposal

''General reportability criteria'' was defined as the criteria set forth in § 225.19(d)(1)–(5).

Comments and Final Rule/Decision

No specific comments were received on this definition. FRA has adopted the definition as proposed.

Proposal

''Medical removal'' was defined as it is described in OSHA's recording

criteria under 29 CFR 1904.9 for medical removal cases. ''Medical removal'' refers to removing an employee from a work location because that location has been determined to be a health hazard. FRA proposed that this definition change automatically if OSHA elects to revise its recording criteria.

Comments

Although no specific comments were received on the definition itself, AAR commented that it was opposed to the concept of floating regulations.

Final Rule/Decision

FRA has adopted the proposed definition of ''medical removal'' and its incorporation of OSHA's provision in 29 CFR part 1910. However, in order to make clear that FRA is not ''floating'' this definition with OSHA's definition of that term, FRA has adopted a year-specific version of OSHA's definition, namely, the 2002 version. *See also* earlier discussion of this definition in the context of the ''float'' vs. ''fixed'' issue at section ''III.D.1.'' of this preamble.

Proposal

''Needlestick and sharps injury'' and ''new case'' were defined in general conformity with OSHA's definitions of these terms under 29 CFR 1904.8 and 1904.6, respectively.

Comments and Final Rule/Decision

No specific comments were received on these definitions. The definitions have been adopted as proposed.

Proposal

''Privacy concern case'' was defined as in 29 CFR 1904.29, except that FRA would categorically exclude MSDs from its definition of ''privacy concern case.'' As discussed in section ''III.G.1.,'' above, FRA sought comment on whether or not FRA should adopt this exclusion, especially if OSHA's proposed January 1, 2004, delay took effect, but in either case. FRA also sought comment on whether it should adopt the proposed exclusion of MSDs from its definition of ''privacy concern case'' as a fixed approach beginning on the effective date of FRA's final rule or whether FRA should ''float'' with OSHA, *i.e.*, make the existence or nonexistence of the exclusion contingent on OSHA's action.

Comments and Final Rule/Decision

No specific comments were received on this definition. FRA has adopted the definition as proposed and has not adopted the exclusion of MSDs from its definition of ''privacy concern case.'' *See also* discussion at section ''III.G.1.'' of this preamble. FRA intends to address the slight differences on this issue in its MOU with OSHA.

Proposal

''Occupational hearing loss'' was defined as OSHA defined it under 29 CFR 1904.10 for calendar year 2002. As discussed in section ''III.D.1.,'' above, FRA sought comment on whether FRA should adopt OSHA's new approach for calendar year 2003 as its fixed approach, beginning on the effective date of FRA's final rule, or whether FRA should diverge from OSHA and continue to enforce OSHA's current approach (which was approved by the Working Group and the RSAC and is the same as FRA's current approach) as a fixed approach beginning on the effective date of FRA's final rule.

Comments

AAR strongly opposed the adoption of OSHA's new policy, noting that the policy would lead to a greater number of hearing loss cases being reported by the railroad industry and result in an adverse trend in the occurrence of railroad injuries regardless of the railroads' actual performance. After further discussion of the criteria at the post-NPRM meeting, AAR acquiesced in accepting the criteria for reporting, but was still concerned regarding the anticipated increases in reportables. AAR requested that FRA consider placing the hearing loss cases under covered data.

Final Rule/Decision

The importance of capturing the true magnitude of work-related hearing loss is justification alone for adopting OSHA's criteria; however, it is important to note that the increase in the number of reportables will be partially offset by OSHA's reclassification as non-reportable many events that previously were reportable.[9] For a more detailed discussion of this issue, see sections ''III.D.1.'' and ''III.H.'' of this preamble. Note that, for clarification and simplicity, the rule text definition has been amended to reflect the actual recording criteria used by OSHA (for calendar year 2003 and beyond) rather than the citation to the relevant section of OSHA's regulation. This amendment does not represent a substantive change from OSHA's criteria.

[9] *See* earlier discussion concerning the definitions of ''medical treatment'' and ''first aid'' at section ''III.J.3.'' of this preamble.

Proposal

The definition of ''occupational illness'' was revised to make it clear that only certain occupational illnesses of a person classified under Chapter 2 of the *Guide* as a Worker on Duty-Employee are to be reported. By contrast, under the 1997 definition of ''occupational illness,'' other categories of persons, such as Worker on Duty-Contractor, were included in the definition, but illnesses to those persons were not reportable because § 225.19(d)(4) limited the reportability of occupational illnesses to those of ''a railroad employee.''

Comments and Final Rule/Decision

No specific comments were received on this definition. The definition has been adopted as proposed.

Proposal

''Occupational musculoskeletal disorder'' was defined essentially as it was set forth by OSHA in January 2001. *See* 29 CFR 1904.12 as published in 66 FR 6129. One of the most common forms of occupational musculoskeletal disorder is Carpal Tunnel Syndrome and other repetitive motion disorders. Under § 1904.12 of its January 19, 2001, final rule, OSHA defined musculoskeletal disorders (MSDs) as:

> disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs. MSDs do not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

66 FR at 6129. *See also* 66 FR at 52034. However, as noted in the overview in section ''I.'' of this preamble, OSHA delayed the effective date of this provision from January 1, 2002, to January 1, 2003, and proposed delaying the effective date until January 1, 2004, ''to give [OSHA] the time necessary to resolve whether and how MSDs should be defined for recordkeeping purposes.'' *See* 67 FR 44125. After the publication of this NPRM, OSHA adopted this proposed delay in its December 17, 2002 final rule. See 67 FR 77165.

As the issue of OSHA's proposed delay of this provision was not before the Working Group when consensus was reached, FRA sought comment on whether or not FRA should still adopt the above definition of MSDs if OSHA's proposed January 1, 2004 delay took effect. FRA noted that if the provision were adopted as approved by the Working Group, FRA would be adopting

the definition in advance of OSHA's defining the term, a result that may not have been contemplated by the Working Group when it agreed to follow OSHA on this issue prior to issuance of the proposed delay. *See* discussion concerning reporting criteria for MSDs at section ''III.D.1.'' of the preamble, above. Even if OSHA chose not to delay the effective date of this provision, FRA sought comment on whether or not FRA should even adopt OSHA's definition for calendar year 2003, since it stated that there were no special criteria beyond the general recording criteria for determining which MSDs to record and because OSHA's definition appeared to be used primarily as guidance for when to check the MSD column on the 300 Log. *See* 66 FR 6129–6130. It was noted that choosing to exclude this definition from FRA's final rule would not have affected an employer's obligation to report work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness. FRA also sought comment on whether or not this definition should ''float'' with OSHA's. *See* discussion of ''float'' vs. ''fixed'' at section ''III.D.1.'' of the preamble, above.

Comments

Although no specific comments were received regarding the adoption of a definition of an MSD, FRA raised the issue at the post-NPRM Working Group meeting. FRA pointed out that there were no special reporting criteria for MSDs and that there may be more problems in trying to delete the definition than to leave it in. Because MSDs must be independently reportable, there seemed to be little or no effect on the regulated community by retaining the proposed definition. AAR indicated that it was inclined to leave the definition in, but might reconsider the issue and provide us with a position after the meeting. However, no further comments were received.

Final Rule/Decision

For the reasons stated above, FRA has adopted the MSD definition as proposed. *See also* the discussion of MSDs in section ''III.D.1.'' of this preamble, and the discussion of deleting the exclusion of MSDs from the definition of ''privacy concern case'' at section ''III.G.1.'' of this preamble. Because FRA has adopted a requirement beyond what OSHA requires, this difference will be addressed in an MOU with OSHA, if necessary.

Proposal

''Occupational tuberculosis'' was defined in general conformity with OSHA's recording criteria under 29 CFR 1904.11 for work-related tuberculosis cases. The word ''occupational'' was included in the term because the term is intended to cover only the occupational illness; it would be confusing to define simply ''tuberculosis'' when the unmodified term would seem to call for a medical definition of tuberculosis in general.

Comments and Final Rule/Decision

No specific comments were received on this definition. For the reasons stated above, the definition has been adopted as proposed.

Proposal

''Significant change in the number of reportable days away from work'' was defined as a 10-percent or greater change in the number of days away from work that the railroad would have to report. FRA decided on 10 percent as the threshold so that railroads would not have to submit amended reports for *de minimis* changes in data. For example, if a railroad estimated that an employee would be away from work for 30 days and reported the 30-day estimate to FRA, but the employee was actually away from work for 32 days, the railroad would not have to amend its accident report to reflect this change. Moreover, FRA uses a 10-percent threshold for amending rail equipment accident reports. Specifically, if a railroad estimates the damage from a rail equipment accident to be $7,000, a railroad need not amend that report unless the actual damage exceeds $7,700. If on the other hand, the actual damage is less than the reporting threshold, but less than 10-percent difference from the estimate, the railroad would be allowed to amend the report to indicate that the incident was not a reportable accident. For example, in the scenario above, if the actual damage was $6,400 (less than 10-percent difference from the $7,000 estimate), the railroad would nevertheless be permitted to withdraw its report of that accident. While the 10-percent threshold was included in Chapter 6 of the *1997 Guide,* FRA proposed to create a definition in the regulatory text since the General Accounting Office recommended that FRA define this term. For clarification of the terms ''significant illness'' and ''significant injury,'' *see* discussion in section ''III.D.1.'' of the preamble, above.

Comments and Final Rule/Decision

No specific comments were received on this definition, however in its comments with respect to covered data cases, AAR sought clarification as to whether the same principles that applied to counting days away from work would apply to counting days of restricted work. At the post-NPRM Working Group meeting, FRA explained that the same principles would apply and agreed to edit the *Guide* to clarify that these cases are to be handled in the same manner. Upon further review of the *Guide* and the rule text definitions, FRA found that the rule text definition concerning a ''significant change in the number of days away from work'' did not express FRA's policy that the 10-percent threshold also applies to days of restricted work activity. Given that this policy was set forth in the *1997 Guide* and was re-approved by the Working Group and the full RSAC for the *2003 Guide,* FRA concluded that the definition should be amended to clarify that the same 10-percent threshold policy that applies to amending reports with respect to days away from work also applies with respect to days of restricted work activity.

Similarly, as noted in the preambles of the NPRM and this final rule, FRA uses a 10-percent threshold for amending rail equipment accident reports. Both the *1997 Guide* and the *2003 Guide* explain a railroad's duty to amend its rail equipment accident reports when an estimated value of the damage costs is significantly in error. A significant difference is defined as a 10-percent variance. Because FRA and the Working Group agreed that the *Guide's* explanation of ''significant change in the number of reportable days away from work'' should be included in the rule text as a definition, FRA concluded that it would be equally appropriate to include the *Guide's* explanation concerning a significant change for purposes of amending rail equipment accident reports. Accordingly, FRA has added a definition of ''significant change in the damage costs for reportable rail equipment accidents/incidents'' that conforms to FRA's previous policy on this matter.

Section 225.9 Telephonic Reports of Certain Accidents/Incidents and Other Events

Proposal

Under the 1997 rule, § 225.9 required a railroad to report immediately by telephone any accident/incident arising from the operation of the railroad that resulted in the death of a railroad employee or railroad passenger or the

death or injury of five or more persons. FRA proposed an amendment to this section, as recommended by the Working Group, to add new circumstances under which a railroad is to telephonically report and to clarify existing procedures for telephonic reporting of the expanded list of events.

Proposed subsection (a) listed the events that a railroad would be required to report telephonically. In proposed subsection (a)(1), ''Certain deaths or injuries,'' FRA proposed that each railroad must report immediately, whenever it learns of the occurrence of an accident/incident that arose from the operation of the railroad, or an event or exposure that may have arisen from the operation of the railroad, that has certain specified consequences. FRA proposed to use the phrase ''may have arisen'' in the proposed regulatory text, instead of keeping the current language ''arising from the operation of a railroad,'' because a railroad may not learn for some time that a particular event in fact arose from the operation of the railroad. By stating that a railroad must report an event that ''may'' have arisen from the operation of the railroad, FRA is assured to capture a broader group of cases. For example, if a railroad employee dies of a heart attack on the railroad's property, the railroad may not know for weeks, following a coroner's report, what the cause of death was and whether the death was work-related. This case might not get immediately reported because the railroad did not immediately learn that the death arose out of the operation of the railroad. Under the proposed change, if the death ''may'' have arisen out of the operation of the railroad, the case must be immediately reported, permitting FRA to commence its investigation in a timely manner. Even when death is ultimately determined to be caused by a coronary event, for instance, it is appropriate to inquire whether unusual workplace stressors (*e.g.*, extreme heat, excessive physical activity without relief) may have played a role in causing the fatality. In addition, under subsection (a)(1), FRA has added the death of an employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad as a new category requiring telephonic reporting.

In proposed subsection (a)(2), FRA captures certain train accidents or train incidents even if death or injury does not necessarily occur as a result of the accident or incident. Under the 1997 rule, FRA did not require telephonic reporting of certain train accidents or train incidents *per se,* but required that they be reported only if they resulted in death of a rail passenger or employee, or death or injury of five or more persons. Accordingly, FRA proposed that railroads telephonically report immediately, whenever it learns of the occurrence of any of the following events:

(i) A train accident that results in serious injury to two or more train crewmembers or passengers requiring admission to a hospital;

(ii) A train accident resulting in evacuation of a passenger train;

(iii) A fatality at a highway-rail grade crossing as a result of a train accident or train incident;

(iv) A train accident resulting in damage (based on a preliminary gross estimate) of $150,000, to railroad and nonrailroad property; or

(v) A train accident resulting in damage of $25,000 or more to a passenger train, including railroad and nonrailroad property.

In proposed subsection (a)(3), FRA requires telephonic reporting of incidents in which a reportable derailment or collision occurs on, or fouls, a line used for scheduled passenger service. This final provision permits more timely initiation of investigation in cases where the underlying hazards involved could threaten the safety of passenger operations. For clarification of other aspects of this proposed section, *see* discussion at section ''III.C.'' of this preamble, above.

Comments and Final Rule/Decision

No specific comments were received on this issue. For the reasons stated above, the amendments have been adopted as proposed.

Section 225.19 Primary Groups of Accidents/Incidents

Proposal

FRA proposed to amend subsection (d), ''Group III, ''Death, injury, occupational illness.'' See prior discussion in section-by-section analysis of the definition of ''accident/incident'' and ''event or exposure arising from the operation of a railroad'' in § 225.5.

Comments and Final Rule/Decision

No specific comments were received on this provision. The amendments have been adopted as proposed.

Section 225.23 Joint Operations

Proposal

FRA proposed to make technical amendments to § 225.23(a) simply to bring it into conformity with the rest of the proposed regulatory text.

Comments and Final Rule/Decision

No specific comments were received on this provision. The amendments have been adopted as proposed.

Section 225.25 Recordkeeping

Proposal

FRA proposed to amend this section by revising subsection 225.25(h)(15) to apply to ''privacy concern cases,'' which would be defined in proposed § 225.5. Accordingly, under the proposed subsection, a railroad is permitted not to post information on an occupational injury or illness that is a ''privacy concern case.''

Comments and Final Rule/Decision

No specific comments were received on this provision. The amendments have been adopted as proposed.

Section 225.39 FRA Policy Statement on Covered Data

Proposal

In connection with the requirements for reporting employee illness/injury cases exclusively resulting from a written recommendation of a physician or other licensed health care provider (POLHCP) for time off when the employee instead returned to work, or a written recommendation for a work restriction when the employee instead worked unrestricted, and in connection with the provision for special reporting of cases exclusively resulting from the direction of a POLHCP in writing to take a non-prescription medication at prescription dose, FRA proposed that these cases not be included in FRA's regular statistical summaries. The data are requested by DOL to ensure comparability of employment-related safety data across industries. The data may also be utilized for other purposes as the need arises, but they would not be reported in FRA's periodic statistical summaries for the railroad industry.

Comments

AAR commented that the *Guide* needed to be clearer in its discussion of covered data so as to include: a definition of that term; instructions on how to report such cases; and clarification of the treatment of these cases in the questions-and-answers section of the *Guide* and in the instructions for Form FRA F 6180.55a. In its comments on the NPRM, verbal comments at the post-NPRM Working Group Meeting, and post-meeting letter and e-mail, AAR expressed a concern a concern regarding the sharp increase in the number of reportables that would result by adopting the proposed changes. In order to soften the impact of

these changes on the railroad industry data, AAR requested that the covered data criteria be extended to three other areas of reporting: one-time dosages of prescription medication, oxygen therapy, and occupational hearing loss.

Final Rule/Decision

FRA determined that the definition of ''covered data'' in § 225.39 and the corresponding discussion of covered data in the *Guide* should be amended to address AAR's concerns regarding clarity and to reflect the addition of one-time dosages of topical prescription medication. For a more detailed discussion of FRA's policy statement on covered data, see section ''III.H.'' of this preamble.

Section 240.117 Criteria for Consideration of Operating Rules Compliance Data

Proposal

FRA proposed a minor change to its locomotive engineer qualifications regulations, which uses a term from part 225. In particular, § 240.117(e)(2) of the locomotive engineer qualifications regulations defines one of the types of violations of railroad rules and practices for the safe operation of trains that is a basis for revoking a locomotive engineer's certification pursuant to part 240; specifically, failures to adhere to the conditional clause of a restricted speed rule ''which cause reportable accidents or incidents under part 225 of this chapter. * * *'' This amendment creates an exception for accidents or incidents that are classified as ''covered data'' under part 225. The reason that ''covered data'' were excluded as a partial basis for decertification under § 240.117(e)(2) is that the injuries and illnesses associated with ''covered data'' cases are comparatively less severe than other types of injuries and illnesses, and, as such, when coupled with a violation of restricted speed, should not trigger revocation under part 240.

Comments and Final Rule/Decision

No specific comments were received on this section. The exception has been adopted as proposed. Note, however, that comments were received on the definition of ''covered data'' and that the category of covered data has been expanded to include another subset of cases. *See* § 225.39 and above discussion of covered data at section ''III.H.'' of this preamble.

V. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory impact analysis addressing the economic impact of this rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at *http://dms.dot.gov.*

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of costs and benefits expected from the adoption of this final rule. The analysis also contains qualitative discussions of benefits that were not quantified. Over a 20-year period, the Present Value (PV) of the estimated costs is $476,000, and the PV of the estimated benefits is $612,000.

The major costs anticipated from adopting this final rule include those incurred in complying with additional OSHA-conformity reporting requirements, such as the covered data cases. Additional reporting burdens on railroads will also occur from an increase in telephonic reporting, an increase in reporting of occupational hearing loss cases, and from the recording of claimed occupational illnesses cases. Finally, there are costs associated with the familiarization of the railroad reporting officers with the revised *Guide,* and for revisions to FRA and railroad electronic reporting systems and databases.

The major benefits anticipated from implementing this final rule include savings from a simplification in the reporting of occupational injuries due to a new definition of ''first aid.'' This benefit will produce a savings in the decision making process for both reportable injuries and accountable injuries. Additional savings will also occur from a reduction in the average burden time to complete a Rail Equipment Accident/Incident Report. This savings is largely a product of a revision to the train accident cause codes. The revised casualty circumstance codes will produce a savings from a reduction in the use of the narrative block on the railroad injury and illness reports. Finally, railroads will receive a savings from a simplification in the counting of the number of days away from work or of restricted work activity. This includes a savings due to a reduction from 365 to 180 days for the maximum number of days that the railroads would have to track and report injuries and illnesses. FRA also anticipates that there will be qualitative benefits from this rulemaking from better data on railroad reports, and the increased utility that the additional data codes would provide to future analysis.

B. Regulatory Flexibility Act of 1980 and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a Federal agency to review its proposed and final rules in order to assess their impact on small entities (small businesses, small organizations, and local governments). If the agency determines that its final rule would have a significant economic impact on a substantial number of small entities, then the agency must prepare an Regulatory Flexibility Analysis (RFA). If the agency determines the opposite, then the agency must certify that determination; an RFA may also provide the basis for the agency's determination that the final rule would not have a significant economic impact on a substantial number of small entities.

''Small entity'' is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The Small Business Administration (SBA) stipulates in its ''Size Standards'' that the largest a railroad business firm that is ''for-profit'' may be, and still be classified as a ''small entity'' is 1,500 employees for ''Line-Haul Operating'' Railroads, and 500 employees for ''Switching and Terminal Establishments.'' SBA's ''size standards'' may be altered by Federal agencies on consultation with SBA and in conjunction with public comment. Pursuant to section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has published an interim policy that formally establishes ''small entities'' as being railroads that meet the line-haulage revenue requirements of a Class III railroad. 62 FR 43024, Aug. 11, 1997. Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's threshold for a Class III railroad carrier, which is

adjusted by applying the railroad revenue deflator adjustment. *See* 49 CFR part 1201. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA proposed to use this alternative definition of ''small entity'' for this rulemaking, and requested comments on its use. No comments were received related to this proposal.

Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' requires in part that a Federal agency notify the Chief Counsel for Advocacy of the SBA of any of its draft rules that would have a significant economic impact on a substantial number of small entities. This Executive Order also requires Federal agencies to consider any comments provided by the SBA, and to include in the preamble to the final rule the agency's response to any written comments by the SBA unless the agency head certifies that including such material would not serve the public interest. 67 FR 53461 (Aug. 16, 2002). Since this final rule does not have a significant economic impact on a substantial number of small entities, FRA has not notified the Office of Advocacy at SBA, and therefore, has not received any comments from Advocacy.

In accordance with the Regulatory Flexibility Act of 1980, FRA has prepared and placed in the docket an RFA, which assesses the small entity impact of this final rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at *http://dms.dot.gov.*

As stated in the RFA, FRA has determined that there are over 650 small railroads that could potentially be affected by this rulemaking; however, the frequency of accidents/incidents, and therefore reporting burden, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller, all other things being equal. For example, in 1998, only 327 railroads reported one or more casualties.

The economic impacts anticipated from final rule are primarily a result of an increase in casualty reporting due to the reporting of some casualties, due to OSHA recordkeeping requirements which this rulemaking is adopting into FRA reporting requirements. In addition, the railroad industry will incur small burdens for an increase in telephonic reporting of some accident/incidents, and for modifications made to computer software and databases. However, FRA does not anticipate that any of these burdens will be imposed on small entities due to the decreased likelihood of a casualty occurring on a small railroad. The computer-based burdens are not expected to impact small entities either since most small railroads report using personal computer (PC)-based software provided by FRA. It is estimated by FRA that small entities will incur five percent or less of the total costs for this final rule.

It is important to note that this final rule will also reduce recordkeeping burdens by simplifying the method used to count employee absences and work restrictions, and by reducing the requirement to keep track of lengthy employee absences. The final rule also simplifies reporting requirements with clarifying definitions for things such as ''medical treatment'' and ''first aid.'' Train accident cause codes and injury occurrence codes would be added, so that accident and injury data would be more precise and the need for some narratives will be eliminated.

This final rule does not provide alternative treatment for small entities in the regulation or reporting requirements. However, small railroads that report using PC-based software will not be burdened with any costs for modifying or changing the software, since FRA provides this software free to all railroads that utilize it. It is important to note that just by the fact that small railroads report fewer accidents/incidents and casualties, they are less likely to be burdened by the final rule.

The RFA concludes that this final rule will not have a significant economic impact on a substantial number of small entities; therefore, FRA certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities. For the same reason, consistent with Executive Order 13272, the draft rule has not been submitted to the SBA. In order to determine the significance of the economic impact for this RFA, FRA invited comments from all interested parties concerning the potential economic impact on small entities in the notice of proposed rulemaking. The Agency considered the lack of comments and data it received in making this decision and certification.

C. Paperwork Reduction Act of 1995

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
225.9—Telephone Reports—Certain Accidents/Incidents and Other Events.	685 railroads	500 reports	15 minutes	125	$5,250
225.11—Reporting of Rail Equipment Accidents/Incidents (Form FRA F 6180.54).	685 railroads	3,000 forms	2 hours	6,000	252,000
225.12(a)—Rail Equipment Accident/Incident Reports—Human Factor (Form FRA F 6180.81).	685 railroads	1,000 forms	15 minutes	250	10,500
225.12(b)—Rail Equipment Accident/Incident Reports—Human Factors (Part 1, Form FRA F 6180.78).	685 railroads	4,100 notices/copies	10 minutes and 3 minutes	372	15,624
225.12(c)—Rail Equipment Accident/Incident Reports—Human Factor—Joint Operations.	685 railroads	100 requests	20 minutes	33	1,386
225.12(d)—Rail Equipment Accident/Incident Reports—Human Factor—Late Identification.	685 railroads	20 attachments + 20 notices.	15 minutes	10	420
225.12(e)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Supplement (Part II, Form FRA F 6180.78).	685 railroads	75 statements	1.5 hours	113	2,938

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
225.12(f)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Confidential Letter.	Railroad Employees	10 letters	2 hours	20	520
225.13—Amended Rail Equipment Accident\Incident Reports.	685 railroads	10 amended reports, 20 copies.	1 hour + 3 minutes	11	462
225.17—Doubtful Cases; Alcohol/Drug Involvement	685 railroads	80 reports	30 minutes	40	1,680
—Appended Reports	685 railroads	5 reports	30 minutes	3	126
225.19—Highway—Rail Grade Crossing Accident\Incident Reports (Form FRA F 6180.57).	685 railroads	3,400 forms	2 hours	6,800	285,600
—Death, Injury, or Occupational Illness (Form FRA F 6180.55a).	685 railroads	13,800 forms	20 minutes	4,400	184,800
225.21 Forms:					
—Form FRA F 6180.55—Railroad Injury\Illness Summary.	685 railroads	8,220 forms	10 minutes	1,370	57,540
—Form FRA F 6180.56—Annual Report of Employee Hours and Casualties by State.	685 railroads	685 forms	15 minutes	171	7,182
—Form FRA F 6180.98—RR Employee Injury and/or Illness Record.	685 railroads	18,000 forms	1 hour	18,000	756,000
—Form FRA F 6180.98—Copies	685 railroads	540 copies	2 minutes	18	756
—Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record.	685 railroads	13,000 forms	30 minutes	6,500	273,000
—Form FRA F 6180.107—Alternate Record For Illnesses Claimed to Be Work Related.	685 railroads	300 forms	15 minutes	75	3,150
225.25—Posting of Monthly Summary	685 railroads	8,220 lists	16 minutes	2,192	92,064
225.27—Retention of Records	685 railroads	1,900 records	2 minutes	63	2,646
225.33—Internal Control Plans—Amended	685 railroads	25 amendments	14 hours	350	14,700
225.35—Access to Records and Reports—Lists	15 railroads	400 lists	20 minutes	133	5,586
—Subsequent Years	4 railroads	16 lists	20 minutes	5	210
225.37—Magnetic Media Transfers	8 railroads	96 transfers	10 minutes	16	672
—Batch Control (Form FRA F 6180.99)	685 railroads	200 forms	3 minutes	10	420

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, 725 17th St., NW., Washington, DC 20503. OMB is required to make a decision concerning the information collection requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *.''

When issuing the proposed rule and final rule in this proceeding, FRA has adhered to Executive Order 13132. FRA engaged in the required Federalism consultation during the early stages of the rulemaking through meetings of the full RSAC, on which several representatives of groups representing State and local officials sit. To date, FRA has received only one concern about the Federalism implications of this rulemaking from these representatives, regarding whether or not FRA's notification requirements would preempt State accident notification requirements. Although FRA's regulations under part 225 preempt States from prescribing accident/incident reporting requirements, there is nothing in these regulations that preempts States from having their own, perhaps even different, accident notification requirements:

> Issuance of these regulations under the federal railroad safety laws and regulations preempts States from prescribing accident/incident reporting requirements. Any State may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accident/incidents and injuries/illnesses which occur in that State.

49 CFR 225.1. FRA did not propose to change this provision that a State may require a railroad to submit to the State copies of reports required by part 225 regarding accidents in the State.

Additionally, section 20902 of title 49 of the United States Code, which authorizes the Secretary of Transportation to investigate certain accidents and incidents, provides: ''[i]f the accident or incident is investigated by a commission of the State in which it occurred, the Secretary, if convenient, shall carry out the investigation at the same time as, and in coordination with, the commission's investigation.'' This section contemplates that States have an interest in carrying out simultaneous investigations in coordination with the Secretary, where convenient. It would be consistent with this interest to permit States to adopt their own accident notification requirements so as to allow a prompt, and perhaps coordinated, investigation. Accordingly, FRA believes that it has satisfied the Executive Order.

E. Environmental Impact

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

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

* * * * *

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

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

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The final rule would not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

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

Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

List of Subjects

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 225

Accident investigation, Penalties, Railroad safety, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends Chapter II, Subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

2. Section 219.5 is amended by adding a definition of *Accident or incident reportable under part 225* and revising the definition of *Reportable injury* to read as follows:

§ 219.5 Definitions.

* * * * *

Accident or incident reportable under part 225 does not include a case that is classified as ''covered data'' under § 225.5 of this chapter (*i.e.*, employee injury/illness cases reportable exclusively because a physician or other licensed health care professional either made a one-time topical application of a prescription-strength medication to the employee's injury or made a written recommendation that the employee: Take one or more days away from work when the employee instead reports to work (or would have reported had he or she been scheduled) and takes no days away from work in connection with the injury or illness; work restricted duty for one or more days when the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled) and takes no other days of restricted work activity in connection with the injury or illness; or take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee actually takes the medication).

* * * * *

Reportable injury means an injury reportable under part 225 of this chapter except for an injury that is classified as ''covered data'' under § 225.5 of this chapter (*i.e.*, employee injury/illness cases reportable exclusively because a physician or other licensed health care professional either made a one-time topical application of a prescription-strength medication to the employee's injury or made a written recommendation that the employee: Take one or more days away from work when the employee instead reports to work (or would have reported had he or she been scheduled) and takes no days away from work in connection with the injury or illness; work restricted duty for one or more days when the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled) and takes no other days of restricted work activity in

connection with the injury or illness; or take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee actually takes the medication.

* * * * *

PART 225—[AMENDED]

3. The authority citation for part 225 is revised to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

4. Section 225.5 is amended as follows:

a. By revising paragraph (3) of the definition of the term *Accident/incident;*

b. By revising the definitions of the terms *Accountable injury or illness, Day away from work, Day of restricted work activity, Medical treatment,* and *Occupational illness;*

c. By removing the term *Arising from the operation of a railroad* and its definition; and

d. By adding definitions of the terms *Covered data, Event or exposure arising from the operation of a railroad, General reporting criteria, Medical removal, Musculoskeletal disorder, Needlestick or sharps injury, New case, Occupational hearing loss, Occupational tuberculosis, Privacy concern case, Significant change in the damage costs for reportable rail equipment accidents/incidents, Significant change in the number of reportable days away from work or days restricted, Significant illness,* and *Significant injury* to read as follows:

§ 225.5 Definitions.

* * * * *

Accident/incident means:

* * * * *

(3) Any event or exposure arising from the operation of a railroad, if the event or exposure is a discernable cause of one or more of the following outcomes, and this outcome is a new case or a significant aggravation of a pre-existing injury or illness:

(i) Death to any person;

(ii) Injury to any person that results in medical treatment;

(iii) Injury to a railroad employee that results in:

(A) A day away from work;

(B) Restricted work activity or job transfer; or

(C) Loss of consciousness;

(iv) Occupational illness of a railroad employee that results in any of the following:

(A) A day away from work;

(B) Restricted work activity or job transfer;

(C) Loss of consciousness; or

(D) Medical treatment;

(v) Significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;

(vi) Illness or injury that meets the application of any of the following specific case criteria:

(A) Needlestick or sharps injury to a railroad employee;

(B) Medical removal of a railroad employee;

(C) Occupational hearing loss of a railroad employee;

(D) Occupational tuberculosis of a railroad employee; or

(E) Musculoskeletal disorder of a railroad employee if this disorder is independently reportable under one or more of the general reporting criteria.

Accountable injury or illness means any condition, not otherwise reportable, of a railroad employee that is discernably caused by an event, exposure, or activity in the work environment which condition causes or requires the railroad employee to be examined or treated by a qualified health care professional.

* * * * *

Covered data means information that must be reported to FRA under this part concerning a railroad employee injury or illness case that is reportable exclusively because a physician or other licensed health care professional—

(1) Recommended in writing that—

(i) The employee take one or more days away from work when the employee instead reports to work (or would have reported had he or she been scheduled) and takes no days away from work in connection with the injury or illness,

(ii) The employee work restricted duty for one or more days when the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled) and takes no days of restricted work activity in connection with the injury or illness, or

(iii) The employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee actually takes the medication; or

(2) Made a one-time topical application of a prescription-strength medication to the employee's injury.

Day away from work means a day away from work as described in paragraph (1) of this definition or, if paragraph (1) does not apply, a day away from work solely for reporting purposes as described in paragraph (2) of this definition. For purposes of this definition, the count of days includes all calendar days, regardless of whether the employee would normally be scheduled to work on those days (*e.g.*, weekend days, holidays, rest days, and vacation days), and begins on the first calendar day after the railroad employee has been examined by a physician or other licensed health care professional (PLHCP) and diagnosed with a work-related injury or illness. In particular, the term means—

(1) Each calendar day that the employee, for reasons associated with his or her condition, does not report to work (or would have been unable to report had he or she been scheduled) if not reporting results from:

(i) A PLHCP's written recommendation not to work, or

(ii) A railroad's instructions not to work, if the injury or illness is otherwise reportable; or

(2) A minimum of one calendar day if a PLHCP, for reasons associated with the employee's condition, recommends in writing that the employee take one or more days away from work, but the employee instead reports to work (or would have reported had he or she been scheduled). This paragraph is intended to take into account ''covered data'' cases and also those non-covered data cases that are independently reportable for some other reason (*e.g.*, ''medical treatment'' or ''day of restricted work activity''). The requirement to report ''a minimum of one calendar day'' is intended to give a railroad the discretion to report up to the total number of days recommended by the PLHCP.

Day of restricted work activity means a day of restricted work activity as described in paragraph (1) of this definition or, if paragraph (1) does not apply, a day of restricted work activity solely for reporting purposes as described in paragraph (2) of this definition; in both cases, the work restriction must affect one or more of the employee's routine job functions (*i.e.*, those work activities regularly performed at least once per week) or prevent the employee from working the full workday that he or she would otherwise have worked. For purposes of this definition, the count of days includes all calendar days, regardless of whether the employee would normally be scheduled to work on those days (*e.g.*, weekend days, holidays, rest days, and vacation days), and begins on the first calendar day after the railroad employee has been examined by a

physician or other licensed health care professional (PLHCP) and diagnosed with a work-related injury or illness. In particular, the term means—

(1) Each calendar day that the employee, for reasons associated with his or her condition, works restricted duty (or would have worked restricted duty had he or she been scheduled) if the restriction results from:

(i) A PLHCP's written recommendation to work restricted duty, or

(ii) A railroad's instructions to work restricted duty, if the injury or illness is otherwise reportable; or

(2) A minimum of one calendar day if a PLHCP, for reasons associated with the employee's condition, recommends in writing that the employee work restricted duty for one or more days, but the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled). This paragraph is intended to take into account ''covered data'' cases and also those non-covered data cases that are independently reportable for some other reason (*e.g.*, ''medical treatment'' or ''day of restricted work activity''). The requirement to report ''a minimum of one calendar day'' is intended to give a railroad the discretion to report up to the total number of days recommended by the PLHCP.

* * * * *

Event or exposure arising from the operation of a railroad includes—

(1) With respect to a person who is on property owned, leased, or maintained by the railroad, an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity;

(2) With respect to an employee of the railroad (whether on or off property owned, leased, or maintained by the railroad), an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; and

(3) With respect to a person who is not an employee of the railroad and not on property owned, leased, or maintained by the railroad—an event or exposure directly resulting from one or more of the following railroad operations:

(i) A train accident, a train incident, or a highway-rail crossing accident or incident involving the railroad; or

(ii) A release of a hazardous material from a railcar in the possession of the railroad or of another dangerous commodity that is related to the performance of the railroad's rail transportation business.

* * * * *

General reporting criteria means the criteria listed in § 225.19(d)(1), (2), (3), (4), and (5).

* * * * *

Medical removal means medical removal under the medical surveillance requirements of the Occupational Safety and Health Administration standard in 29 CFR part 1910 in effect during calendar year 2002, even if the case does not meet one of the general reporting criteria.

Medical treatment means any medical care or treatment beyond ''first aid'' regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does *not* include counseling.

Musculoskeletal disorder (MSD) means a disorder of the muscles, nerves, tendons, ligaments, joints, cartilage, and spinal discs. The term does not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

Needlestick or sharps injury means a cut, laceration, puncture, or scratch from a needle or other sharp object that involves contamination with another person's blood or other potentially infectious material, even if the case does not meet one of the general reporting criteria.

New case means a case in which either the employee has not previously experienced a reported injury or illness of the same type that affects the same part of the body, or the employee previously experienced a reported injury or illness of the same type that affected the same part of the body but had recovered completely (all signs had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

* * * * *

Occupational hearing loss means a diagnosis of occupational hearing loss by a physician or other licensed health care professional, where the employee's audiogram reveals a work-related Standard Threshold Shift (STS) (*i.e.*, at least a 10-decibel change in hearing threshold, relative to the baseline audiogram for that employee) in hearing in one or both ears, and the employee's total hearing level is 25 decibels or more above audiometric zero (averaged at 2000, 3000, and 4000 Hz) in the same ear(s) as the STS.

Occupational illness means any abnormal condition or disorder, as diagnosed by a physician or other licensed health care professional, of any person who falls under the definition for the classification of Worker on Duty—Employee, other than one resulting from injury, discernably caused by an environmental factor associated with the person's railroad employment, including, but not limited to, acute or chronic illnesses or diseases that may be caused by inhalation, absorption, ingestion, or direct contact.

Occupational tuberculosis means the occupational exposure of an employee to anyone with a known case of active tuberculosis if the employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, even if the case does not meet one of the general reporting criteria.

* * * * *

Privacy concern case is any occupational injury or illness in the following list:

(1) Any injury or illness to an intimate body part or the reproductive system;

(2) An injury or illness resulting from a sexual assault;

(3) Mental illnesses;

(4) HIV infection, hepatitis, or tuberculosis;

(5) Needlestick and sharps injuries; and

(6) Other injuries or illnesses, if the employee independently and voluntarily requests in writing to the railroad reporting officer that his or her injury or illness not be posted.

* * * * *

Significant change in the damage costs for reportable rail equipment accidents/incidents means at least a ten-percent variance between the damage amount reported to FRA and current cost figures.

Significant change in the number of reportable days away from work or days restricted means at least a ten-percent variance in the number of actual reportable days away from work or days restricted compared to the number of days already reported.

Significant illness means an illness involving cancer or a chronic irreversible disease such as byssinosis or silicosis, if the disease does not result in death, a day away from work, restricted work, job transfer, medical treatment, or loss of consciousness.

Significant injury means an injury involving a fractured or cracked bone or a punctured eardrum, if the injury does

not result in death, a day away from work, restricted work, job transfer, medical treatment, or loss of consciousness.

* * * * *

5. Section 225.9 is revised to read as follows:

§ 225.9 Telephonic reports of certain accidents/incidents and other events.

(a) *Types of accidents/incidents and other events to be reported.* (1) *Certain deaths or injuries.* Each railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of an accident/incident arising from the operation of the railroad, or an event or exposure that may have arisen from the operation of the railroad, that results in the—

(i) Death of a rail passenger or a railroad employee;

(ii) Death of an employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad; or

(iii) Death or injury of five or more persons.

(2) *Certain train accidents or train incidents.* Each railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of any of the following events that arose from the operation of the railroad:

(i) A train accident that results in serious injury to two or more train crewmembers or passengers requiring their admission to a hospital;

(ii) A train accident resulting in evacuation of a passenger train;

(iii) A fatality at a highway-rail grade crossing as a result of a train accident or train incident;

(iv) A train accident resulting in damage (based on a preliminary gross estimate) of $150,000, to railroad and nonrailroad property; or

(v) A train accident resulting in damage of $25,000 or more to a passenger train, including railroad and nonrailroad property.

(3) *Train accidents on or fouling passenger service main lines.* The dispatching railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of any train accident reportable as a rail equipment accident/incident under §§ 225.11 and 225.19(c)—

(i) that involves a collision or derailment on a main line that is used for scheduled passenger service; or

(ii) that fouls a main line used for scheduled passenger service.

(b) *Method of reporting.* (1) Telephonic reports required by this section shall be made by toll-free telephone to the National Response Center, Area Code 800–424–8802 or 800–424–0201.

(2) Through one of the same telephone numbers (800–424–0201), the National Response Center (NRC) also receives notifications of rail accidents for the National Transportation Safety Board (49 CFR part 840) and the Research and Special Programs Administration of the U.S. Department of Transportation (Hazardous Materials Regulations, 49 CFR 171.15). FRA Locomotive Safety Standards require certain locomotive accidents to be reported by telephone to the NRC at the same toll-free number (800–424–0201). 49 CFR 229.17.

(c) *Contents of report.* Each report must state the:

(1) Name of the railroad;

(2) Name, title, and telephone number of the individual making the report;

(3) Time, date, and location of the accident/incident;

(4) Circumstances of the accident/incident;

(5) Number of persons killed or injured; and

(6) Available estimates of railroad and non-railroad property damage.

(d) *Timing of report.* (1) To the extent that the necessity to report an accident/incident depends upon a determination of fact or an estimate of property damage, a report will be considered immediate if made as soon as possible following the time that the determination or estimate is made, or could reasonably have been made, whichever comes first, taking into consideration the health and safety of those affected by the accident/incident, including actions to protect the environment.

(2) NTSB has other specific requirements regarding the timeliness of reporting. *See* 49 CFR part 840.

6. In section 225.19, paragraph (d) is revised to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(d) *Group III—Death, injury, or occupational illness.* Each event or exposure arising from the operation of a railroad shall be reported on Form FRA F 6180.55a if the event or exposure is a discernable cause of one or more of the following outcomes, and this outcome is a new case or a significant aggravation of a pre-existing injury or illness:

(1) Death to any person;

(2) Injury to any person that results in medical treatment;

(3) Injury to a railroad employee that results in:

(i) A day away from work;

(ii) Restricted work activity or job transfer; or

(iii) Loss of consciousness;

(4) Occupational illness of a railroad employee that results in any of the following:

(i) A day away from work;

(ii) Restricted work activity or job transfer;

(iii) Loss of consciousness; or

(iv) Medical treatment;

(5) Significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;

(6) Illness or injury that meets the application of any of the following specific case criteria:

(i) Needlestick or sharps injury to a railroad employee;

(ii) Medical removal of a railroad employee;

(iii) Occupational hearing loss of a railroad employee;

(iv) Occupational tuberculosis of a railroad employee; or

(v) Musculoskeletal disorder of a railroad employee if this disorder is independently reportable under one or more of the general reporting criteria.

* * * * *

7. In section 225.21, a new paragraph (j) is added to read as follows:

§ 225.21 Forms.

* * * * *

(j) Form FRA 6180.107—*Alternative Record for Illnesses Claimed to Be Work-Related.* (1) Form FRA F 6180.107 shall be used by a railroad to record each illness claimed to be work-related that is reported to the railroad—

(i) For which there is insufficient information to determine whether the illness is work-related;

(ii) For which the railroad has made a preliminary determination that the illness is not work-related; or

(iii) For which the railroad has made a final determination that the illness is not work-related.

(2) For any case determined to be reportable, the designation ''illness claimed to be work-related'' shall be removed, and the record shall be transferred to the reporting officer for retention and reporting in the normal manner.

(3) In the event the narrative block (similar to Form FRA F 6180.98, block

39) indicates that the case is not reportable, the explanation contained on that block shall record the reasons the railroad determined that the case is not reportable, making reference to the most authoritative information relied upon.

(4) Although the Form FRA F 6180.107 may not include all supporting documentation, such as medical records, the Form FRA F 6180.107 shall note the name, title, and address of the custodian of those documents and where the supporting documents are located so that they are readily accessible to FRA upon request.

8. In section 225.23, paragraph (a) is revised to read as follows:

§ 225.23 Joint operations.

(a) Any reportable death, injury, or illness of an employee arising from an accident/incident involving joint operations must be reported on Form FRA F 6180.55a by the employing railroad.

* * * * *

9. Section 225.25 is amended by revising paragraphs (b)(6), (b)(16), (b)(25)(v), (e)(8), (e)(24), (h)(15), and new paragraphs (b)(25)(xi), (b)(25)(xii) and (i) are added to read as follows:

§ 225.25 Recordkeeping.

* * * * *

(b) * * *

(6) Employee identification number or, in the alternative, Social Security Number of railroad employee;

* * * * *

(16) Whether employee was on premises when injury, illness, or condition occurred;

* * * * *

(25) * * *

(v) If one or more days away from work, provide the number of days away and the beginning date;

* * * * *

(xi) Significant injury or illness of a railroad employee;

(xii) Needlestick or sharps injury to a railroad employee, medical removal of a railroad employee, occupational hearing loss of a railroad employee, occupational tuberculosis of a railroad employee, or musculoskeletal disorder of a railroad employee which musculoskeletal disorder is reportable under one or more of the general reporting criteria.

* * * * *

(e) * * *

(8) County and nearest city or town;

* * * * *

(24) Persons injured, persons killed, and employees with an occupational illness, broken down into the following classifications: worker on duty—employee; employee not on duty; passenger on train; nontrespasser—on railroad property; trespasser; worker on duty—contractor; contractor—other; worker on duty—volunteer; volunteer—other; and nontrespasser-off railroad property;

* * * * *

(h) * * *

(15) The railroad is permitted not to post information on an occupational injury or illness that is a privacy concern case.

* * * * *

(i) *Claimed Occupational Illnesses.* (1) Each railroad shall maintain either the Form FRA F 6180.107, to the extent that the information is reasonably available, or an alternate railroad-designed record containing the same information as called for on the Form FRA F 6180.107, to the extent that the information is reasonably available, for each illness claimed to be work-related—

(i) For which there is insufficient information to determine whether the illness is work-related;

(ii) For which the railroad has made a preliminary determination that the illness is not work-related; or

(iii) For which the railroad has made a final determination that the illness is not work-related.

(2) For any case determined to be reportable, the designation ''illness claimed to be work-related'' shall be removed, and the record shall be transferred to the reporting officer for retention and reporting in the normal manner.

(3) In the event the narrative block (similar to Form FRA F 6180.98, block 39) indicates that the case is not reportable, the explanation contained on that block shall record the reasons the railroad determined that the case is not reportable, making reference to the most authoritative information relied upon.

(4) In the event the railroad must amend the record with new or additional information, the railroad shall have up until December 1 of the next calendar year for reporting accidents/incidents to make the update.

(5) Although the Alternative Record for Illnesses Claimed to be Work-Related (or the alternate railroad-designed form) may not include all supporting documentation, such as medical records, the alternative record shall note the custodian of those documents and where the supporting documents are located so that they are readily accessible to FRA upon request.

10. Section 225.33 is amended by adding new paragraph (a)(11) to read as follows:

§ 225.33 Internal Control Plans.

(a) * * *

(11) In the case of the Form FRA F 6180.107 or the alternate railroad-designed form, a statement that specifies the name, title, and address of the custodian of these records, all supporting documentation, such as medical records, and where the documents are located.

* * * * *

11. Section 225.35 is amended by designating the first paragraph as paragraph (a), designating the second paragraph as paragraph (b), and adding after the fourth sentence of newly designated paragraph (b) the following two sentences:

§ 225.35 Access to records and reports.

* * * * *

(b) * * * The Form FRA F 6180.107 or the alternate railroad-designed form need not be provided at any railroad establishment within 4 hours of a request. Rather, the Form FRA F 6180.107 or the alternate railroad-designed form must be provided upon request, within five business days, and may be kept at a central location, in either paper or electronic format.* * *

12. Section 225.39 is added to read as follows:

§ 225.39 FRA policy on covered data.

FRA will not include covered data (as defined in § 225.5) in its periodic summaries of data on the number of occupational injuries and illnesses.

PART 240—[AMENDED]

13. The authority citation for part 240 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

14. In section 240.117, paragraph (e)(2) is revised to read as follows:

§ 240.117 Criteria for consideration of operating rules compliance data.

* * * * *

(e) * * *

(2) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour. Where restricted speed is in effect, railroads shall consider only those violations of the conditional clause of restricted speed rules (*i.e.*, the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under part 225 of this chapter, except for accidents and incidents that are classified as ''covered data'' under

§ 225.5 of this chapter (*i.e.*, employee injury/illness cases reportable exclusively because a physician or other licensed health care professional either made a one-time topical application of a prescription-strength medication to the employee's injury or made a written recommendation that the employee: Take one or more days away from work when the employee instead reports to work (or would have reported had he or she been scheduled) and takes no days away from work in connection with the injury or illness; work restricted duty for one or more days when the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled) and takes no other days of restricted work activity in connection with the injury or illness; or take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee actually takes the medication, as instances of failure to adhere to this section;

* * * * *

Issued in Washington, DC, on February 19, 2003.

Allan Rutter,

Federal Railroad Administrator.

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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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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–

6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 141/P.L. 108–8
To improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes. (Feb. 25, 2003; 117 Stat. 555)

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***1, 2 (2** Reserved)	(869–050–00001–6)	9.00	[4] Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869–048–00002–0)	59.00	[1] Jan. 1, 2002
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166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
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7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
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49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
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1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–048–00047–0)	59.00	Jan. 1, 2002
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 2003

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
March 3	March 18	April 2	April 17	May 2	June 2
March 4	March 19	April 3	April 18	May 5	June 2
March 5	March 20	April 4	April 21	May 5	June 3
March 6	March 21	April 7	April 21	May 5	June 4
March 7	March 24	April 7	April 21	May 6	June 5
March 10	March 25	April 9	April 24	May 9	June 9
March 11	March 26	April 10	April 25	May 12	June 9
March 12	March 27	April 11	April 28	May 12	June 10
March 13	March 28	April 14	April 28	May 12	June 11
March 14	March 31	April 14	April 28	May 13	June 12
March 17	April 1	April 16	May 1	May 16	June 16
March 18	April 2	April 17	May 2	May 19	June 16
March 19	April 3	April 18	May 5	May 19	June 17
March 20	April 4	April 21	May 5	May 19	June 18
March 21	April 7	April 21	May 5	May 20	June 19
March 24	April 8	April 23	May 8	May 23	June 23
March 25	April 9	April 24	May 9	May 27	June 23
March 26	April 10	April 25	May 12	May 27	June 24
March 27	April 11	April 28	May 12	May 27	June 25
March 28	April 14	April 28	May 12	May 27	June 26
March 31	April 15	April 30	May 15	May 30	June 30