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Federal Register

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Contents

Federal Register

Vol. 68, No. 51

Monday, March 17, 2003

Editorial Note: In the **Federal Register** of March 14,2003, the page numbers from all the entries in the table of contents were inadvertently replaced with **Federal Register** document numbers. A corrected table of contents for the March 14, 2003, issue appears after the Readers Aids section at the back of today's **Federal Register.**

Agriculture Department
See Forest Service
See Rural Utilities Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12715–12716

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
South Africa; National Institute for Communicable Diseases, 12700–12701
Meetings:
HIV and STD Prevention and Treatment Advisory Committee, 12701

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

Commodity Futures Trading Commission
RULES
Commodity pool operators and commodity trading advisors:
National Futures Association; disclosure documents filing, 12583–12584
PROPOSED RULES
Commodity pool operators and commodity trading advisors:
Registration exemption and other regulatory relief, 12622–12639
NOTICES
Meetings; Sunshine Act, 12684
National Futures Association:
Authorization for reviews of commodity pool operators' disclosure documents for publicly-offered commodity pools, 12684–12685

Defense Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 12685–12686

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12686–12687

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
AmeriFlux Research Program, 12687–12690
Meetings:
Secretary of Energy Advisory Board, 12690

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
Biomass Research and Development Technical Advisory Committee, 12690–12691

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Metal coil surface coating; technical correction, 12590–12592
Air quality implementation plans; approval and promulgation; various States:
Ohio, 12590
Water pollution control:
Ocean dumping; site designations—
Historic Area Remediation Site-specific polychlorinated biphenyl worm tissue criterion, 12592–12602
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Primary aluminum reduction plants, 12645–12652
NOTICES
Environmental statements; availability, etc.:
Coastal nonpoint pollution control programs; States and territories—
Minnesota, 12675–12676

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Bombardier Aerospace Model BD-100-1A10 airplane, 12581–12582
Class D airspace, 12582–12583
PROPOSED RULES
Airworthiness directives:
BAE Systems (Operations) Ltd., 12614–12615
Empresa Basileira de Aeronautica S.A. (EMBRAER), 12615–12618
McDonnell Douglas, 12618–12620
Class E airspace, 12621
NOTICES
Advisory circulars; availability, etc.:
Aircraft ice protection, 12734–12735
Meetings:
RTCA, Inc., 12735
Reports and guidance documents; availability, etc.:
No-smoking placards and signs; policy statement, 12735

Federal Communications Commission
RULES
Digital television stations; table of assignments:
Minnesota, 12610–12611

Television broadcasting:
Broadcast auxiliary service rules, 12743–12777
PROPOSED RULES
Television broadcasting:
Rural Translator Service; National Translation Association's rulemaking petition, 12652–12653
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 12697

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12698

Federal Election Commission
RULES
Compliance procedures:
Administrative fines; civil money penalties reduction for political committees that file reports late or not at all, 12572–12580

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
WPS New England Generation, Inc., et al., 12692–12693
Environmental statements; notice of intent:
Dominion Transmission, Inc., et al., 12693–12695
Hydroelectric applications, 12695–12697
Meetings:
New England transmission cost allocation stakeholder workshop; agency staff participation, 12697
Applications, hearings, determinations, etc.:
American Municipal Power-Ohio, Inc., et al., 12691
Atlantic City Electric Co. et al., 12691–12692
Northwest Pipeline Corp., 12692

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
St. Louis City and St. Louis County, MO, 12735–12736
Texas and Howell Counties, MO, 12736

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12698–12699
Banks and bank holding companies:
Change in bank control, 12699
Formations, acquisitions, and mergers, 12699–12700
Permissible nonbanking activities, 12700

Federal Trade Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12700

Fish and Wildlife Service
RULES
Endangered and threatened species:
Canada lynx; contiguous U.S. distinct population segment, 12611–12612
PROPOSED RULES
Migratory bird permits:
Double-crested cormorant management, 12653–12660
NOTICES
Endangered and threatened species:
Recovery plans—
Mead's milkweed, 12710–12711
Endangered and threatened species and marine mammal permit applications, 12709–12710
Environmental statements; availability, etc.:
Incidental take permits—
Erie County, OH; Lake Erie water snakes, 12711–12712
Environmental statements; notice of intent:
Incidental take permits—
Washington State forest practices rules; salmon, steelhead, and trout species, 12676–12678
Marine mammal permit applications, 12712

Food and Drug Administration
RULES
Human drugs:
Systemic antibacterial products; labeling requirements Correction, 12584
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12701–12707
Human drugs:
Patent extension; regulatory review period determinations—
VITREON, 12707–12708

Forest Service
NOTICES
Environmental statements; notice of intent:
Manti-La Sal National Forest, UT, 12661–12662
Umpqua National Forest, OR, 12662–12663
Meetings:
Intergovernmental Advisory Committee, 12663–12664
Resource Advisory Committees—
Flathead County, 12664

General Services Administration
RULES
Federal travel:
Travel expenses payment from non-Federal source, 12602–12610
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 12685–12686

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration

Housing and Urban Development Department
RULES
Civil money penalties; inflation adjustment, 12785–12789
Mortgage and loan insurance programs:
Multifamily housing programs; mortgage insurance premiums, 12791–12795
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12708–12709

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See Reclamation Bureau

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12737–12738

International Trade Administration
NOTICES
Antidumping:
Barium carbonate from—
China, 12664–12669
Barium chloride from—
China, 12669–12671
Fresh Atlantic salmon from—
Chile, 12671
Preserved mushrooms from—
China, 12671–12672
Small diameter carbon and alloy seamless standard, line, and pressure pipe from—
Romania, 12672–12674

International Trade Commission
NOTICES
Import investigations:
Radios and components, 12714

Judicial Conference of the United States
NOTICES
Meetings:
Judicial Conference Advisory Committee on—
Appellate Procedure Rules, 12715
Bankruptcy Procedure Rules, 12714–12715
Civil Procedure Rules, 12715
Criminal Procedure Rules, 12715
Evidence Rules, 12715

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Wild Horse and Burro Advisory Board, 12712–12713

Minerals Management Service
PROPOSED RULES
Royalty management:
Federal geothermal resources; discussions for developing consensus on royalty valuation approaches, 12643–12644

Mine Safety and Health Administration
PROPOSED RULES
Coal mine safety and health:
Underground coal mine operators' dust control plans and compliance sampling for respirable dust; verification
Hearings, 12641–12643

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 12685–12686

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Haddock, 12612–12613
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12674–12675
Environmental statements; availability, etc.:
Coastal nonpoint pollution control programs; States and territories—
Minnesota, 12675–12676
Environmental statements; notice of intent:
Incidental take permits—
Washington State forest practices rules; salmon, steelhead, and trout species, 12676–12678

National Science Foundation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12717
Meetings:
Business and Operations Advisory Committee, 12717–12718

National Telecommunications and Information Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Technology Opportunities Program, 12678–12683

Nuclear Regulatory Commission
RULES
Production and utilization facilities; domestic licensing:
Nuclear power plants; decommissioning trust provisions; correction, 12571–12572
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12718
Environmental statements; availability, etc.:
Savannah River Site, SC—
Mixed oxide fuel fabrication facility; construction and operation; correction, 12720–12721
Applications, hearings, determinations, etc.:
Tennessee Valley Authority, 12718–12720

Postal Rate Commission
RULES
Practice and procedure:
Electronic filing of documents over Internet; related minor conforming changes, 12588–12590
NOTICES
Visits to facilities, 12721

Presidential Documents
ADMINISTRATIVE ORDERS
Farm Security and Rural Investment Act of 2002; food for education and child nutrition program, establishment (Memorandum of March 11, 2003), 12569

Railroad Retirement Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12721

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Columbia Basin Project, WA; Banks Lake Drawdown, 12713–12714

Research and Special Programs Administration
NOTICES
Meetings:
Pipeline safety—
Personnel qualification, 12736–12737

Rural Utilities Service
NOTICES
Environmental statements; availability, etc.:
Tri-State Generation & Transmission Association, Inc., 12664

Saint Lawrence Seaway Development Corporation
PROPOSED RULES
Seaway regulations and rules:
Tariff of tolls, 12644–12645

Securities and Exchange Commission
RULES
Organization, functions, and authority delegations:
Director, Market Regulation Division, 12779–12783
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12722
Meetings; Sunshine Act, 12723
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 12723–12724
National Association of Securities Dealers, Inc., 12724–12732
Applications, hearings, determinations, etc.:
Koppers Inc., 12722–12723

Social Security Administration
PROPOSED RULES
Social security benefits and supplemental security income:
Mental disorders; medical evaluation criteria, 12639–12641

State Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12732–12733
Meetings:
Eastern Europe and Independent States of Former Soviet Union Study Advisory Committee, 12733

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Norfolk Southern Railway Co., 12737

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 12733–12734

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration
See Saint Lawrence Seaway Development Corporation
See Surface Transportation Board
PROPOSED RULES
Computer reservation systems, carrier-owned:
General policy statements; correction, 12622

Treasury Department
See Internal Revenue Service
RULES
Disclosure of records:
Legal proceedings; access to information and records; clarification, 12584–12588

Veterans Affairs Department
NOTICES
Privacy Act:
Systems of records, 12738–12741

Separate Parts In This Issue

Part II
Federal Communications Commission, 12743–12777

Part III
Securities and Exchange Commission, 12779–12783

Part IV
Housing and Urban Development Department, 12785–12789

Part V
Housing and Urban Development Department, 12791–12795

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Memorandums:
Memorandum of March 11, 2003 12569

Executive Orders:

12752 (See Memorandum of March 11, 2003) 12569

10 CFR

50 12571

11 CFR

111 12572

14 CFR

25 12581
71 12582

Proposed Rules:

39 (3 documents) 12614, 12615, 12618
71 12621
255 12622
399 12622

17 CFR

4 12583
200 12780
240 12780

Proposed Rules:

4 12622

20 CFR

Proposed Rules:

404 12639
416 12639

21 CFR

201 12584

24 CFR

25 12766
28 12766
30 12766
81 12766
180 12766
207 12792
3282 12766
3500 12766

30 CFR

Proposed Rules:

70 12641
72 12641
75 12641
90 12641
206 12643

31 CFR

1 12584

33 CFR

Proposed Rules:

402 12644

39 CFR

3001 12588

40 CFR

52 12590
63 12590
228 12592

Proposed Rules:

63 12645

41 CFR

300–2 12602
Ch. 304 12602

47 CFR

1 12744
2 12744
73 (2 documents) 12610, 12744
74 12744
78 12744
101 12744

Proposed Rules:

74 12652

50 CFR

17 12611
648 12612

Proposed Rules:

21 12653

Federal Register
Vol. 68, No. 51
Monday, March 17, 2003

Presidential Documents

Title 3—

The President

Memorandum of March 11, 2003

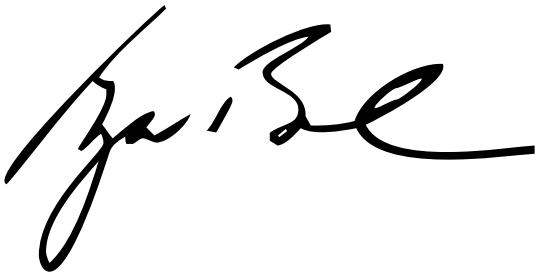
Implementation of Section 3107 of the Farm Security and Rural Investment Act of 2002, Relating to Food for Education and Child Nutrition

Memorandum for the Secretary of Agriculture

Effective upon the publication of this memorandum in the **Federal Register**, there is established the program relating to food for education and child nutrition authorized by subsection 3107(b) of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) (7 U.S.C. 17360–1). Pursuant to subsection 3107(d) of the Act, the Department of Agriculture is designated to take actions specified in that subsection. The authorities and duties of the President under section 3107 (except the authority to designate under 3107(d)) are delegated to the Secretary of Agriculture.

In the implementation of a program for which section 3107 provides, the Secretary of Agriculture shall consult as appropriate with the Food Policy Assistance Council established by section 3 of Executive Order 12752 of February 25, 1991, as amended, and such heads of Federal departments and agencies as the Secretary determines appropriate.

You are authorized and directed to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, March 11, 2003.

[FR Doc. 03–6455
Filed 3–14–03; 8:45 am]
Billing code 3410–10–M

Rules and Regulations

Federal Register
Vol. 68, No. 51
Monday, March 17, 2003

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

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG52

Decommissioning Trust Provisions; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains a correction to an amendment included with the final regulations establishing licensing criteria for the decommissioning trust provisions for nuclear power plants that the Nuclear Regulatory Commission published in the **Federal Register** of December 24, 2002.

EFFECTIVE DATE: December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1978; e-mail *bjr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction become effective on December 24, 2003. The final rule, published December 24, 2002 (67 FR 78332), amended parts 50 and 72 of 10 CFR Chapter 1. One of the amendments included in the final rule was to § 50.75(e). However, as a result of that amendment, paragraphs (e)(1)(ii)(A) and (e)(1)(ii)(B) would be inadvertently removed from the NRC's regulations at § 50.75(e) when the December 24, 2002, final rule becomes effective. The NRC does not intend to remove these paragraphs.

Need for Correction

As published, the final regulations erroneously omit two paragraphs of § 50.75(e) that address the requirements for an external sinking fund sufficient to fund decommissioning costs for a nuclear power facility at the time permanent termination of operations is expected. This correction restores those paragraphs to 10 CFR Part 50.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

Accordingly, 10 CFR Part 50 is corrected by making the following correcting amendments:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.75, revise paragraph (e)(1)(ii) to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(1) * * *

(ii) External sinking fund. An external sinking fund is a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates in which the total amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected. An external sinking fund may be in the form of a trust, escrow account, or Government fund, with payment by certificate of deposit, deposit of Government or other securities, or other method acceptable to the NRC. This trust, escrow account, Government fund, or other type of agreement shall be established in writing and maintained at all times in the United States with an entity that is an appropriate State or Federal government agency, or an entity whose operations in which the external linking fund is managed are regulated and examined by a Federal or State agency. A licensee that has collected funds based on a site-specific estimate under § 50.75(b)(1) of this section may take credit for projected earnings on the external sinking funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the decommissioning period, provided that the site-specific estimate is based on a period of safe storage that is specifically described in the estimate. This includes the periods of safe storage, final dismantlement, and license termination. A licensee that has collected funds based on the formulas in § 50.75(c) of this section may take credit for collected earnings on the decommissioning funds using up to 2 percent annual real rate of return up to the time of permanent termination. A licensee may use a credit of greater than 2 percent if the licensee's rate-setting authority has specifically authorized a higher rate. However, licensees certifying only to the formula amounts (*i.e.*, not a site-specific estimate) can take a pro-rata credit during the dismantlement period (*i.e.*, recognizing both cash expenditures and earnings the first 7 years after shutdown). Actual earnings on existing funds may be used

to calculate future fund needs. A licensee, whose rates for decommissioning costs cover only a portion of these costs, may make use of this method only for the portion of these costs that are collected in one of the manners described in this paragraph, (e)(1)(ii). This method may be used as the exclusive mechanism relied upon for providing financial assurance for decommissioning in the following circumstances:

(A) By a licensee that recovers, either directly or indirectly, the estimated total cost of decommissioning through rates established by ''cost of service'' or similar ratemaking regulation. Public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, that establish their own rates and are able to recover their cost of service allocable to decommissioning, are assumed to meet this condition.

(B) By a licensee whose source of revenues for its external sinking fund is a ''non-bypassable charge,'' the total amount of which will provide funds estimated to be needed for decommissioning pursuant to §§ 50.75(c), 50.75(f), or 50.82 of this part.

* * * * *

Dated at Rockville, Maryland, this 11th day of March, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 03–6287 Filed 3–14–03; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2003—6]

Administrative Fines

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission is amending its administrative fines regulations to reduce the civil money penalties for political committees with less than $50,000 in financial activity in a reporting period that file reports late or that do not file them at all. The revised rules create two additional levels-of-activity brackets for such committees to make further distinctions in the amount of the civil money penalty assessed. The amendments also change the method for calculating the ''level of activity'' on which civil money penalties are based for unauthorized committees by excluding certain non-Federal activity from the calculation. Additionally, these amended rules: clarify how late filers and non-filers will be notified of reason-to-believe findings, final determinations and other actions; and clarify the factors that will not be considered ''extraordinary circumstances'' when findings or penalties are challenged. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

EFFECTIVE DATE: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Ms. Dawn M. Odrowski, Attorney, at 999 E Street, NW., Washington, DC., 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is issuing final rules to make certain revisions to its administrative fines program. The program enables the Commission to adjudicate reporting violations of section 434(a) of the Federal Election Campaign Act of 1971, as amended (''FECA'' or ''Act''), 2 U.S.C. 431 *et seq.*, by political committees and their treasurers who fail to file, or untimely file, required campaign finance disclosure reports. The adjudication employs a streamlined procedure that affords respondents due process rights and assesses a civil money penalty for violations based on published penalty schedules. The Commission established the administrative fines program in July 2000 pursuant to 2 U.S.C. 437g(a)(4). *See* Treasury and Government Appropriations Act, 2000, Pub. L. 106–58, 106th Cong. § 640, 113 Stat. 430, 476–77 (1999), as amended by the Treasury and General Government Appropriations Act, 2002, Pub. L. 107–67, 107th Cong. § 642, 115 Stat. 514, 555 (2001) and Explanation and Justification for Administrative Fines, 65 FR 31787 (May 19, 2000) and 66 FR 59680 (November 30, 2001). The sunset date of the program is December 31, 2003. *See* 11 CFR 111.30.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on administrative fines were transmitted to Congress on March 7, 2003.

Explanation and Justification

The Commission initiated this rulemaking by publishing a Notice of Proposed Rulemaking (''NPRM'') on April 25, 2002 in which it sought comment on proposed rules amending the current administrative fines regulations based on its experience with the program. 67 FR 20461 (April 25, 2002). The NPRM sought comment on proposed amendments to lower the civil money penalties for all late- and non-filers, and to clarify how it notifies respondents in the administrative fines program of reason-to-believe findings and final determinations. The NPRM also sought comment generally on: (1) Whether to limit the scope of the civil money penalty reduction to those committees with less than $50,000 in financial activity in a reporting period, or alternatively, to limit reduction to the fine schedule applicable to late-or non-filed non-election sensitive reports; (2) Whether to clarify that certain circumstances do not constitute ''extraordinary circumstances'' for purposes of challenging a reason-to-believe finding; and (3) Whether to revise the method of calculating the ''level of activity'' on which civil money penalties are based to exclude certain non-Federal activity.

The comment period closed on May 28, 2002. Comments were received from FEC Watch and from the law firm of Sandler, Reiff and Young.

11 CFR 111.35 If the Respondent Decides to Challenge the Alleged Violation Or the Proposed Civil Money Penalty, What Should the Respondent Do?

11 CFR 111.35(b) sets forth the requirements for written responses that a respondent may choose to make to challenge a reason-to-believe finding or a proposed civil money penalty. It contains specific circumstances that the Commission will consider in determining whether to levy a civil money penalty, including the existence of ''extraordinary circumstances'' that were beyond the respondents' control, that continued for at least 48 hours, and that prevented the timely filing of a report. Paragraph (b)(4) provides four broad examples of circumstances that the Commission will not consider to be ''extraordinary.'' Respondents have raised a number of other defenses that the Commission has determined are not ''extraordinary circumstances.''

The NPRM sought comment as to whether 11 CFR 111.35 should be revised to state more specifically the kinds of circumstances that the Commission will not accept as an

''extraordinary circumstances'' defense. Neither of the commenters addressed this issue.

In the final rules that follow, the Commission adds to section 111.35(b)(4) two more examples of circumstances that are not considered extraordinary. Specifically, paragraph (b)(4)(iii) of 11 CFR 111.35 is being amended to include, in addition to staff illness, staff ''inexperience'' and ''unavailability.'' The revision also clarifies that the term ''staff'' includes the treasurer. The Commission strongly encourages political committees to name an assistant treasurer so that their financial activities will not be disrupted, thus avoiding violating the reporting requirements when their treasurer is unavailable.

11 CFR 111.43 What are the Schedules of Penalties?

1. Revised Civil Money Penalty Schedules

The NPRM proposed amendments to the civil money penalty schedule for election sensitive and non-election sensitive reports that would have lowered civil money penalties for all late- and non-filed reports. The Commission was concerned that, based on its experience with the administrative fines program, the published fines schedules for political committees with lower levels of financial activity, generally below $50,000 in a reporting period, may have been too high. Committees in this category are often those of candidates who have lost an election or who have withdrawn from the race and fail to continue filing the required disclosure reports until they are eligible to terminate. Fines for these committees can be relatively high due to their failure to file because the civil money penalties are calculated using the estimated level of activity from previously filed reports. Therefore, the fines may create a hardship for some authorized committees and their treasurers since many unsuccessful campaigns lack fundraising ability and their treasurers, who are sometimes volunteers, are legally liable for the fines.

The Commission was also concerned that the civil money penalty schedules at all levels of activity may result in fines that are substantial compared with civil penalties for other types of FECA violations that the Commission approves in conciliation agreements reached through the traditional enforcement process. *See* 2 U.S.C. 437g(a). The concern was exacerbated by the fact that the 25% recidivist factor was beginning to take effect for repeat violations.

The Commission sought comment in the NPRM on the impact of lowering civil money penalties across the board, specifically: Whether the proposed reductions would still provide an incentive for committees to file timely their reports and not become merely a cost of doing business, and whether reductions would affect committees' decisions to challenge reason-to-believe findings and proposed civil money penalties. The Commission specifically sought comment on two alternatives to lowering the civil money penalties across the board: Lowering the penalties only for committees with levels of financial activity below $50,000 per report, or lowering the penalties only for non-election sensitive reports.

One of the commenters generally agreed with more lenient treatment for committees with minimal financial activity during a reporting period because such committees are often ''defunct, moribund or winding down and are often staffed by volunteer treasurers who are not able to deal with complex federal election laws and regulations.'' This commenter did not specifically address reducing fines overall but rather urged a change in calculating the ''level of activity'' on which the administrative fines are based. (See below).

The other commenter generally disagreed with lowering the civil money penalties ''until an adequate administrative record can be established.'' The commenter rejected as a justification for lowering fines across the board the concern that civil penalties in the administrative fines program were high relative to civil penalties approved in conciliation agreements for other types of FECA violations. The commenter argued that this disparity could also be interpreted as evidence that civil penalties in conciliation agreements are too low. The commenter also suggested that the recidivist factor could be lowered if the Commission was concerned it might contribute to disproportionately high civil penalties. This commenter further urged that the standard applied in adjusting the fines should be whether the fines are higher than necessary to serve as incentive to file reports timely. The commenter referred to an April 25, 2002, Commission press release that credited the administrative fines program with reducing the percentage of late filers from 24% to 11% between 1998 and 2000. The commenter noted that, although 11% non-compliance is still too high, these gains in disclosure should not be undermined without substantial justification. Finally, the commenter urged that if the Commission reduced the fines, it should selectively target the reduction at committees with lower levels of financial activity where, according to the NPRM, the most undesirable results have occurred.

Neither commenter opined on whether lowering the fines would affect committees' decisions to challenge reason-to-believe findings or proposed civil money penalties.

Based on its continued experience with the administrative fines program, the Commission has decided to target the reductions in the civil money penalty schedules to committees with levels of financial activity below $50,000 per report. As of January 31, 2003, 60% of the political committees against whom the Commission made reason-to-believe findings and proposed a civil money penalty had under $50,000 of financial activity on the late- or non-filed report. As noted in the NPRM, many committees in this category are winding down, or are established by candidates who have lost, or have withdrawn from, an election. The concern that a reduction in fines will serve as a disincentive to file timely future reports is not as relevant for such committees. Moreover, the fact that these committees still face a fine continues to provide an incentive for them to file a final report.

Although the Commission has decided not to reduce civil money penalties ''across the board,'' it notes that it has revised its method of calculating the ''level of activity'' to exclude receipts and disbursements for unauthorized committees that report a non-Federal share of allocated Federal/non-Federal activity. This change, discussed below, will effectively lower ''across the board'' penalties faced by certain unauthorized committees that allocate expenses between Federal and non-Federal accounts. This will result in penalties that are more reflective of a committee's level of participation in Federal elections.

Accordingly, the final rules at amended 11 CFR 111.43 include two sets of civil money penalty schedules. Paragraphs (a)(1) and (b)(1) maintain the previous penalty schedules for non-election sensitive and election sensitive reports, respectively, with due dates before the effective date of these rules. Paragraphs (a)(2) and (b)(2) include new schedules that reduce civil money penalties for non-election sensitive and election sensitive reports of committees with less than $50,000 in activity. These new schedules will apply to reports that

are due on or after the effective date of these rules.

The previous and current civil money penalty schedules for late filers have two components: A base amount that increases with the level of activity reflected in a report and an additional charge for each day a report is late. The previous and current schedules for nonfilers consist of a base amount that increases with the level of activity. Both late and nonfilers are subject to a recidivist escalator that increases the penalty by 25% for each previous violation.

The reduction in civil money penalties for committees with levels of activity below $50,000 is being accomplished in two ways. First, the bracket previously covering levels of activity of under $25,000 is now divided into three brackets covering levels of activity of $1-$4,999.99, $5,000-$9,999.99 and $10,000-$24,999.99, respectively. This subdivision makes more refined distinctions in penalties for committees at the lowest levels of financial activity. Second, the base amount and/or the per day charge is being reduced in each level of activity bracket below $50,000. The civil money penalty reductions at these levels are identical to the reductions proposed in the NPRM. The civil money penalty schedules for committees with levels of activity of $50,000 and above are unchanged from former 11 CFR 111.43(a) and (b).

For late-filed non-election sensitive reports with levels of activity of $1-$4,999.99, the per day charge is being reduced from $25 to $5 and the base penalty is being reduced from $100 to $25; for reports with levels of activity of $5,000-$9,999.99, the per day charge is being reduced from $25 to $5 and the base penalty is being reduced from $100 to $50; for reports with levels of activity of $10,000-$24,999.99, the per day charge is being reduced from $25 to $5 and the base penalty remains at $100; and for reports with levels of activity of $25,000-$49,999.99, the per day charge is being reduced from $50 to $20 and the base penalty remains at $200. Reductions in the civil money penalties for late-filed non-election sensitive reports with less than $50,000 of activity range between 12% and 79.4%. A chart illustrating the penalty reductions for late-filed non-election sensitive reports follows:

Level of activity in report	Civil money penalty for late-filed non-election sensitive reports due before April 16, 2003.	Civil money penalty for late filed non-election sensitive reports due on or after April 16, 2003.
$1–4,999.99 [a]	[$100 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	[$25 + ($5 × Number of days late)] × [1 + (.25 × Number of previous violations)].
$5,000–$9,999.99	[$100 + ($25 × Number of days late)] × (.25 × Number of previous violations)].	[$50 + ($5 × Number of days late)] × [1 + (.25 × Number of previous violations)].
$10,000–$24,999.99	[$100 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	[$100 + ($5 × Number of days late)] × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$200 + ($50 × Number of days late)] × [1 + (.25 × Number of previous vilations)].	[$200 + ($20 × Number of days late)] × [1 + (.25 × Number of previous violations)].

Non-election sensitive reports are deemed not filed if they are filed more than 30 days late or not filed at all. The final rule at 11 CFR 111.43(a)(2)(iii) reduces the base penalty for reports with levels of activity of $1-$4,999.99 from $900 to $250; for reports with levels of activity of $5,000-$9,999.99 from $900 to $300; for reports with levels of activity of $10,000-$24,999.99 from $900 to $500; and for reports with levels of activity of $25,000 $49,999.99 from $1800 to $900. Reductions in the civil money penalties for non-filed non-election sensitive reports with less than $50,000 in activity range between 50% and 72%. A chart illustrating the penalty reductions for non-filed non-election sensitive reports follows:

Level of activity in report	Civil money penalty for non-election sensitive non-filed reports due before April 16, 2003.	Civil money penalty for non-election sensitive non-filed reports due on or after April 16, 2003.
$1–4,999.99	$900 × [1 + (.25 × Number of previous violations)].	$250 × [1 + (.25 × Number of previous violations)]
$5,000–9,999.99	$900 × [1 +(.25 × Number of previous violations)].	$300 × [1 + (.25 × Number of previous violations)]
$10,000–24,999.99	$900 × [1 + (.25 × Number of previous violations)].	$500 × [1 + (.25 × Number of previous violations)]
$25,000–49,999.99	$1800 × [1 + (.25 × Number of previous violations)].	$900 × [1 + (.25 × Number of previous violations)]

For late-filed election sensitive reports with levels of activity of $1–$4,999.99, the per day charge is being reduced from $25 to $10 and the base penalty is being reduced from $150 to $50; for reports with levels of activity of $5,000–$9,999.99, the per day charge is being reduced from $25 to $10 and the base penalty is being reduced from $150 to $100; for reports with levels of activity of $10,000–$24,999.99, the per day charge is being reduced from $25 to $10 and the base penalty remains at $150; and for reports with levels of activity of $25,000–$49,999.99, the per day charge is being reduced from $50 to $25 and the base charge remains at $300. Reductions in the civil money penalties for late-filed election sensitive reports with less than $50,000 of activity range between 7.1% and 65.7%. A chart illustrating the penalty reductions for late-filed election sensitive reports follows:

Level of activity in report	Civil money penalty for late-filed election sensitive reports due before April 16, 2003.	Civil money penalty for late-filed election sensitive reports due on or after April 16, 2003.
$1–$4,999.99	[$150 + ($25 × Number of days late)] [1 + (.25 × Number of previous violations)].	[$50 + ($10 × Number of days late)] × [1 + (.25 × Number of previous violations)]
$5,000–$9,999.99	[$150 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	[$100 + ($10 × Number of days late)] × [1 + (.25 × Number of previous violations)]
$10,000–$24,999.99	[$150 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	[$150 + ($10 × Number of days late)] × [1 + (.25 × Number of previous violations)]
$25,000–$49,999.99	[$300 + ($50 × Number of days late)] × [1 + (.25 × Number of previous violations)].	[$300 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)]

Election sensitive reports are deemed not filed if they are not filed prior to four days before an election. The final rule at 11 CFR 111.43(b)(2)(iii) reduces the base penalty for these reports with levels of activity of $1–$4,999.99 from $1,000 to $500; for levels of activity of $5,000–$9,999.99 from $1,000 to $600; for levels of activity of $10,000–$24,999.99 from $1,000 to $900; and for levels of activity of $25,000–$49,999.99 from $2,000 to $1,400. Reductions in the civil money penalties for non-filed election sensitive reports with less than $50,000 of activity range between 10% and 50%. A chart illustrating the penalty reductions for non-filed election sensitive reports follows:

Level of activity in report	Civil money penalty for election sensitive non-filed reports due before April 16, 2003.	Civil money penalty for election sensitive non-filed reports due on or after April 16, 2003.
$1–$4,999.99	1,000 × [1 + (.25 × Number of previous violations)].	500 × [1 + (.25 × Number of previous violations)]
$5,000–$9,999.99	1,000 × [1 + (.25 × Number of previous violations)].	600 × [1 + (.25 × Number of previous violations)]
$10,000–$24,999.99	1,000 × [1 + (.25 × Number of previous violations)].	900 × [1 + (.25 × Number of previous violations)]
$25,000–$49,999.99	2,000 × [1 + (.25 × Number of previous violations)].	1,400 × [1 + (.25 × Number of previous violations)]

2. Revised Calculation of the ''Level of Activity'' and ''Estimated Level of Activity''

The Commission calculates civil money penalties by applying the civil money penalty schedules at 11 CFR 111.43 to a political committee's ''level of activity.'' Under the previous rule at 11 CFR 111.43(d), the ''level of activity'' is defined as the ''total amount of receipts and disbursements for the period covered by the late-filed report.'' If the report is not filed, the ''level of activity'' is based on the ''estimated level of activity,'' which is an estimate of total receipts and disbursements based on previously reported amounts.

The NPRM reflected the Commission's concern, based on its experience with the administrative fines program, that using total receipts and disbursements as the basis for the penalty calculation may have unfairly resulted in higher fines for political committees that finance non-Federal activity through their Federal accounts. For example, unauthorized committees that finance activities in connection with both Federal and non-Federal elections must allocate disbursements for those activities between their Federal and non-Federal accounts and must pay for those expenses from their Federal account or from a separate Federal allocation account. *See generally* 11 CFR 106.6 and 106.7. Non-Federal funds must be transferred into the Federal accounts to pay for the non-Federal share of the activity, thereby resulting in higher total receipts and disbursements for those committees than for political committees that do not have allocable activity.

The NPRM sought comment on whether the Commission should alter the way it calculates the level of activity. 67 FR 20463. The Commission sought comment generally on whether the level of activity should exclude all receipts or disbursements that are not for the purpose of influencing a Federal election. In addition to the receipt of non-Federal transfers to pay for the non-Federal share of allocable activity, the Commission asked whether other types of disbursements should be excluded and gave several examples, such as disbursements by an authorized committee made to influence the election of candidates to State or local office.

One of the commenters urged the Commission to exclude from the ''level of activity'' definition those disbursements for the non-Federal portion of allocated Federal/non-Federal activity, such as certain generic get-out-the-vote drives, as well as the receipt of non-Federal fund transfers to pay for those disbursements. The commenter maintained that including these receipts and disbursements ''unfairly punished'' State and local political party committees, whose activities are focused more on State and local elections. The commenter illustrated this point by using an example of a local party committee. Using a similar example under the current allocation regime for State and local party committees, depending on the election cycle, only 15% to 36% of allocable activity under 11 CFR 106.7 is considered Federal. Under the Commission's allocation regulations, such a committee must make disbursements from its Federal account to cover the 64% to 85% of the activity that is attributable to non-Federal elections and then reimburse the Federal account via transfers from its non-Federal account. Under the prior rules, the civil money penalty was based on the total of Federal and non-Federal activity since both are reported. As an alternative to changing the way ''level of activity'' is calculated, the commenter argued that the Commission should create a separate, more lenient schedule for committees that allocate expenses.

The other commenter disagreed with that approach. It noted that the Explanation and Justification (''E&J'') for the administrative fines rules issued in May 2000 rejected a suggestion that the ''level of activity'' be based on contributions and expenditures rather than total receipts and disbursements. The E&J noted that 2 U.S.C. 437g(a)(4), which permits the Commission to

implement the administrative fines program, requires the Commission to ''take[s] into account, the amount of the violation involved,'' and concluded that, since 2 U.S.C 434 required committees to report all receipts and disbursements, the ''amount of the violation involved'' was equal to the total receipts and disbursements. *See* Explanation and Justification for Final Rules on Administrative Fines, 65 FR 31792 (May 19, 2000). The commenter observed that the Commission's regulations required committees to report non-Federal disbursements that are part of an allocable Federal/non-Federal activity and are paid for via non-Federal transfers to the Federal account. By excluding these amounts in the civil penalty calculation, the commenter argued that the Commission would effectively treat the disclosure of some types of receipts and disbursements as less important than others.

The Commission continues to believe that, in most cases, ''total receipts and disbursements'' is a fair basis on which to calculate a civil money penalty for violations of 2 U.S.C. 434(a). However, based on its experience with the administrative fines program, the Commission concludes that basing a civil money penalty on ''total receipts and disbursements'' may unfairly inflate the level of activity for unauthorized committees that allocate expenses between Federal and non-Federal accounts because a large portion of their receipts and disbursements may be attributable to non-Federal activity that must be reported through a Federal account. The Commission concludes that it is a permissible construction of 2 U.S.C. 437g(a)(4) to exclude from the definition of ''level of activity'' receipts and disbursements attributable to the payment of allocable non-Federal activity. Section 437g(a)(4) of FECA permits the Commission to establish and publish a schedule of penalties ''which takes into account the amount of the violation involved . . . *and other factors as the Commission deems appropriate.*'' (Emphasis added). It is both appropriate and fair to exclude from the civil money penalty calculation those receipts and disbursements solely attributable to payment of the non-Federal portion of allocated Federal/non-Federal activity. This approach ensures that the civil money penalty is proportionate to a committee's level of participation in Federal elections.

Other disbursements that may be characterized as non-Federal but that are paid for with Federal funds, such as a disbursement by an authorized committee to a State or local candidate, will not be excluded from the ''level of activity'' calculation. In these cases, a political committee chooses to use Federally-permissible receipts deposited in a Federal account for a non-Federal purpose. In contrast, where non-Federal funds are used to pay the non-Federal share of allocable activities, these funds flow through, and are reported by, the Federal account because Commission regulations so require.

Because only unauthorized committees are affected by the allocation rules, the definitions of ''level of activity'' and ''estimated level of activity'' have been amended only as applied to them. The definitions of these terms remain the same for late-filed or non-filed reports of all political committees before the effective date of these rules and for late-or non-filed reports of authorized committees due on or after the effective date of these rules. To make these distinctions clear, the definitions of ''level of activity'' and ''estimated level of activity'' have been moved in the final rules from 11 CFR 111.43(d) into revised section 111.43(a) and (b).

Specifically, the definitions of ''level of activity'' and ''estimated level of activity'' remain the same for late- and non-filed reports of all political committees that are due before the effective date of these rules as set forth in 11 CFR 111.43(a)(1)(i), 111.43(a)(1)(ii), 111.43(b)(1)(i) and 111.43(b)(1)(ii) and correspond to the schedule of penalties for reports due before the effective date of these final rules. The definitions of these terms also remain unchanged when applied to late- and non-filed reports of authorized committees that are due on or after the effective date of these rules as set forth in 11 CFR 111.43(a)(2)(i)(A), 111.43(a)(2)(ii)(A), 111.43(b)(2)(i) and 111.43(b)(2)(ii).

However, the final rules include revised definitions of ''level of activity'' and ''estimated level of activity'' as applied to late-filed and non-filed reports of unauthorized committees due on or after the effective date of these rules. Specifically, the final rule applicable to late-or non-filed non-election sensitive reports in 11 CFR 111.43(a)(2)(i)(B) provides that the definition of ''level of activity'' for these unauthorized committees means ''total amount of receipts and disbursements'' for the period covered by the late report minus the total of: (1) transfers received from non-Federal account(s) (from Schedule H3) as reported on Line 18(a) of FEC Form 3X, and (2) disbursements for the non-Federal share of operating expenditures attributable to allocated Federal/non-Federal activity (from Schedule H4) as reported on Line 21(a)(ii) covered by the late report. The final rule applicable to late-filed or non-filed election-sensitive reports at new 11 CFR 111.43(b)(2)(i) refers back to that definition.

Similarly, the final rule applicable to late- and non-filed non-election sensitive reports of unauthorized committees due on or after the effective date contains a new definition of ''estimated level of activity'' expressed in a formula. New 11 CFR 111.43(a)(2)(ii)(B)(1) provides that ''estimated level of activity'' is calculated as follows: [(total receipts and disbursements reported in the current two-year election cycle) − (transfers received from non-Federal account(s) as reported on either Line 18(a) of FEC Form 3X or Line 18 of FEC Form 3X if before March 1, 2003 + disbursements for the non-Federal Share of operating expenditures attributable to allocated Federal/non-Federal activity as reported on Line 21(a)(ii) of Form 3X)] ÷ number of reports filed covering the activity in the current two-year election cycle. The final rule applicable to late-filed or non-filed election-sensitive reports of unauthorized committees at new 11 CFR 111.43(b)(2)(ii) refers back to that definition. Please note that the line number for transfers is different when referring to pre-BCRA reports.

Finally, new 11 CFR 111.43(a)(2)(ii)(B)(2) addresses the calculation of ''estimated level of activity'' when an unauthorized committee has not filed a non-election sensitive report covering activity in the current two-year election cycle. In that case, ''estimated level of activity'' is calculated as: [(total receipts and disbursements reported in the prior two-year election cycle) − (transfers received from non-Federal account(s) as reported on either Line 18(a) of FEC Form 3X or Line 18 of FEC Form 3X if before March 1, 2003 + disbursements for the non-Federal Share of operating expenditures attributable to allocated Federal/non-Federal activity as reported on Line 21(a)(ii) of Form 3X)] ÷ number of reports filed covering the activity in the prior two-year election cycle. New 11 CFR 111.43(b)(2)(ii) refers back to that definition for election-sensitive reports.

The Commission emphasizes that the exclusion of non-Federal receipts and disbursements attributable to allocable activity from the calculation of ''level of activity'' does not change an unauthorized committee's obligation to fully disclose these amounts. Failure to do so is a violation of the Act and

Commission regulations and may be pursued by the Commission in an enforcement action under subpart A of 11 CFR part 111.

11 CFR 111.45 What Actions Will Be Taken to Collect Unpaid Civil Penalties?

11 CFR 111.45 is being revised to correct citations to regulations establishing the Federal Claims Collection Standards. After the Commission's administrative fines rules were promulgated on May 19, 2000, the Department of Justice and the Department of Treasury, in place of the General Accounting Office, revised and recodified the Federal Claims Collection Standards at 31 CFR parts 900 through 904. *See* 65 FR 70390 (November 22, 2000). No comments were received on this revision.

11 CFR 111.46 How Will the Respondent Be Notified of Actions Taken by the Commission and the Reviewing Officer?

Respondents who have challenged reason-to-believe findings in the administrative fines program have sometimes maintained that they did not receive notification because it was sent to an old address even though the Commission sent the notification to the political committee's address of record in the Statement of Organization on file with the Commission.

In the NPRM, the Commission proposed revisions to four regulations to clarify how notifications and other communications called for in subpart B of 11 CFR part 111 would be delivered to respondents. 67 FR 20464. Neither of the commenters addressed this issue.

The Commission has since concluded that this issue may be addressed more efficiently by adding a new regulation rather than by amending several current regulations. New 11 CFR 111.46 addresses how respondents will be notified of reason-to-believe findings, final determinations and all other communications authorized in subpart B of part 111 governing the administrative fines program. The final rule clarifies that unless a respondent has filed a statement designating counsel in accordance with 11 CFR 111.23, all notifications or other communications from the Commission or the administrative fines reviewing officer will be sent to a respondent political committee and its treasurer at the committee address listed in the most recent Statement of Organization or amendment thereto, filed with the Commission. If counsel has been designated, all contact will be with counsel unless the respondent authorizes direct contact in writing. *See* 11 CFR 111.23. The substantive effect of new section 111.46 is identical to the revisions proposed in the NPRM.

This new rule is supported by the statute and case law. 2 U.S.C. 433(c) requires a political committee to file any changes in a previously filed Statement of Organization, including an address, within ten days after the change. Moreover, in a recent case in which a respondent in the administrative fines program challenged the Commission's final determination, the district court held that mailing a notification to the committee's last known address constitutes constitutionally significant notice. *See Cunningham* v. *FEC,* 2002 WL 31431557, at *4 (S.D. Ind.)(2002).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification for any small entities subject to the amended rules is that the civil money penalties are lower than those previously assessed and are scaled to better take into account the amount of financial activity on reports filed by political committees. Thus, committees with lower levels of financial activity are subject to lower fines than political committees with higher amounts. Moreover, the calculation of the civil money penalty has been revised so that it better takes into account the level of Federal activity for committees that finance allocable Federal and non-Federal activity. These committees would also be subject to lower civil penalties since they are now based only on the portion of their finances attributable to Federal activity. Finally, some entities affected by the rules, such as political committee treasurers and committees of the two major political parties, are not small entities under 5 U.S.C. 601 because they are not small businesses, organizations or small governmental jurisdictions.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement.

For the reasons set forth in the preamble, the Federal Election Commission amends subchapter A of Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))

1. The authority citation for part 111 continues to read as follows:

Authority: 2 U.S.C. 437g, 437d(a), 438(a)(8).

2. Section 111.35 is amended by revising paragraph (b)(4)(iii) to read as follows:

§ 111.35 If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?

* * * * *

(b) * * *

(4) * * *

(iii) Illness, inexperience, or unavailability of staff, including the treasurer;

* * * * *

3. Section 111.43 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b); and

c. Amending paragraph (d) by removing the definitions of *estimated level of activity* and *level of activity.*

The revised text reads as follows:

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated as follows:

(1) For reports due before April 16, 2003:

(i) *Level of activity* means the total amount of receipts and disbursements for the period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity as set forth in paragraph (a)(1)(ii) of this section.

(ii) *Estimated level of activity* means total receipts and disbursements reported in the current two-year election cycle divided by the number of reports filed to date covering the activity in the current two-year election cycle. If the respondent has not filed a report covering activity in the current two-year election cycle, estimated level of activity means total receipts and disbursements reported in the prior two-year election cycle divided by the number of reports filed covering the activity in the prior two-year election cycle.

(iii)The civil money penalty shall be calculated in accordance with the following schedule:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–24,999.99 [a]	[$100 + ($25 × Number of days late)] × [1 (.25 × Number of previous violations)].	+$900 × [1 + (.25 × Number of previous violations)]
$25,000–49,999.99	[$200 + ($50 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1800 × [1 + (.25 × Number of previous violations)]
$50,000–74,999.99	[$300 + ($75 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$2700 × [1 + (.25 × Number of previous violations)]
$75,000–99,999.99	[$400 + ($100 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3500 × [1 + (.25 × Number of previous violations)]
$100,000–149,999.99	[$600 + ($125 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4500 × [1 + (.25 × Number of previous violations)]
$150,000–199,999.99	[$800 + ($150 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5500 × [1 + (.25 × Number of previous violations)]
$200,000–249,999.99	[$1,000 + ($175 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6500 × [1 + (.25 × Number of previous violations)]
$250,000–349,999.99	[$1500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8000 × [1 + (.25 × Number of previous violations)]
$350,000–449,999.99	[$2000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9000 × [1 + (.25 × Number of previous violations)]
$450,000–549,999.99	[$2500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9500 × [1 + (.25 × Number of previous violations)]
$550,000–649,999.99	[$3000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,000 × [1 + (.25 × Number of previous violations)]
$650,000–749,999.99	[$3500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,500 × [1 + (.25 × Number of previous violations)]
$750,000–849,999.99	[$4000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,000 × [1 + (.25 × Number of previous violations)]
$850,000–949,999.99	[$4500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,500 × [1 + (.25 × Number of previous violations)]
$950,000 or over	[$5000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,000 × [1 + (.25 × Number of previous violations)]

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(2) For reports due on or after April 16, 2003:

(i) *Level of activity* means:

(A) For an authorized committee, the total amount of receipts and disbursements for the period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity as set forth in paragraph (a)(2)(ii)(A) of this section.

(B) For an unauthorized committee, the total amount of receipts and disbursements for the period covered by the late report minus the total of: transfers received from non-Federal account(s) as reported on Line 18(a) of FEC Form 3X and disbursements for the non-Federal share of operating expenditures attributable to allocated Federal/non-Federal activity as reported on Line 21(a)(ii) of FEC Form 3X for the period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity as set forth in paragraph (a)(2)(ii)(B) of this section.

(ii) *Estimated level of activity* means:

(A) For an authorized committee, total receipts and disbursements reported in the current two-year election cycle divided by the number of reports filed to date covering the activity in the current two-year election cycle. If the respondent has not filed a report covering activity in the current two-year election cycle, estimated level of activity for an authorized committee means total receipts and disbursements reported in the prior two-year election cycle divided by the number of reports filed covering the activity in the prior two-year election cycle.

(B)(*1*) For an unauthorized committee, estimated level of activity is calculated as follows: [(Total receipts and disbursements reported in the current two-year cycle)—(Transfers received from non-Federal account(s) as reported on either Line 18(a) of FEC Form 3X or Line 18 of FEC Form 3X if before March 1, 2003 + Disbursements for the non-Federal share of operating expenditures attributable to allocated Federal/non-Federal activity as Reported on Line 21(a)(ii) of FEC Form 3X)] ÷ Number of reports filed to date covering the activity in the current two-year election cycle.

(2) If the unauthorized committee has not filed a report covering activity in the current two-year election cycle, the estimated level of activity is calculated as follows: [(Total receipts and disbursements reported in the prior two-year election cycle)—(Transfers received from non-Federal account(s) as reported on either Line 18(a) of FEC Form 3X or Line 18 of FEC Form 3X if before March 1, 2003 + Disbursements for the non-Federal Share of operating expenditures attributable to allocated Federal/non-Federal activity as reported on Line 21(a)(ii) of FEC Form 3X)] ÷ Number of reports filed covering the activity in the prior two-year election cycle.

(iii) The civil money penalty shall be calculated in accordance with the following schedule:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–4,999.99 [a]	[$25 + ($5 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$250 × [1 + (.25 × Number of previous violations)]
$5,000–9,999.99	[$50 + ($5 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$300 × [1 + (.25 × Number of previous violations)]
$10,000–24,999.99	[$100 + ($5 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$500 × [1 + (.25 × Number of previous violations)]

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$25,000–49,999.99	[$200 + ($20 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$900 × [1 + (.25 × Number of previous violations)]
$50,000–74,999.99	[$300 + ($75 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$2700 × [1 + (.25 × Number of previous violations)]
$75,000–99,999.99	[$400 + ($100 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3500 × [1 + (.25 × Number of previous violations)]
$100,000–149,999.99	[$600 + ($125 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4500 × [1 + (.25 × Number of previous violations)]
$150,000–199,999.99	[$800 + ($150 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5500 × [1 + (.25 × Number of previous violations)]
$200,000–249,999.99	[$1,000 + ($175 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6500 × [1 + (.25 × Number of previous violations)]
$250,000–349,999.99	[$1500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8000 × [1 + (.25 × Number of previous violations)]
$350,000–449,999.99	[$2000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9000 × [1 + (.25 × Number of previous violations)]
$50,000–549,999.99	[$2500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9500 × [1 + (.25 × Number of previous violations)]
$550,000–649,999.99	[$3000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,000 × [1 + (.25 × Number of previous violations)]
$650,000–749,999.99	[$3500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,500 × [1 + (.25 × Number of previous violations)]
$750,000–849,999.99	[$4000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,000 × [1 + (.25 × Number of previous violations)]
$850,000–949,999.00	[$4500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,500 × [1 + (.25 × Number of previous violations)]
$950,000 or over	[$5000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,000 × [1 + (.25 × Number of previous violations)]

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated as follows:

(1) For reports due before April 16, 2003:

(i) *Level of activity* has the same meaning as paragraph (a)(1)(i) of this section.

(ii) *Estimated level of activity* has the same meaning as paragraph (a)(1)(ii) of this section.

(iii) The civil money penalty shall be calculated in accordance with the following schedule:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–24,999.99 [a]	[$150 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1000 × [1 + (.25 × Number of previous violations)]
$25,000–49,999.99	[$300 + ($50 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$2000 × [1 + (.25 × Number of previous violations)]
$50,000–74,999.99	[$450 + ($75 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3000 × [1 + (.25 × Number of previous violations)]
$75,000–99,999.99	[$600 + ($100 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4000 × [1 + (.25 × Number of previous violations)]
$100,000–149,999.99	[$900 + ($125 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5000 × [1 + (.25 × Number of previous violations)]
$150,000–199,999.99	[$1200 + ($150 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6000 × [1 + (.25 × Number of previous violations)]
$200,000–249,999.99	[$1500 + ($175 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7500 × [1 + (.25 × Number of previous violations)]
$250,000–349,999.99	[$2250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9000 × [1 + (.25 × Number of previous violations)]
$350,000–449,999.99	[$3000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,000 × [1 + (.25 × Number of previous violations)]
$450,000–549,999.99	[$3750 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,000 × [1 + (.25 × Number of previous violations)]
$550,000–649,999.99	[$4500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,000 × [1 + (.25 × Number of previous violations)]
$650,000–749,999.99	[$5250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,000 × [1 + (.25 × Number of previous violations)]
$750,000–849,999.99	[$6000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,000 × [1 + (.25 × Number of previous violations)]
$850,000–949,999.99	[$6750 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,000 × [1 + (.25 × Number of previous violations)]

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$950,000 or over	[$7500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,000 × [1 + (.25 × Number of previous violations)]

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(2) For reports due on or after April 16, 2003:

(i) Level of activity has the same meaning as paragraph (a)(2)(i) of this section.

(ii) *Estimated level of activity* has the same meaning as paragraph (a)(2)(ii) of this section.

(iii) The civil money penalty shall be calculated in accordance with the following schedule:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–$4,999.99 [a]	[$50 + ($10 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$500 × [1 + (.25 × Number of previous violations)].
$5,000–$9,999.99	[$100 + ($10 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$600 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$150 + ($10 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$900 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$300 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1,400 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$450 + ($75 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3000 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$600 + ($100 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4000 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$900 + ($125 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5000 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1200 + ($150 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6000 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$1500 + ($175 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7500 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$2250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9000 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$3000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,000 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$3750 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,000 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$4500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,000 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$5250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,000 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$6000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,000 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$6750 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,000 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$7500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,000 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

* * * * *

4. Section 111.45 is amended by removing in the second sentence the phrase, ''4 CFR parts 101 through 105'' and by adding in its place, ''31 CFR parts 900 through 904,'' and by removing in the second sentence the phrase, ''General Accounting Office'' and adding in its place, ''U.S. Department of the Treasury.''

5. Section 111.46 is added to read as follows:

§ 111.46 How will the respondent be notified of actions taken by the Commission and the reviewing officer?

If a statement designating counsel has been filed in accordance with 11 CFR 111.23, all notifications and other communications to a respondent provided for in subpart B of this part will be sent to designated counsel. If a statement designating counsel has not been filed, all notifications and other communications to a respondent provided for in subpart B of this part will be sent to respondent political committee and its treasurer at the political committee's address as listed in the most recent Statement of Organization, or amendment thereto, filed with the Commission in accordance with 11 CFR 102.2.

Dated: March 7, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–5957 Filed 3–14–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM245; Special Conditions No. 25–229–SC]

Special Conditions: Bombardier Aerospace Model BD–100–1A10; Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Bombardier Aerospace for the Model BD–100–1A10 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes, associated with engine size and torque load which affects sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. 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 March 6, 2003. Comments must be received on or before May 1, 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. NM245, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM245. 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: Todd Martin, FAA Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1178; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

FAA 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.

Comments Invited

Although this action is in the form of final special conditions and, for the reasons stated above, is not preceded by notice and an opportunity for public comment, comments are invited on these special conditions. We invite interested persons to participate in this rulemaking by submitting written 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 these special conditions, 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 June 28, 1999, Bombardier Aerospace applied for a new type certificate for their Model BD–100–1A10 airplane. The BD–100–1A10 is a medium range transport category airplane, powered by two rear fuselage-mounted Allied Signal AS907 engines. This engine model is a high bypass turbofan engine, with 6826 lb. takeoff thrust at sea level flat rated to ISA+20°.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Bombardier Aerospace must show that the Model BD–100–1A10 meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–98. The type certification basis for the Model BD–100–1A10 will therefore include 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–98; 14 CFR, part 34, effective September 10, 1990, including Amendment 34–1, and any subsequent amendments that will be applicable on the date the type certificate is issued; and 14 CFR part 36, effective December 1, 1969, including Amendments 36–1 through 36–22, and any subsequent amendments that will be applicable on the date the type certificate is issued. The certification basis may also include certain exceptions, exemptions, and other special conditions that are not relevant to these special conditions:

If the Administrator finds that the applicable airworthiness regulations (that is, part 25) do not contain adequate or appropriate safety standards for the Model BD–100–1A10 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model BD–100–1A10 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36; and the FAA must issue a finding of regulatory adequacy pursuant to Section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

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 § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1) [Amendment 21–69, effective September 16, 1991].

Novel or Unusual Design Features

The Bombardier Aerospace Model BD–100–1A10 will incorporate novel or unusual design features involving engine size and torque load that affect sudden engine stoppage conditions.

Discussion

The limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category airplanes since 1957. In the past, the design torque loads associated with typical failure scenarios have been estimated by the engine manufacturer and provided to the airframe manufacturer as limit loads. These limit loads were considered simple, pure torque static loads. The size, configuration, and failure modes of jet engines have changed considerably from those envisioned when the engine seizure requirement of § 25.361(b) was first adopted. Current engines are much larger and are now designed with large bypass fans capable of producing much larger torque loads if they become jammed. It is evident from service history that the frequency of occurrence of the most severe sudden engine stoppage events is rare.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of special conditions to establish appropriate design standards. The latest generation of jet engines are capable of producing, during failure, transient loads that are significantly higher and more complex than the generation of engines that were present when the existing standard was developed. Therefore, the FAA has determined that special conditions are needed for the Bombardier Aerospace Model BD–100–1A10 airplane.

In order to maintain the level of safety envisioned in § 25.361(b), more comprehensive criteria is needed for the new generation of high-bypass engines. The special conditions would distinguish between the more common engine failure events and those rare events resulting from structural failures. For these rarer but more severe seizure events, the criteria could allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high-bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by providing a higher safety factor. The criteria for the more severe events would no longer be a pure static torque load condition, but would account for the full spectrum of transient dynamic loads developed from the engine failure condition.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Aerospace Model BD–100–1A10 airplane. Should Bombardier Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1) [Amendment 21–69, effective September 16, 1991].

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping 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 Bombardier Aerospace Model BD–100–1A10 airplanes.

1. *Sudden Engine Stoppage.* In lieu of compliance with § 25.361(b), the following special conditions apply:

a. For turbine engine installations, the engine mounts, pylons, and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust.

(2) The maximum acceleration of the engine.

b. For auxiliary power unit installations, the power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden auxiliary power unit deceleration due to malfunction or structural failure.

(2) The maximum acceleration of the auxiliary power unit.

c. For engine supporting structure, an ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from each of the following:

(1) The loss of any fan, compressor, or turbine blade.

(2) Where applicable to a specific engine design, and separately from the conditions specified in paragraph c(1) above, any other engine structural failure that results in higher loads.

d. The ultimate loads developed from the conditions specified in paragraphs c(1) and c(2) above are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

Issued in Renton, Washington, on March 6, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6332 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–13]

Establishment of Class D Airspace; Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This corrective action changes the effective date for the establishment of the Class D airspace area at Rome, NY. The proposed commissioning date for the Airport Traffic Control Tower (ATCT) has been delayed; therefore, the effective date of the establishment of the Class D airspace must also be delayed.

EFFECTIVE DATE: 0901 UTC May 15, 2003

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 02–29902, Airspace Docket No. 02–AEA–13, published in the **Federal Register** on November 25, 2002 (67 FR 70533–70534), established the description of the Class D airspace area at Rome, NY. This action was originally scheduled to become effective on March 20, 2003; however, a delay in the commissioning of the ATCT has required the effective date of this action to be delayed until May 15, 2003.

Accordingly, pursuant to the authority delegated to me, the effective date for the Class D airspace area at

Rome, NY as published in the **Federal Register** on November 25, 2002 (67 FR 70533–70534), (**Federal Register** Document) is corrected as follows:

PART 71—[CORRECTED]

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

The effective date on Airspace Docket No. 02–AEA–13 is hereby delayed from March 20, 2003 to May 15, 2003

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

Issued in Jamaica, New York on February 21, 2003.

Richard J. Ducharme,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–6333 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') has adopted amendments to part 4 of its rules, which governs Commodity Pool Operators (''CPOs'') and Commodity Trading Advisors (''CTAs''). These amendments make clear that certain Disclosure Documents need only be filed with the National Futures Association (''NFA'') and need not also be filed with the Commission. The Commission, in a separate Notice and Order published elsewhere in the **Federal Register**, has authorized NFA to receive and review these documents.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Kevin P. Walek, Assistant Director, Audit and Financial Review Section, or Michael A. Piracci, Attorney Advisor, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

In 1997, the Commission authorized NFA to review Disclosure Documents that CPOs are required to file, pursuant to Commission rule 4.26(d), with regard to those Disclosure Documents filed for ''privately offered'' pools.[1] In December 2002, the Commission amended part 4 of its rules, including rule 4.26(d), to make clear that, as a result of the Commission order issued in 1997, as well as a Commission order issued in December 2002 that authorized NFA to receive and review various documents required to be filed with the Commission,[2] it was no longer necessary for the Commission to receive copies of these documents.[3] Accordingly, the Commission amended the subject rules to make clear that the required documents need only be filed with NFA and need not also be filed with the Commission.[4] As the Commission would continue to receive and review Disclosure Documents for publicly-offered pools, rule 4.26(d) was amended by adding paragraph (d)(3) to make clear that Disclosure Documents for publicly-offered pools, as well as any subsequent amendments to such Disclosure Documents, must be filed with the Commission.[5]

II. Rule Amendments

In a separate notice published elsewhere today in the **Federal Register**, the Commission is authorizing NFA to receive and review Disclosure Documents required to be filed by CPOs, pursuant to Commission rule 4.26(d), with regard to publicly-offered commodity pools. Accordingly, as the Commission noted regarding Disclosure Documents filed by CPOs with regard to privately offered pools, it is not necessary for the Commission to impose upon the persons filing these documents the burden and cost of having to file the documents with both NFA and the Commission. The Commission is, therefore, amending rule 4.26(d) to make clear that the required documents need only be filed with NFA and need not also be filed with the Commission.

[1] *See* 62 FR 52088 (Oct. 6, 1997). Pursuant to Commission rule 4.24(d)(3)(i), ''privately offered'' commodity pools are those offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*). As discussed herein, ''publicly-offered'' commodity pools are pools not offered pursuant to section 4(2) of the Securities Act of 1933 or pursuant to Regulation D.

[2] *See* 67 FR 77470 (Dec. 18, 2002).

[3] *See* 67 FR 77409 (Dec. 18, 2002).

[4] *See* 67 FR at 77410–11. The Commission rules amended were: (1) 4.5; (2) 4.7; (3) 4.12; (4) 4.13; (5) 4.14; (6) 4.22; (7) 4.26; and (8) 4.36.

[5] *See* 67 FR at 77411.

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[6] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The rule amendment does not require a new collection of information on the part of any entities subject to the proposed rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that this rule amendment will not impose any new reporting or recordkeeping requirements.

B. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The amendment herein is intended to minimize the filing burdens imposed upon CPOs by making clear that the subject documents need only be filed with NFA and not also the Commission. The Commission is considering the costs and benefits of this rule in light of the specific provisions of section 15(a) of the Act:

1. *Protection of market participants and the public.* While the amendment is expected to lessen the filing burdens imposed upon CPOs, it does not reduce the type of information and documents that must be provided to customers of CPOs. Moreover, these documents will

[6] 44 U.S.C. 3501 *et seq.*

continue to be reviewed for compliance with the Act and Commission rules. Accordingly, the amendment being adopted herein should have no effect on the Commission's ability to protect market participants and the public.

2. *Efficiency and competition.* The amendment, by requiring that the subject documents need only be filed with NFA and not also the Commission, should increase the efficiency with which CPOs comply with rule 4.26(d).

3. *Financial integrity of futures markets and price discovery.* The amendment should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. *Sound risk management practices.* The amendment being adopted herein should have no effect on the risk management practices of the futures and options industry.

5. *Other public interest considerations.* The amendment should make compliance with the Commission rule 4.26(d) more efficient without imposing any costs to the regulatory oversight of commodity registrants.

After considering these factors, the Commission has determined to adopt the amendment discussed above.

C. Administrative Procedure Act

The Commission has determined that the amendment discussed herein relates solely to agency organization, procedure, and practice. Accordingly, the provisions of the Administrative Procedure Act that generally require notice of proposed rulemaking and that provide other opportunities for public participation are not applicable.[7] The Commission further finds that, because the amendment relieves a restriction as to the required filing of documents and the amendment has no adverse effect upon a member of the public, there is good cause to make it effective less than thirty days after publication in the **Federal Register**.[8]

List of Subjects in 17 CFR Part 4

Advertising, Customer protection, and Reporting and recordkeeping requirements.

For the reasons discussed in the foregoing, the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

[7] 5 U.S.C. 553(b)(3)(A) (1994).

[8] *See* 5 U.S.C. 553(d) (1994).

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6(c), 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.26 is amended as follows:

a. By amending the introductory text of paragraph (d) by removing ''and paragraph (d)(3) of this section''; and

b. By removing paragraph (d)(3).

Issued in Washington, DC on March 10, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–6179 Filed 3–14–03; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 00N–1463]

RIN 0910-AB78

Labeling Requirements for Systemic Antibacterial Drug Products Intended for Human Use; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of February 6, 2003 (68 FR 6062). The document amended FDA's regulations to require that the labeling for all systemic antibacterial drug products intended for human use include certain statements about using antibiotics in a way that will reduce the development of drug-resistant bacterial strains. The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–2969, appearing on page 6062 in the **Federal Register** of Thursday, February 6, 2003, the following correction is made:

1. On page 6081, in the second column, at the end of the document, the phrase ''Dated: October 4, 2002'' is corrected to read ''Dated: December 4, 2002''.

Dated: March 10, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–6232 Filed 3–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Departmental Offices

31 CFR Part 1

RIN 1505–AA97

Disclosure of Records in Legal Proceedings

AGENCY: Departmental Offices, Treasury.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends Treasury's regulations that govern access to information and records in connection with legal proceedings, including litigation in which neither the United States nor the Department of the Treasury is a party. The amendments elaborate on the procedures used when determining whether employees in the Departmental Offices will be permitted to testify or provide records relating to their official duties when they are directly subpoenaed or otherwise requested to testify. The amendments also specify and clarify the criteria that Treasury officials use when deciding whether to allow an employee to testimony or provide records.

DATES: This interim final rule is effective March 17, 2003. Written comments may be submitted by April 16, 2003.

ADDRESSES: Submit written comments to Thomas M. McGivern, Counselor to the General Counsel, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 3000, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Tom McGivern, Counselor to the General Counsel, at (202) 622–2317 or Traci J. Sanders, Deputy Counselor, at (202) 622–2744 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Under 5 U.S.C. 301, heads of Executive or military departments may prescribe regulations governing the conduct of its employees and the custody, use, and preservation of the department's records, papers, and property. Many departments and agencies have promulgated such regulations to provide procedures for the disclosure of official records and

information. Generally, these are termed Touhy regulations, after the Supreme Court's decision in *United States* ex rel. *Touhy* v. *Regan,* 340 U.S. 462 (1951). In that case, the Supreme Court held that an agency employee could not be held in contempt for refusing to disclose agency records or information when following instructions of his or her supervisor regarding the disclosure that were issued pursuant to agency regulations. As such, an agency's Touhy regulations are the instructions agency employees are to follow when those employees receive requests or demands to testify or otherwise disclose agency records or information.

Treasury's Touhy regulations are codified in sections 1.8 through 1.12 of title 31 of the Code of Federal Regulations. These regulations provide that employees of the Departmental Offices of the Department of the Treasury may not disclose documents or information in response to a demand or other order of a court or any other authority without first being authorized to do so. The purpose of these regulations is to conserve valuable agency resources, protect Treasury employees from becoming enmeshed in litigation, and to protect sensitive government information and decision making processes.

This interim final rule revises the regulations to prescribe the factors Treasury officials should consider when deciding whether to allow disclosure of documents and information and which officials may make these decisions. This rule also makes a number of clarifying and technical amendments to the current regulations.

II. Analysis of the Interim Final Rule

Section 1.8 Scope

This section is amended to exclude references to the United States Savings Bonds Division and the United States Secret Service. The Savings Bond Division is currently a part of the Bureau of the Public Debt and the Secret Service will become a component of the Department of Homeland Security on March 1, 2003. This section also is amended to make clear that all offices and bureaus of the Department are covered by this subpart, except to the extent that the bureaus enact their own regulations governing the subject matter of a provision of this subpart.

Section 1.11 Testimony or the Production of Records in a Court or Other Proceeding

This section sets forth the policies and procedures of the Department regarding the testimony of employees as witnesses in legal proceedings and the production or disclosure of Treasury documents for use in legal proceedings.

Paragraph (a) describes the applicability of section 1.11. It specifies that section 1.11 does not apply (1) to an employee's testimony regarding matters that are unrelated to the official business of the Department and (2) to access to records pursuant to the Freedom of Information Act, the Privacy Act, or the Trade Secrets Act. Paragraph (a) also clarifies that the procedures of section 1.11 only provide guidance for the internal operations of the Department and do not create any rights or benefits enforceable at law by a party against the United States.

Paragraph (b) defines various terms used in section 1.11.

Paragraph (c) sets forth the general policy of the Department concerning requests that employees testify or provide documents or other information in litigation. This policy provides that employees may not respond to a demand, produce any documents, provide testimony regarding any information relating to, or based upon Department documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties or official status, without the prior authorization of the General Counsel or the appropriate agency counsel.

Paragraph (d) sets forth procedures applicable to requests for testimony or the production of documents. Paragraph (d)(1) provides that requests directed at the Department for testimony by an employee of the Departmental Offices or for the production of documents are to be directed to the General Counsel of the Department. Requests for testimony by an employee of a Treasury office or bureau are to be directed to the Chief or Legal Counsel of the office or bureau.

Paragraph (d)(2) provides that subpoenas or other requests for testimony or the production of documents directed at a Department employee be served in accordance with the Federal Rules of Civil or Criminal Procedure, or applicable State procedure.

Paragraph (d)(3) provides that any request for testimony or the production of documents in litigation in which neither the Department nor the United States is a party be supported by an affidavit setting forth the nature of the litigation, describing the nature of the testimony and/or documents sought, and explaining why the testimony and/or documents are desired.

Paragraph (d)(4) provides that employees may not give testimony or produce documents in connection with legal proceedings without the approval of agency counsel.

Paragraph (e) sets forth the factors to be considered by agency counsel when reviewing requests for testimony or records. These factors include (1) the burden on government resources, (2) applicable privileges, and (3) the potential release of classified documents. The factors enumerated in paragraph (e) are not exclusive and other relevant factors may be considered in appropriate circumstances.

Paragraph (f) provides that requests for employees to provide expert testimony shall be denied except in cases of exceptional need and when the matter is not adverse to the interests of the Department. This provision is designed to ensure that the Department's resources are not consumed by repeated requests for employee expert testimony. This provision also allows former employees who hire themselves out as experts in the subject area in which they worked while with the government to provide testimony, as long as the testimony involves only the employee's general expertise.

Paragraph (g) sets forth procedures to be followed by an employee when agency counsel determines that it is not appropriate to comply with a request for testimony or the production of documents.

Section 1.12 Regulations Not Applicable to Official Request

This section currently provides that subpart B does not apply to official requests made by other government agencies or officials, unless it appears that granting a request would be in violation of law or inimical to the public interest. The interim final rule clarifies that agency counsel should be consulted if an employee has any doubt concerning the applicability of this section to a particular request.

III. Procedural Requirements

Because this rule relates to agency management and personnel, and because it merely amends Treasury's existing regulations to more closely parallel similar regulations adopted by other Federal agencies, it is not subject to notice and public procedure pursuant to 5 U.S.C. 553(a)(2) and (b)(B). For the same reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(a)(2) and (d)(3). Nevertheless, the Department will consider any public comments on this interim final rule before issuing a final rule.

Because no notice of proposed rulemaking is required, the provisions

of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

It has been determined that this interim final rule is not a significant regulatory action for purposes of Executive Order 12866.

List of Subjects in 31 CFR Part 1

Courts, Freedom of information, Government employees, and Privacy.

Therefore, for the reasons discussed in the preamble, 31 CFR part 1 is amended as set forth below:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

2. The second sentence of §1.8 is amended by removing the references to the United States Savings Bond Division and the United States Secret Service. The amended sentence reads as follows:

§ 1.8 Scope.

* * * This subpart is applicable to the Departmental Offices and to the bureaus of the Department as defined in § 1.1(a) of this part, except to the extent that bureaus of the Department have adopted separate guidance governing the subject matter of a provision of this subpart.

3. Section 1.9 is republished and reads as follows:

§ 1.9 Records not to be otherwise withdrawn or disclosed.

Except in accordance with this part, or as otherwise authorized, Treasury Department officers and employees are prohibited from making records or duplicates available to any person who is not an officer or employee of the Department, and are prohibited from withdrawing any such records or duplicates from the files, possession or control of the Department.

4. Section 1.10(a) is revised to read as follows:

§ 1.10 Oral information.

(a) Officers and employees of the Department may, in response to requests, orally provide information contained in records of the Department that are determined to be available to the public. If the obtaining of such information requires a search of records, a written request and the payment of the fee for a record search set forth in § 1.6 will be required.

* * * * *

5. Section 1.11 is revised to read as follows:

§ 1.11 Testimony or the production of records in a court or other proceeding.

(a) *Applicability.* (1) This section sets forth the policies and procedures of the Department regarding the testimony of employees and former employees as witnesses in legal proceedings and the production or disclosure of information contained in Department documents for use in legal proceedings pursuant to a request, order, or subpoena (collectively referred to in this subpart as a demand).

(2) This section does not apply to any legal proceeding in which an employee is to testify while on leave status regarding facts or events that are unrelated to the official business of the Department.

(3) (i) Nothing in this section affects the rights and procedures governing public access to records pursuant to the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a).

(ii) Demands in legal proceedings for the production of records, or for the testimony of Department employees regarding information protected by the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), or other confidentiality statutes, must satisfy the requirements for disclosure set forth in those statutes and the applicable regulations of this part before the records may be provided or testimony given.

(4) This section is intended only to provide guidance for the internal operations of the Department and to inform the public about Department procedures concerning the service of process and responses to demands or requests, and the procedures specified in this section, or the failure of any Treasury employee to follow the procedures specified in this section, are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party against the United States.

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

(1) *Agency counsel* means:

(i) With respect to the Departmental Offices, the General Counsel; and

(ii) With respect to a bureau or office of the Department, the Chief Counsel or Legal Counsel (or his/her designee) of such bureau or office.

(2) *Demand* means a request, order, or subpoena for testimony or documents related to or for possible use in a legal proceeding.

(3) *Department* means the United States Department of the Treasury.

(4) *Document* means any record or other property, no matter what media and including copies thereof, held by the Department, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes and sound or mechanical reproductions.

(5) *Employee* means all employees or officers of the Department, including contractors and any other individuals who have been appointed by, or are subject to the supervision, jurisdiction or control of the Secretary. The procedures established within this subpart also apply to former employees of the Department where specifically noted.

(6) *General Counsel* means the General Counsel of the Department or other Department employee to whom the General Counsel has delegated authority to act under this subpart.

(7) *Legal proceeding* means all pretrial, trial and post trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, grand juries, or other tribunals, foreign or domestic. This phrase includes all phases of discovery as well as responses to formal or informal requests by attorneys or others involved in legal proceedings.

(8) *Official business* means the authorized business of the Department.

(9) *Secretary* means the Secretary of the Treasury.

(10) *Testimony* means a statement in any form, including personal appearances before a court or other legal tribunal, interviews, depositions, telephonic, televised, or videotaped statements or any responses given during discovery or similar proceedings, which response would involve more than the production of documents.

(c) *Department policy.* No current or former employee shall, in response to a demand, produce any Department documents, provide testimony regarding any information relating to or based upon Department documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties or official status, without the prior authorization of the General Counsel or the appropriate agency counsel.

(d) *Procedures for demand for testimony or production of documents.* (1) A demand directed to the Department for the testimony of a Department employee or for the production of documents shall be served in accordance with the Federal Rules of Civil Procedure, Federal Rules

of Criminal Procedure, or applicable state procedures and shall be directed to the General Counsel, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, or to the Chief or Legal Counsel of the concerned Department component. Acceptance of a demand shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the applicable laws or rules.

(2) A subpoena or other demand for testimony directed to an employee or former employee shall be served in accordance with the Federal Rules of Civil or Criminal Procedure or applicable State procedure and a copy of the subpoena shall be sent to agency counsel.

(3)(i) In court cases in which the United States or the Department is not a party, where the giving of testimony or the production of documents by the Department or a current or former employee is desired, an affidavit (or if that is not feasible, a statement) by the litigant or the litigant's attorney, setting forth the information with respect to which the testimony or production is desired, must be submitted in order to obtain a decision concerning whether such testimony or production will be authorized. Such information shall include: the title of the legal proceeding, the forum, the requesting party's interest in the legal proceeding, the reason for the demand, a showing that the desired testimony or document is not reasonably available from any other source and, if testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony. The purpose of this requirement is to assist agency counsel in making an informed decision regarding whether testimony or the production of document should be authorized. Permission to testify or produce documents will, in all cases, be limited to the information set forth in the affidavit or statement, or to such portions thereof as may be deemed proper.

(ii) Agency counsel may consult or negotiate with an attorney for a party, or the party if not represented by an attorney, to refine or limit a demand so that compliance is less burdensome or obtain information necessary to make the determination required by paragraph (e) of this section. Failure of the attorney or party to cooperate in good faith to enable agency counsel to make an informed determination under this subpart may serve, where appropriate, as a basis for a determination not to comply with the demand.

(iii) A determination under this subpart to comply or not to comply with a demand is without prejudice as to any formal assertion or waiver of privilege, lack of relevance, technical deficiency or any other ground for noncompliance.

(4)(i) Employees shall immediately refer all inquiries and demands made on the Department to agency counsel.

(ii) An employee who receives a subpoena shall immediately forward the subpoena to agency counsel. Agency counsel will determine the manner in which to respond to the subpoena.

(e) *Factors to be considered by agency counsel.* (1) In deciding whether to authorize the release of official information or the testimony of personnel concerning official information (hereafter referred to as ''the disclosure'') agency counsel shall consider the following factors:

(i) Whether the request or demand is unduly burdensome;

(ii) Whether the request would involve the Department in controversial issues unrelated to the Department's mission;

(iii) Whether the time and money of the United States would be used for private purposes;

(iv) The extent to which the time of employees for conducting official business would be compromised;

(v) Whether the public might misconstrue variances between personal opinions of employees and Department policy;

(vi) Whether the request demonstrates that the information requested is relevant and material to the action pending, genuinely necessary to the proceeding, unavailable from other sources, and reasonable in its scope;

(vii) Whether the number of similar requests would have a cumulative effect on the expenditure of agency resources;

(viii) Whether disclosure otherwise would be inappropriate under the circumstances; and

(ix) Any other factor that is appropriate.

(2) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors exists:

(i) The disclosure would violate a statute, Executive order, or regulation;

(ii) The integrity of the administrative and deliberative processes of the Department would be compromised;

(iii) The disclosure would not be appropriate under the rules of procedure governing the case or matter in which the demand arose;

(iv) The disclosure, including release in camera, is not appropriate or necessary under the relevant substantive law concerning privilege;

(v) The disclosure, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified or other matters exempt from unrestricted disclosure; or

(vi) The disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, or disclose trade secrets or similarly confidential commercial or financial information.

(f) *Requests for opinion or expert testimony.* (1) Subject to 5 CFR 2635.805, An employee shall not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice, without written approval of agency counsel.

(2) Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the Department or the United States, agency counsel may, in writing, grant authorization for an employee, or former employee, to appear and testify at no expense to the United States.

(3) Any expert or opinion testimony by a former employee of the Department shall be excepted from § 1.11(f)(1) where the testimony involves only general expertise gained while employed at the Department.

(g) *Procedures when agency counsel directs an employee not to testify or provide documents.* (1) If agency counsel determines that an employee or former employee should not comply with a subpoena or other request for testimony or the production of documents, agency counsel will so inform the employee and the party who submitted the subpoena or made the request.

(2) If, despite the determination of the agency counsel that testimony should not be given and/or documents not be produced, a court of competent jurisdiction or other appropriate authority orders the employee or former employee to testify and/or produce documents, the employee shall notify agency counsel of such order.

(i) If agency counsel determines that no further legal review of, or challenge to, the order will be sought, the employee or former employee shall comply with the order.

(ii) If agency counsel determines to challenge the order, or that further legal

review is necessary, the employee or former employee should not comply with the order. Where necessary, the employee should appear at the time and place set forth in the subpoena. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of this subpart and respectfully inform the legal tribunal that he/she has been advised by counsel not to provide the requested testimony and/or produce documents. If the legal tribunal rules that the subpoena must be complied with, the employee shall respectfully decline to comply, citing this section and *United States* ex rel. *Touhy* v. *Ragen,* 340 U.S. 462 (1951).

6. The second sentence of § 1.12 is revised to read as follows:

§ 1.12 Regulations not applicable to official request.

* * * Cases of doubt should be referred for decision to agency counsel (as defined in § 1.11(b)(1)).

Dated: March 11, 2003.

David D. Aufhauser,

General Counsel.

[FR Doc. 03–6247 Filed 3–14–03; 8:45 am]

BILLING CODE 4810–25–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003–4; Order No. 1362]

Rule of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission recently implemented a comprehensive electronic (online) document handling system. This system's ability to provide rapid notice of filings has overtaken practices that were adopted some time ago to address certain situations where there was special interest in expediting notice of Postal Service requests and distribution of other documents. Accordingly, the Commission is making minor conforming changes to four sets of provisions to align them with the new online system. These changes preserve or increase the expedition these provisions were originally designed to provide.

DATES: This rule is effective April 16, 2003.

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

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

SUPPLEMENTARY INFORMATION:

Regulatory History

66 FR 33034
67 FR 67552
68 FR 46

Background

On October 21, 2002, the Commission issued Order No. 1349 amending its rules of practice. This order made submitting documents via the Internet using the Commission's Filing Online system the standard method for filing documents in Commission proceedings. The effective date of the new filing system was January 7, 2003.

The Commission's rules of practice provide expedited procedures for considering Postal Service requests for a recommended decision on certain, narrowly defined changes to postal rates, classifications, or terms of service. Currently, the Commission has four sets of rules authorizing expedited proceedings that seek to achieve expedition, in part, through special accelerated notice, service, intervention, or discovery procedures. They were adopted before Filing Online became the standard procedure for filing and serving documents in formal Commission dockets. Filing Online now provides a faster and more effective means for performing most of these functions. The Commission is eliminating or simplifying these special procedures, as appropriate, wherever standard Filing Online procedures provide a faster and more effective alternative.

In 1989, the Postal Service proposed, and the Commission adopted, a set of special rules for processing ''Express Mail Market Response Rate'' requests. See Order No. 836, issued August 10, 1989, and 39 CFR 3001.57 through 3001.60. They are designed to allow such requests to be processed within 90 days of filing. 39 CFR 3001.60. To help speed the processing of such requests, existing rule 59(c)(1) authorizes persons wishing to participate in such a proceeding to register their name and business address with the Commission. Registrants are automatically made parties to a Market Response rate proceeding at the time that the request is filed. Existing rule 59(c)(2) requires the Postal Service to hand deliver a copy of its request on the day that it is filed to registrants who maintain a service address in the Washington metropolitan area, and to serve other registrants with a copy by Express Mail. Rule 59(c)(3) requires the Postal Service to send by Express Mail to all participants in the most recent omnibus rate case, a notice briefly describing its Market Response Rate Request, the special rules under which it was filed, and advising them of the deadline for intervention.

This registration and notification scheme provides a model for three other sets of rules authorizing expedited proceedings. Almost identical provisions are included in the set of rules for processing ''expedited minor classification cases'' (*see* 39 CFR 3001.69b(b), (c) and (d)), the rules for ''expedited review to allow market tests of proposed mail classification changes'' (*see* 39 CFR 3001.163(b), (c) and (d)), and the rules for ''expedited review of requests for Provisional Service Changes of Limited Duration'' (*see* 39 CFR 3001.173(b), (c) and (d)).

Rationale for Making Minor Conforming Changes

For each of these four sets of rules, the purpose of these special notice, intervention, and service procedures was to accelerate the processing of these requests. The Commission's Filing Online system and related electronic document handling procedures can now serve this purpose more quickly and more effectively.

Under the Commission's electronic document handling procedures, there is no longer a need to maintain a list of registrants who are entitled to receive a hard copy of a Postal Service request of one of these special types promptly after it is filed. On the Commission's website, an interested person may define a ''Document Alert'' rule that will result in notice from the Commission by e-mail when the Postal Service files a request to institute a proceeding of any kind, expedited or otherwise. That person should be able to download the request from the Commission's website within 30 minutes of the time that the request was accepted for filing by the Commission. This is earlier than the person would have received hard copy delivery of the request from the Postal Service. Because requests under these expedited rules are expected to be much smaller and simpler documents than omnibus rate requests, downloading them from the Commission's website is unlikely to strain the computing resources of any interested person. Under the Commission's electronic document handling procedures, therefore, the opportunity to register to promptly receive a hard copy of a request in an expedited proceeding does not provide an additional benefit of any significance to interested persons.

As noted above, the existing registration scheme includes a provision that automatically makes a person on the register an intervenor in any docket that the Postal Service institutes under these various sets of expedited procedures. The only rationale for this procedure that can be inferred from the administrative history of this rule is that this reduces the delay involved in intervening. For example, there was no thought that registrants should be required to intervene and respond to discovery as a condition of registration, since they were allowed to withdraw as intervenors at any time. See Memorandum of United States Postal Service in Response to Presiding Officer's Ruling No. RM88–2/1 at 7. As a means of accelerating intervention, registration is now obsolete. Under Filing Online, persons interested in intervening may accomplish this almost instantaneously by filing a notice of intervention under a temporary account. *See* 39 CFR 3001.9(e).

Accordingly, under the revised rules adopted in this order, the provisions found in these four sets of expedited docket rules that contemplate delivery of hardcopy Requests to a list of registrants and their automatic intervention will be deleted.

As noted above, these four sets of expedited procedures currently require the Postal Service to mail a notice to all participants in the most recent omnibus rate case that briefly describes its request, the special rules under which it was filed, and alerts them of the deadline for intervention. This function is also one that can be performed faster and more effectively under the Commission's electronic document handling system. Under the revised rules adopted in this order, the Postal Service must still prepare a notice summarizing its request to institute an expedited docket. Rather than mailing it to all participants in the most recent omnibus rate case, however, the Postal Service will be required only to file that notice online. The Commission will then post the notice on its Daily Listing Page of its Web site, where the public may view it and download it immediately. This will provide those actively monitoring the Daily Listing Page with notice that a request to institute an expedited docket has been filed, and will provide it earlier than under the current notice procedure.

The Commission's electronic document handling system can also provide notice to those who do not actively monitor its website. An important part of that system is the ''Document Alert'' feature. As discussed above, it allows a person to choose a notification rule that will result in an e-mail from the Commission when the Postal Service files a request to institute a Commission proceeding of any kind, including an expedited proceeding. Using the ''Document Alert'' function, an interested person will receive immediate notice of the filing of such a request. The Daily Listing page can then be accessed to view and download either the notice summarizing the request, or the request itself, depending on the person's degree of interest. This electronic notice will be both earlier, and more effective, than receiving a hard copy notice in the mail.

The Commission will soon mail to every person that participated in the most recent omnibus rate case (Docket No. R2001–1) a letter that will specifically describe this use of the ''Document Alert'' function, and will include a Filing Online User Guide that explains how to take advantage of it.

The implementation of Filing Online makes an additional revision of the rules governing Express Mail Market Response Rate requests appropriate. In order to accelerate motion practice, existing rule 59(e)(4) provides that objections to discovery requests made in such proceedings be made within 10 days of the discovery request, and served ''by hand, facsimile, or expedited delivery.'' There is no comparable provision in the other three sets of expedited procedures addressed by this order. Since filing objections online will provide a faster way to communicate them to the questioning party, these special service requirements will be deleted from rule 59(e)(4).

The minor revisions made in this order to these four sets of expedited procedures conform their filing and service provisions to the general Filing Online rules. They do so while preserving or increasing the expedition that they were originally designed to provide. Since these changes are not prejudicial to the interests of any prospective participants in Commission proceedings, the Commission considers it appropriate to make these revision without first issuing a notice of proposed rulemaking. They will become effective 30 days from the date of this Order.

Ordering Paragraphs

It is ordered:

1. The revisions to § 3001.59(c) and (e)(4), § 3001.69b(b) through (d), § 3001.163(b) through (d), and § 3001.173(b) through (d) of the Commission's rules of practice, as set forth in the attachment to this order, shall take effect 30 days from their publication in the **Federal Register**.

2. The Secretary shall cause this order to be published in the **Federal Register**. By the Commission.

Authority: 39 U.S.C. 3603.

Issued March 7, 2003.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons stated in the accompanying Order, the Commission adopts the following amendments to 39 CFR part 3001.

PART 3001—RULES OF PRACTICE AND PROCEDURE

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

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

2. Amend § 3001.59 by revising paragraphs (c) and (e)(4) to read as follows:

§ 3001.59 Market Response Rate Requests—expedition of public notice and procedural schedule.

* * * * *

(c)(1) Persons who are interested in participating in Express Mail Market Response Rate Request cases may intervene pursuant to § 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.60. Parties may withdraw from a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.60 it shall comply with the standard Filing Online procedures of §§ 3001.9 through 3001.12.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.60, it shall on that same day file a notice that briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.60, and identify the last day for filing a notice of intervention with the Commission.

* * * * *

(e) * * *

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be filed

within 10 days in the form of a Motion to Excuse from Answering. Responses to Motions to Excuse from Answering must be filed within 7 days, and should such a motion be denied, the answers to the discovery in question are due within 7 days of the denial thereof. It is the Commission's intention that parties resolve discovery disputes informally between themselves whenever possible. The Commission, therefore, encourages the party receiving discovery requests considered to be unclear or objectionable to contact counsel for the party filing the discovery requests whenever further explanation is needed, or a potential discovery dispute might be resolved by means of such communication.

* * * * *

3. Amend § 3001.69b by revising paragraphs (b) through (d) to read as follows:

§ 3001.69b Expedited minor classification cases'expedition of procedural schedule.

* * * * *

(b) Persons who are interested in participating in proceedings to consider Postal Service requests for minor changes in mail classification may intervene pursuant to § 3001.20. Parties may withdraw from a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of §§ 3001.69 through 3001.69c, it shall comply with the standard Filing Online procedures of §§ 3001.9 through 3001.12.

(d) When the Postal Service files a request under the provisions of §§ 3001.69 through 3001.69c, it shall on that same day file a notice that briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a request for a minor change in mail classification to be considered under §§ 3001.69 through 3001.69c, and identify the last day for filing a notice of intervention with the Commission.

* * * * *

4. Amend § 3001.163 by revising paragraphs (b) through (d) to read as follows:

§ 3001.163 Procedures'expedition of public notice and procedural schedule.

* * * * *

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to conduct a market test may intervene pursuant to § 3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart. Parties may withdraw from a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall comply with the standard Filing Online procedures of §§ 3001.9 though 3001.12.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day file a notice that briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a Market Test Request to be considered under §§ 3001.161 through 3001.166, and identify the last day for filing a notice of intervention with the Commission.

* * * * *

5. Amend § 3001.173 by revising paragraphs (b) through (d) to read as follows:

§ 3001.173 Procedures—expedition of public notice and procedural schedule.

* * * * *

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to establish a provisional service may intervene pursuant to § 3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart. Parties may withdraw from a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall comply with the standard Filing Online procedures of §§ 3001.9 through 3001.12.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day file a notice that briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of a Request for Establishment of a Provisional Service to be considered under §§ 3001.171 through 3001.176, and identify the last day for filing a notice of intervention with the Commission.

* * * * *

[FR Doc. 03–6250 Filed 3–14–03; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH155–2; FRL–7467–3]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, the EPA is withdrawing the direct final rule approving Ohio's State Implementation Plan for the Oxides of Nitrogen (NO_X) State Implementation Plan Call. In the direct final rule published on January 16, 2003 (68 FR 2211), EPA stated that if EPA receives adverse comment by February 18, 2003, the NO_X rule would be withdrawn and not take effect. On February 18, 2003, EPA subsequently received one comment from American Electric Power Service Corporation (AEP). We believe this comment is adverse and therefore, we are withdrawing the direct final rule. EPA will address the comment received from AEP in a subsequent final action based on the proposed action published on January 16, 2003.

DATES: The direct final rule published at 68 FR 2211 on January 16, 2003, is withdrawn as of March 17, 2003.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone: (312) 886–6084. E-Mail Address: *paskevicz.john@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: March 7, 2003.

Cheryl Newton,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

Accordingly, the addition of 40 CFR 52.1870(c) (127) is withdrawn as of March 17, 2003.

[FR Doc. 03–6192 Filed 3–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7467–1]

RIN 2060–AG97

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: On June 10, 2002, EPA issued the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of metal coil. This action will correct the timeline for beginning the first semiannual reporting period and submitting the first semiannual report as published in the NESHAP. The correction is necessary because the compliance period was changed from monthly in the proposed NESHAP (65 FR 44616, July 18, 2000) to annual in the final NESHAP (67 FR 39794, June 10, 2002), and the timeline was not corrected in the final NESHAP to reflect that change. This action will not change the level of health protection of the Metal Coil Surface Coating NESHAP or the basic control requirements. The NESHAP requires new and existing major sources to control emissions of hazardous air pollutants (HAP) to the level reflecting application of the maximum achievable control technology.

EFFECTIVE DATE: March 17, 2003.

ADDRESSES: Docket No. A–97–47 contains the supporting information used in developing the Metal Coil Surface Coating NESHAP. The EPA Docket Center is located at the U.S. EPA, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Rhea Jones, Coatings and Consumer Products Group (C539–03), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–2940; facsimile number (919) 541–5689; electronic mail address: *jones.rhea@epa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making the technical correction final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial in nature, and do not substantively change the requirements of the Metal Coil Surface Coating NESHAP. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Regulated Entities. All entities regulated under the Metal Coil Surface Coating NESHAP will be affected by this correction. Categories and entities potentially regulated by the NESHAP include:

Category	NAICS codes	Examples of potentially regulated entities
Metal Coil Coating Industry	332812 [a], 339991, 331112, 331221, 33121, 331312, 331314, 331315, 332312, 332322, 332311, 33637, 332813, 332999, 333293, 336399, 325992, 42183.	Those facilities that perform surface coating of metal coil using HAP-containing materials.

[1] The majority of facilities are included in NAICS 332812.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by the Metal Coil Surface Coating NESHAP, you should examine the applicability criteria in § 63.5090 of the NESHAP. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate Regional Office representative. *Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

I. Summary of Corrections

Today's action consists of corrections to 40 CFR 63.5180(g)(1), subparagraphs (i) and (ii). In the **Federal Register** document published June 10, 2002 (67 FR 39794), these subparagraphs mistakenly stated that the first semiannual reporting period would begin on the compliance date specified in § 63.5130 and end on June 30 or December 31, whichever date is the first date following the end of the calendar half following the compliance date. The first semiannual report would, therefore, be scheduled to be postmarked or submitted 1 month later. Beginning the semiannual reporting period and submitting the first semiannual report as described in these subparagraphs would require that facilities submit semiannual reports before the end of the initial compliance period and before submitting a notification of compliance status. Our intent was to require that the first semiannual reporting period begin on the day following the end of the initial compliance period rather than on the compliance date, and end 6 months later. The first semiannual report would then be submitted 1 month after the end of the reporting period.

II. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because EPA has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law No. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. The technical corrections also do not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The technical corrections will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The technical corrections action does not involve technical standards. The EPA's compliance with § 12(d) of the

National Technology Transfer and Advancement Act of 1995 (Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note)) has been addressed in the preamble of the underlying final rule (67 FR 39794, June 10, 2002). The technical corrections also do not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing the technical corrections, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the technical corrections in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. The technical corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 10, 2002, **Federal Register** notice containing the metal coil surface coating final rule.

The technical corrections are not subject to Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

The Congressional Review Act (CRA) (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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 17, 2003. The EPA will submit a report containing the technical corrections 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 correction notice in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 7, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart SSSS—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil

2. Section 63.5180 is amended by revising paragraphs (g)(1)(i) and (g)(1)(ii) to read as follows:

§ 63.5180 What reports must I submit?

* * * * *

(g) * * *

(1) * * *

(i) The first semiannual reporting period begins 1 day after the end of the initial compliance period described in § 63.5130(d) that applies to your affected source and ends 6 months later.

(ii) The first semiannual compliance report must cover the first semiannual reporting period and be postmarked or delivered no later than 30 days after the reporting period ends.

* * * * *

[FR Doc. 03–6301 Filed 3–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7467–6]

Historic Area Remediation Site (HARS)—Specific Polychlorinated Biphenyl Worm Tissue Criterion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today modifies the designation of the Historic Area Remediation Site (hereinafter referred to as HARS) by establishing a HARS-specific worm tissue polychlorinated biphenyl (PCB) criterion of 113 parts per billion (ppb) for use in determining the suitability of proposed dredged material for use as Remediation Material. This amendment to the HARS designation establishes a pass/fail criterion for evaluating PCBs in worm tissue from bioaccumulation tests performed on dredged material proposed for use at the HARS as Remediation Material. The PCB criterion will remain in effect until after EPA and the U.S. Army Corps of Engineers (USACE) complete their review of the 2002 scientific peer review comments on the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use at the HARS as Remediation Material for human health effects, conduct and respond to the comments on the future scientific peer review on the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use at the HARS as Remediation Material for ecological effects, and revise, as necessary, the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use as Remediation Material at the HARS for all contaminants of concern in accordance with the September 27, 2000 Memorandum of Agreement (MOA) (USEPA, 2000a) between EPA and the USACE.

Among other things, the September 27, 2000 MOA established an interim guidance value of 113 ppb for PCBs in the tissues of bioassayed worms, to be considered when determining whether proposed dredged material from the New York/New Jersey Harbor is acceptable for placement at the HARS. At the time of the MOA, the agencies agreed that, while the peer review was not complete, the implementation of this interim change was warranted based upon existing information. This

change is designed to ensure that the remedial goals of the HARS will be met.

Upon signing the MOA, EPA withdrew its concurrence (given prior to the MOA) for the U.S. Gypsum Corporation to place dredged material at the HARS as Remediation Material. U.S. Gypsum brought suit against the USACE and EPA, and in a July 10, 2002 decision, the U.S. District Court, Southern District of New York, held that the announcement of the 113 ppb interim value in the MOA was *de facto* rulemaking that should have been the subject of public notice and comment. This rulemaking is intended to address the court's concerns.

DATES: This final regulation is effective on April 16, 2003.

ADDRESSES: 1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA Home page at the Federal Register *http://www.epa.gov/fedrgstr/,* or on EPA Region 2's Home page at: *http://www.epa.gov/region02/water/dredge.*

2. *In person.* The complete administrative record for this action has been established and includes supporting documentation as well as printed, paper versions of electronic comments. Copies of information in the record are available upon request. The official record of this rulemaking is available for inspection at the EPA Region 2 Library, 16th Floor, 290 Broadway, New York, NY 10007–1866. For access to the docket materials, call Rebecca Garvin at (212) 637–3185 between 9 a.m. and 3:30 p.m. Monday through Friday, excluding legal holidays, for an appointment. The record is also available for viewing at EPA Region 2's Edison, NJ Office Library, 2890 Woodbridge Avenue, Building 209, MS–245, Edison, New Jersey 08837. For access to the docket materials at this facility, call Ms. Margaret Esser (732) 321–6762 between 9 a.m. and 3:30 p.m. Monday through Friday, excluding legal holidays, for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Pabst, Team Leader, Dredged Material Management Team, U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, NY 10007–1866 (E-mail *pabst.douglas@epa.gov*) (212) 637–3797.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially affected by this action include those who might have sought or will seek permits or authorizations to place dredged material into ocean waters at the HARS for purpose of remediation, under the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* (hereinafter referred to as the MPRSA). The rule would primarily be of relevance to entities in the New York-New Jersey Harbor and surrounding area seeking permits from the USACE to place Remediation Material at the HARS, as well as the USACE itself. Potentially affected categories and entities seeking to use the HARS include:

Category	Examples of potentially affected entities
Industry	Ports/facilities in NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS.
	Marinas in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS.
	Shipyards in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS.
	Berth owners in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS.
State/local/tribal governments	Local governments owning ports or berths in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS.
Federal Agencies	U.S. Army Corps of Engineers for its proposed dredging projects in NY/NJ Harbor and surrounding areas to be placed at the HARS.
	Other Federal agencies (*e.g.* U.S. Navy) seeking MPRSA permits for dredged material from NY/NJ Harbor and surrounding areas to be placed at the HARS.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your organization is affected by this action, you should carefully consider whether your organization is required to obtain a MPRSA permit (*See* 40 CFR 220.1), and you wish to use the HARS. If you have any questions regarding applicability of this action to a particular entity, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Other entities potentially affected by today's final rule would include commercial and recreational fishing interests using New York Bight Apex fishing and shellfishing grounds. However, by establishing a pass/fail interim PCB tissue criterion that is approximately 75 percent lower than the previously established 400 ppb worm tissue guideline for remediation of areas adversely impacted by historic disposal activities (*see* discussion below), any effects of today's final rule on fishery and shellfish resources would be expected to be positive.

II. Background

On October 8, 2002 EPA proposed modifying the designation of the HARS by establishing a HARS-specific worm tissue PCB criterion of 113 ppb for use in determining the suitability of proposed dredged material for use as Remediation Material. (67 FR 62659).

The MPRSA was enacted in 1972 to address and control the dumping of materials into ocean waters. Title I of MPRSA authorized EPA (and the USACE in the case of dredged material) to regulate dumping in ocean waters. Since the MPRSA was enacted, and through its subsequent amendments (including the Ocean Dumping Ban Act of 1988, which prohibited ocean dumping of sewage sludge and industrial waste), dumping in the New York Bight has been dramatically reduced.

With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit issued under the MPRSA. The MPRSA divides permitting responsibility between EPA and the

USACE. Under section 102 of the MPRSA, EPA has responsibility for issuing permits for all materials other than dredged material (e.g., fish wastes, burial at sea). Under section 103 of the MPRSA, the Secretary of the Army has the responsibility for issuing permits for the ocean dumping of dredged material. This permitting authority has been delegated to the USACE. Determinations to issue section 103 MPRSA permits for dredged material are subject to EPA review and concurrence.

Section 102(c) of the MPRSA provides that EPA shall designate recommended times and sites for ocean dumping, and section 103(b) further provides that the USACE shall use such EPA designated sites to the maximum extent feasible. Regulations implementing these and other provisions of MPRSA are set forth at 40 CFR parts 220 through 229. Forty CFR part 228 provides that EPA's designation of an ocean dumping site is accomplished by promulgation of a site designation specifying the site. On October 1, 1986, the Administrator delegated the authority to designate/de-designate ocean dumping sites for dredged material to the Regional Administrator of the Region in which the site is located. In accordance with that authority, EPA Region 2 designated the HARS in September 1997 for placement of dredged material suitable for use as Material for Remediation, 40 CFR 228.15(d)(6); 62 FR 46142 (August 29, 1997). Pursuant to that designation, use of the HARS is restricted to dredged material determined to be suitable for use as Material for Remediation.

Material for Remediation, or Remediation Material, is defined in 40 CFR 228.15(d)(6)(A) as material ''selected so as to ensure it will not cause significant undesirable effects including through bioaccumulation or unacceptable toxicity, in accordance with 40 CFR 227.6.'' The HARS was designated for continuing use until EPA determines that the PRA (Primary Remediation Area: a nine square nautical mile area to be remediated) has been sufficiently capped with at least 1 meter of the Material for Remediation. This Remediation Material is, ''uncontaminated dredged material (*i.e.*, dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation)'' (Preamble to HARS designation Final Rule 62 FR 46142). The HARS is being managed to reduce impacts of historical disposal activities at the site to acceptable levels in accordance with 40 CFR 228.11(c).

On September 27, 2000, EPA and the U.S. Army Corps of Engineers (USACE) entered into a Memorandum of Agreement (MOA) that announced a schedule and a process by which EPA and USACE would review the science and the guidelines used in the evaluation of dredged material proposed for placement as Remediation Material at the HARS. Specifically, the Agencies committed to the shared objective of completing the scientific peer review process initiated by EPA, and responding to input from both the peer review and the public.

EPA is today modifying the HARS designation (40 CFR 228.15(d)(6)) by establishing a HARS-specific worm tissue PCB criterion of 113 ppb for dredged material proposed for use as Material for Remediation, pursuant to 40 CFR 228.10 and 228.11(c). This value will remain in effect until after EPA and the U.S. Army Corps of Engineers (USACE) complete their review of the 2002 scientific peer review comments on the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use at the HARS as Remediation Material for human health effects, conduct and respond to the comments on the future scientific peer review on the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use at the HARS as Remediation Material for ecological effects, and revise, as necessary, the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use as Remediation Material at the HARS for all contaminants of concern in accordance with the September 27, 2000 MOA between EPA and the USACE. It should be noted that MPRSA site designation does not constitute or imply EPA's approval of the placement of particular material at the site. Before placement of the Material for Remediation at the HARS may commence, the USACE must evaluate permit applications according to EPA's Ocean Dumping Regulations and obtain EPA's concurrence.

III. Public Comments

In the preamble to the proposed rule, EPA requested public comment by November 8, 2002, and held two public hearings (attended by an estimated total of 120 people) as follows:

October 28, 2002, at 7 PM: Monmouth Beach Municipal Auditorium, 22 Beach Road, Monmouth Beach, New Jersey, 07750 (16 individuals presented testimony).

October 29, 2002, at 2 PM: EPA Region 2 NYC Office, Conference Room 27A, 290 Broadway, NY, NY 10007–1866 (five individuals presented testimony).

In addition to the testimony and comments provided at the hearings, EPA also received 220 sets of written comments on the proposed action.

Dredging and remediation of the HARS has proven to be a controversial and complex issue in recent years. As would be expected in light of such controversy, EPA received both supportive and non-supportive comments. In developing the final rule, EPA reviewed and considered all the written comments as well as those received verbally at the two public hearings. Most of the comments received were e-mails from elected officials, local governments, citizens and environmental/public interest groups that expressed, to varying degrees, support for the 113 ppb HARS-specific worm tissue PCB criterion. Many of these comments requested that the proposed rule be adopted without change. Thus, the 113 ppb HARS-specific PCB worm tissue criterion appears to be acceptable to the majority of those who provided comments. Approximately 40 commenters requested an end to ocean dumping and placement of dredged material at the HARS; for these commenters, the 113 ppb HARS-specific PCB worm tissue criterion appears not to have been sufficiently conservative. Approximately 20 comment letters were critical and non-supportive. Although in the minority based upon number of comments received, they presented the majority of issues raised. These non-supportive comment letters were from the USACE, New York Shipping Association, New York City Economic Development Corporation, private marina owners, ferry operators, dredging applicants, and other business groups. These comment letters requested that EPA not finalize the proposed rule until completion of the human health and ecological scientific peer review process. (That process commenced in 1998, and is expected to be completed in four to five more years.) The non-supportive comments had similar criticism of the proposed rule. Most expressed reservations concerning the scientific basis and economic consequences for the HARS-specific worm tissue PCB criterion of 113 ppb and offered alternative ideas for estimating a HARS-specific PCB worm tissue criterion. Following are summaries of the most significant among these comments:

Definition of PCBs

A few comments requested that EPA include a definition of PCBs in the final rule. For purposes of this rule total PCBs are defined in the EPA Region 2/USACE

New York District guidance document entitled, Guidance for Performing Tests on Dredged Material Proposed for Ocean Disposal or the Regional Testing Manual (RTM) (EPA Region 2/USACE–NYD, 1992). Applicants are instructed to analyze the following 22 PCB congeners: PCB 8, 18, 28, 44, 49, 52, 66, 87, 101, 105, 118, 128, 138, 153, 170, 180, 183, 184, 187, 195, 206, and 209.

The recommended method for estimating total PCB concentrations referenced in the RTM was changed on February 14, 1996 (EPA, 1996). The change was based on a review of various data sets that measured an extended list of PCB congeners (106 or more). The data indicated that total PCB tissue residue could be more reliably estimated by doubling the subtotal of the 22 PCB congeners listed above. The rationale and data sets supporting this change are described in the human health scientific peer review charge for the scientific peer review (EPA, 2001). After doubling the dredging project 28-day worm tissue bioaccumulation results of the 22 PCB congeners to obtain a total PCB tissue residue value for dredged material, the resulting total PCB tissue residue value is adjusted to reflect equilibrium conditions (steady state) by multiplying by 2. The resulting total PCB tissue residue value for dredged material will be compared to the 113 ppb HARS-specific PCB worm tissue criterion, for each dredging project.

Wait for Completion of the 2002 Scientific Peer Review Prior to Promulgating the 113 ppb HARS-Specific PCB Worm Tissue Criterion

A number of those who commented on the proposed rule suggested that EPA should wait for completion of the scientific peer review prior to promulgating any revision to the old 400 ppb matrix value for PCBs. EPA categorically rejects this view. The 400 ppb worm tissue matrix value, established as guidance in 1981, was based entirely on a non-degradation policy, and was not based on any kind of risk assessment. There is broad scientific consensus that the 400 ppb guidance value is not adequately protective of human health and the environment. Failure to revise the matrix value could result in propagating adverse impacts at the HARS that EPA is endeavoring to remediate.

In contrast, the 113 ppb worm tissue value is a rational, risk-based value, protective of human health and the environment, based upon available scientific information pending completion of the current scientific peer review and evaluation process. There is, moreover, solid evidence that further protective measures are needed. For example, for a number of years, the States of New York and New Jersey have had advisories for ''limited consumption'' of several species of fish (striped bass and bluefish) and lobster tomalley caught in the waters of the New York/New Jersey Harbor and Bight area, and have, in some cases, prohibited the sale, consumption, and/or harvesting of fish, crustacea, and shellfish due to toxic contamination, especially of PCBs and dioxins.

The HARS designation Supplemental Environmental Impact Statement (SEIS) (USEPA, 1997a), among other documents, contains significant evidence that dredged material disposal has contributed contaminants to the area, and therefore has likely contributed to the present conditions observed in the New York Bight Apex. Organisms living in or near these degraded surface sediments in nearshore waters will be continually exposed to contaminants until the contaminants are buried by natural sedimentation, placement of Remediation Material, or otherwise isolated or removed. Exposed sediments can directly and indirectly impact benthic and pelagic organisms. Impacts to terrestrial organisms (including human beings) are also possible if the contaminants were to undergo trophic transfer. Those conditions are cause for concern. In particular, contaminant bioaccumulation by infaunal organisms presents the potential for food chain/trophic transfer, potentially posing a risk not only to aquatic animals but also to seafood consumers. For example, elevated levels of PCBs and dioxin/furan compounds were found in the tissues of infaunal species and the hepatopancreas of lobsters collected from the vicinity of the former Mud Dump Site (MDS). The total PCB and 2,3,7,8-TCDD (dioxin) levels in lobster hepatic tissue sampled in the Bight Apex exceeded Food and Drug Administration (FDA) consumption guidance that, in most cases, recommends no consumption, or at least limited consumption, at those levels. (*See* SEIS Chapter 3.5.1.1.) (USEPA, 1997a).

The 113 ppb criterion appropriately furthers the remediation goals of the HARS. The need for remediating the HARS is extensively documented in the HARS designation rulemaking record, including the **Federal Register** notices (62 FR 26275 and 62 FR 46142), HARS Response to Comments Document (EPA, 1997b) and the HARS SEIS (EPA, 1997a). Bioaccumulation in organisms collected within the HARS was one of the factors leading to the selection of the Remediation Alternative in the HARS SEIS. It is EPA's conclusion that continued use of dredged material that bioaccumulates above 113 ppb in worm tissue would not advance, but would rather hinder, the goals of the HARS remediation and could result in increased tissue levels for organisms living within the site. EPA also concludes that continued ocean placement of dredged material that results in total PCB bioaccumulation above 113 ppb in worm tissue could contribute to human health effects.

EPA strongly disagrees with those comments that suggest that the current peer review process should be completed before any action is taken to update the old 1981 matrix value of 400 ppb. EPA believes that it is entirely inappropriate to perpetuate an outdated and non-protective criterion simply because scientific consideration of the matter is ongoing. Indeed, science is by definition always ongoing, and in this context scientific developments will continue long after the current peer review of the HARS criteria is completed. Completion of the peer review process will certainly be an important milestone, and EPA anticipates that at that time, the criteria for many contaminants of concern will be revised. It is possible, perhaps even likely, that further revisions of the value for PCBs will also be made at that time. But it is unreasonable to suggest that EPA should not act today, based on the best scientific information available at present, to replace a demonstrably unprotective value with a protective one, simply because better information may be available several years from now.

The scientific peer review process was initiated in 1998, continues today, and more time will be necessary to complete it. EPA believes that the interim PCB criterion is reasonable, based on the currently available scientific information, and is appropriately conservative to provide for the continued management of the HARS to reduce impacts within the Primary Remediation Area (PRA) to acceptable levels in accordance with 40 CFR 228.11(c), as required in 40 CFR 228.15(6)(A). It is important to implement a more appropriately conservative PCB criterion now, rather than to continue using guidelines that could potentially perpetuate benthic conditions that would need further remediation.

It is also important to note that the human health portion of the 2002 scientific peer review has been completed. The consensus opinions of

the scientific peer review panel are reported in the June 20, 2002 report entitled Interim Consensus Report of the HARS Scientific Peer Review. Phase 1: Human Health Evaluation (USEPA, 2002a). EPA intends to resume Remediation Material Workgroup (RMW) meetings with the focus on the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use at the HARS as Remediation Material, before responding to the peer reviewers' consensus report and finalizing the human health and ecological effects testing evaluation framework (TEF).

One of the central consensus opinions of the 2002 scientific peer review panel is that improvement of estimates of key exposure parameters requires that site-specific studies be conducted to obtain updated or better information. The USACE and EPA have developed several scopes of work for studies to obtain this information. It is clear, however, that many of these necessary studies will require substantial time to complete. The interim PCB tissue criterion would ensure that material that is placed at the HARS attains a level of protection consistent with the current best estimates of exposure and with the remedial intent of the HARS.

The PCB criterion will remain in effect until after EPA and the USACE complete their review of the 2002 scientific peer review comments on the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use at the HARS as Remediation Material for human health effects, conduct and respond to the comments on the future scientific peer review on the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use at the HARS as Remediation Material for ecological effects, and revise, as necessary, the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use as Remediation Material at the HARS for all contaminants of concern in accordance with the September 27, 2000 MOA between EPA and the USACE. When the above steps are completed, any further changes to the HARS testing evaluation process used to evaluate PCBs, or other contaminants of concern, will be the subject of further rulemaking, as necessary. EPA estimates that it will take four to five years to fully complete this process, including additional rulemaking, as necessary.

Exposure Assumptions Are Too Conservative

A frequent observation made in the negative comments on the proposed rule is that the site-specific exposure assumptions used by EPA in calculating the 113 ppb HARS-specific PCB worm tissue criterion are ''overly conservative'' or ''unrealistic.'' EPA rejects this assertion. The 113 ppb HARS-specific PCB worm tissue criterion is designed to be appropriately conservative to protect human health and the marine environment. The value was calculated using a non-cancer Hazard Quotient of 1, the level recommended by EPA Superfund guidance for remediation of sites with hazardous substance contamination; and a cancer risk factor of 10^{-4}, the minimum level recommended by EPA Superfund guidance.

Where EPA was conservative in calculating the PCB criterion, this conservative approach was appropriate given the relative paucity of data from which to derive alternative, site-specific exposure figures. However, the conservativism of individual exposure assumptions made in the calculation is balanced by EPA's use of a less conservative cancer risk level of 1×10^{-4}. Had EPA chosen a more protective cancer risk level of 1×10^{-5} or 1×10^{-6}, as is typical when selecting goals for site remediation, the calculated HARS-specific PCB worm tissue criterion would have been one or two orders of magnitude lower. Thus, EPA believes that the use of what some comments contend is an unrealistically conservative set of exposure assumptions (selected because of the absence of data on which to base arguably more realistic assumptions) is more than offset by EPA's use of a cancer risk level which is at the very low end of what is considered acceptable under EPA's other hazardous site remediation programs. If reliable, site-specific exposure data were available, EPA would use them in its calculations. In finalizing the review of the HARS testing evaluation process, EPA will also evaluate the use of a cancer risk level that is more protective and more consistent with what is typically used in Superfund site remediation. If EPA were to select a more protective cancer risk level, even with different exposure data, the net result might well be a calculated PCB value no higher than, and almost certainly lower than, 113 ppb.

The comments that criticized EPA's conservative exposure assumptions also failed to note the ultimate intent of the proposed rule, which is to further the remediation of the HARS. The need for and intent of such remediation was clearly established in the HARS designation in 1997 (62 FR 46142).

Implementation of the 113 ppb HARS-Specific PCB Worm Tissue Criterion Will Have Significant Negative Economic Consequences

Some comments have made dire predictions about economic dislocations if EPA proceeds with the proposed promulgation of the 113 ppb HARS-specific PCB worm tissue criterion. EPA does not believe that this will be a likely outcome. On the contrary, dredging activity, and placement of dredged material at the HARS, has continued apace in the more than two years since the September 2000 MOA, when EPA and USACE first started using the PCB value of 113 ppb. Undoubtedly, some dredgers who would wish to use the HARS will be unable to do so because their material does not satisfy the 113 ppb criterion; and it may cost more for these individual dredgers to dispose of the material elsewhere. However, EPA disagrees that widespread, adverse economic consequences are to be expected from this rulemaking. Specifically, there has been more dredged material placed at the HARS since the 113 ppb PCB value was announced under the September 2000 MOA (approximately 11 million cubic yards, based on scow volume, of maintenance and deepening dredged material), than was placed in previous years (approximately 4 million cubic yards, based on scow volume, of maintenance and deepening) (USACE, 2002). A PCB criterion of 113 ppb would render only approximately 300,000 cubic yards of maintenance dredged material from 3 past projects, since the September 2000 MOA (U.S. Gypsum, Port Imperial, and a portion of Naval Weapons Station Earle), unsuitable for placement at the HARS at an estimated cost of $14.1 million. A PCB criterion of 113 ppb would render approximately 1.2 million cubic yards (including the 300,000 mentioned earlier) of maintenance dredged material from 8 past projects (including the three discussed above) since the HARS was designated (Buttermilk Channel, Raritan River, Raritan Cutoff, Refined Sugars [now American Sugars], and Castle Astoria) unsuitable for placement at the HARS, which represents an average of 240,000 cubic yards per year (over a 5 year period). EPA estimated a worst case scenario of 1.33 million cubic yards in any given year would be unsuitable for the HARS based upon todays rule, at a cost of $62.5 million. See response to comment 7–2 in the Response to

Comments Document (USEPA, 2003a). Approximately 15 million cubic yards of Remediation Material has been placed at the HARS since it was designated in 1997. No deepening material (below 45 feet Mean Low Water) is expected to be affected by today's rule.

Nevertheless, MPRSA section 103(b) expressly provides an opportunity for the USACE to select a disposal site meeting the criteria of 40 CFR part 228, should use of an EPA-designated site prove not to be feasible. Existence of an EPA-designated disposal site thus is not a prerequisite for ocean disposal, nor does it bar use of other sites selected in accordance with section 103(b).

Further, MPRSA section 103(b) states that in considering permit applications, the Secretary's determination as to the need for the dumping is to be ''[b]ased upon an evaluation of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States * * *'' And, in the highly unlikely event that there was to be no economically feasible alternative to ocean disposal, MPRSA section 103(d) provides the opportunity for the Secretary of the Army to seek a waiver of the environmental criteria. EPA's rulemaking in no way affects that authority.

Existing Permits/Authorizations Should Be ''Grandfathered''

One comment requested that EPA ''grandfather'' existing dredging projects that have an approved Testing Evaluation Memo (signed by EPA and the USACE), but do not have a USACE permit or authorization. EPA considered this comment and has determined that the 113 ppb HARS-specific PCB worm tissue criterion will be applied to all USACE permit and authorization requests pending as of the effective date of the final rule and all permit and authorization requests filed thereafter.

EPA carefully considered and responded to each comment received. A complete Response to Comments Document has been prepared which contains all the comments received and EPA's responses to each of these comments. That document is available for viewing at the location specified in the section titled, ''How Can You Get Additional Information or Copies of Support Documents'' below.

IV. Supporting Documents

1. *USACE. 1981.* Final Interpretive Guidance for Bioaccumulation of Petroleum Hydrocarbon, DDT, Cadmium, and Mercury in the New York Bight. Memorandum from North Atlantic Division Corps of Engineers to G.R. Tobertson, Deputy Director of Civil Works, Dept. of Army.
2. *EPA/USACE. 1991.* Evaluation of Dredged Material Proposed for Ocean Disposal-Testing Manual. Environmental Protection Agency, Washington, DC, and U.S. Army Corps of Engineers, Washington, DC. EPA–503/8–91/001. February 1991.
3. *EPA Region 2/USACE-NYD (New York District). 1992.* Guidance for Performing Tests on Dredged Material Proposed for Ocean Disposal. U.S. Army Corps of Engineers New York District and Environmental Protection Agency Region, New York, NY. Draft Release. December 1992.
4. *EPA. 1996.* Letter dated February 14, 1996 from Mario Del Vicario, U.S. Environmental Protection Agency, region 2, to John Tavolaro, U.S. Army Corps of Engineers New York District. Subject PCB Quantification. February 1996.
5. *NY/NJ HEP (New York/New Jersey Harbor Estuary Program). 1996.* Comprehensive Conservation and Management Plan for the Harbor Estuary Program, including the Bight Restoration Program. Final Report. March 1996.
6. *USEPA. 1997a.* Supplement to the Environmental Impact Statement on the New York Dredged Material Disposal Site Designation for the Designation of the Historic Area Remediation Site (HARS) in the New York Bight Apex. May 1997.
7. *USEPA. 1997b.* Response to Comments on the May 13, 1997, Proposed Rule for the Simultaneous De-Designation and Termination of the Mud Dump Site (MDS) and Designation of the Historic Area Remediation Site (HARS). August 1997.
8. *USEPA. 1997c.* Biological Assessment for the Closure of the Mud Dump Site and Designation of the Historic Area Remediation Site in the New York Bight Apex. May 1997.
9. *USEPA. 2000a.* Memorandum of Agreement: among the Department of the Army, the Environmental Protection Agency, and the U.S. Army Corps of Engineers. To Strengthen Environmental Protection of the Ocean Environment and to Promote Economic Progress in the Port of New York and New Jersey. September 27, 2000.
10. *USEPA. 2000b.* Proposed Changes to the Bioaccumulation Testing Evaluation Framework and Response to Scientific Peer Reviewers Comments on the Framework for Determining the Suitability of Dredged Material to be Placed at the Historic Area Remediation (HARS). October 19, 2000.
11. *USEPA. 2000c.* Memorandum to the File from Douglas Pabst. Subject: Modification of the Matrix Value for PCB in Worm Tissue. September 27, 2000.
12. *USEPA. 2001.* Scientific Peer Review Package and Charge, Proposed Bioaccumulation Testing Evaluation Framework for Assessing the Suitability of Dredged Material to be Placed at the Historic Area Remediation Site (HARS). USEPA, Region 2. New York, NY. December 21, 2001.
13. *USACE. 2002.* Email from Stephen Knowles to EPA Region 2. Subject: Ocean Placement Summary Table. December 12, 2002.
14. *USEPA. 2002a.* Interim Consensus Report of the HARS Specific Peer Review. Phase 1: Human Health Evaluation. July 20, 2002.
15. *USEPA. 2002b.* Memorandum to the File from Douglas Pabst. Subject: Private Permits Placing Dredged Material at the Historic Area Remediation Site. October 1, 2002.
16. *USEPA. 2002c.* Memorandum to the File from Douglas Pabst. Subject: Small Businesses Applications to Place Dredged Material at the Historic Area Remediation Site. October 1, 2002.
17. *USEPA. 2002d.* Dun & Bradstreet Reports for Castle Astoria Terminals, American Sugars, Port Imperial Marina, International Matex Tank Chemicals, and New York Waterways. September 20, 2002.
18. *USEPA. 2003a.* Response to Comments on the October 8, 2002 Proposed Rule for the Establishment of a Historic Area Remediation Site (HARS)-Specific Polychlorinated Biphenyl Worm Tissue Criterion. March 7, 2003.
19. *USEPA. 2003b.* Memorandum to the File from Douglas Pabst. Subject: Private Permits for Navigational Dredging with Placement of Dredged Material at the Historic Area Remediation Site. March 6, 2003.
20. *USEPA. 2003c.* Email from Robert Hargrove to Douglas Pabst. Subject: Coastal Zone Consistency Review for the Proposed PCB 113 Guideline for the HARS. March 5, 2003.

How Can You Get Additional Information or Copies of Support Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA Home page at the **Federal Register** *http://www.epa.gov/fedrgstr/,* or on EPA

Region 2's Home page at: *http://www.epa.gov/region02/water/dredge.*

2. *In person.* The complete administrative record for this action has been established and includes supporting documentation as well as printed, paper versions of electronic comments. Copies of information in the record are available upon request. The official record of this rulemaking is available for inspection at the EPA Region 2 Library, 16th Floor, 290 Broadway, New York, NY 10007–1866. For access to the docket materials, call Rebecca Garvin at (212) 637–3185 between 9 a.m. and 3:30 p.m. Monday through Friday, excluding legal holidays, for an appointment. The record is also available for viewing at EPA Region 2's Edison NJ Office Library, 2890 Woodbridge Avenue, Building 209, MS–245, Edison, New Jersey 08837. For access to the docket materials at this facility, call Ms. Margaret Esser (732) 321–6762 between 9 a.m. and 3:30 p.m. Monday through Friday, excluding legal holidays, for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

Today's action, which establishes a HARS-specific PCB worm tissue criterion of 113 ppb, is not a significant regulatory action under E.O. 12866. In particular, as explained in the Response to Comments Document included in the record for this rule, even if one assumes a worst case scenario of 4 million cubic yards of maintenance dredged material from New York/New Jersey Harbor for one year, the projected worst-case economic impact could be approximately $62.5 million or as low as $14.1 million per year depending upon the dredging volume determined to be unsuitable for the HARS (*See* Response to Comment 7–2 in the Response to Comments Document (USEPA, 2003a)). Furthermore, the 113 ppb PCB value has been in use since the September 2000 MOA. Since that time there has been only one HARS application where the dredged material was determined unsuitable for the HARS (U.S. Gypsum) on the basis of the 113 ppb PCB value. Two additional HARS applications (Port Imperial Corporation and Naval Weapons Station Earle) would have been rejected under the proposed rule. As such, given that only two businesses (the U.S. Navy is not a maritime business) would have been affected, EPA has seen no material economic impact on maritime businesses in NY/NJ Harbor since the 113-ppb value was announced in the September 2000 MOA (USEPA 2000a). Since the signing of the MOA in September 2000, there has been more dredging and even deepening of NY/NJ Harbor than since the HARS was designated (USACE, 2002). From the time the HARS was designated in 1997 through when the September 2000 MOA was announced, two additional businesses (Castle Astoria and Refined Sugars [now American Sugars]) would have been impacted by today's rule. A total of four businesses would have been impacted by today's rule, since the HARS was designated to present. Given that each business represents a different industry, EPA concludes that this rule does not represent a material impact on any one business in New York/New Jersey Harbor. Therefore, today's rule will not 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. It thus has been determined that this rule is not a ''significant regulatory action'' under the terms of the Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This final rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

After considering the economic impact of today's final rule on small entities, the Agency certifies that this action will not have a significant economic impact on a substantial number of small entities as explained below.

For the purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business based on the Small Business Administration's (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The SBA thresholds define minimum employment, sales revenue, or other factors than may qualify an industry segment as small. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS) defined at 13 CFR 121.201. Table 1 lists the SBA size standards and NAICS codes for businesses potentially applicable to today's rule.

Table 1. Small Business Size Standards matched to North American Industry Classification System (NAICS). The NAICS codes in this table include modifications made to NAICS by the Office of Management and Budget effective January 1, 2002. Referred to as NAICS 2002. These size standards are based on NAICS 2002. They are effective October 1, 2002.

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
221210	Natural Gas Distribution		500
Except	Dredging and Surface Cleanup Activities [1]	[1] $17.0	
311312	Cane Sugar Refining		750
311313	Beet Sugar Manufacturing		750
322130	Paperboard Mills		750
324110	Petroleum Refineries [2]		[2] 1,500
327420	Gypsum Product Manufacturing		1,000
336611	Ship Building and Repairing		1,000
336612	Boat Building		500
483111	Deep Sea Freight Transportation		500
4831123	Deep Sea Passenger Transportation		500
483113	Coastal and Great Lakes Freight Transportation		500
483114	Coastal and Great Lakes Passenger Transportation		500
483211	Inland Water Freight Transportation		500
483212	Inland Water Passenger Transportation		500
488310	Port and Harbor Operations	21.6	
488320	Marine Cargo Handling	21.5	
488330	Navigational Services to Shipping	6.0	
493110	General Warehousing and Storage	21.5	
493120	Refrigerated Warehousing and Storage	21.5	
493130	Farm Product Warehousing and Storage	21.5	
493190	Other Warehousing and Storage	21.5	

[1] *NAICS code 237990*—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

[2] *NAICS code 324110*—For purposes of Government procurement, the firm may not have more than 1,500 employees or more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

EPA obtained information about all permits issued and any current permit applications in order to assess the potential universe of small entities that could be affected by today's rule. Since the HARS was first designated in 1997, the U.S. Army Corps of Engineers has received 19 private permit application for HARS placement (USEPA, 2003b), of which 15 permits were issued (Federal authorizations were not included in this analysis as the USACE is not a small entity), and there are currently 2 active permit applications pending (New York Waterways and Naval Weapons Station Earle Pier 3). The remaining permit applications (New York State Thruway and Department of Army, Op Sail) are no longer active. As the HARS is expected to exist for a limited time, until the PRA has been remediated with at least one meter of Remediation Material, EPA believes it is reasonable to assume that the universe of current and pending applications (based upon over 5 years of application history) constitutes the reasonable universe of entities affected by the todays' rule. Of the 19 permit applications, only 4 (Castle Astoria Terminals, Inc., Port Imperial Marina, New York WaterWays, and International Matex Tank Terminals) are small entities, which is not a substantial number of small entities. Of the four, three (Castle Astoria Terminals, Inc., Port Imperial Marina, and New York WaterWays) would have been affected by today's proposal, based upon past permitting information. Castle Astoria Terminals, Inc. has had a permit for HARS placement since 1999, which expired in January 2003, but they never dredged. Port Imperial Marina recently received a permit for HARS placement, but dredges very infrequently. New York WaterWays does not currently have a HARS placement permit, and has not dredged for many years. Further, these small entities are only a very small percentage of their SIC code. This analysis was included in the preamble to the proposed rule (67 FR 62659) and no additional small businesses were identified during the comment period.

In summary, based on past permit information, there would have been only a few small entities affected by the final rule, with low impacts. As such, EPA concludes that the final rule will not have a significant impact on a substantial number of small entities. Therefore, for the reasons explained above, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the final rule will not have a significant economic impact on a substantial number of small entities.

D. The Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal Mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have

meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA estimated total annualized (post-tax) costs of compliance for the final rule to be between $14.1 million and $62.5 million (worst case scenario). *See* response to comment 7–2 in the Response to Comments Document (USEPA, 2003a). Of this total cost, $14.1 million to $62.5 million would be incurred by the private sector and none would be incurred by State and Local governments. Thus, this final rule is not subject to the requirements of sections 202 and 205 of UMRA.

EPA also has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule would apply equally to all dredged material to be placed at the HARS, thus there would be no unique effect of the rule on small governments. This rule is not anticipated to result in significant expenditures for small governments based on the universe of permit holders and applicants for the HARS. Thus, the requirements of section 203 of UMRA also do not apply to this rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 *FR* 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 *FR* 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

This final rule does not have Tribal implications. It would not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. EPA does not have information indicating that any Tribe would incur costs because of this rule. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 *FR* 19885, April 23, 1997) applies to any rule that (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 *FR* 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this final rule will have a disproportionately high and adverse human health and environmental effect on any segment of the population. In addition, this rule does not impose substantial direct

compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on April 16, 2003.

L. National Environmental Policy Act of 1969

Section 102(c) of the National Environmental Policy Act of 1969, section 4321 *et seq*, (NEPA) requires Federal agencies to prepare environmental impact statements (EIS) for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. Although EPA ocean dumping program activities have been determined to be ''functionally equivalent'' to NEPA, EPA has voluntarily undertaken to follow NEPA procedures when designating ocean dumping sites. *See*, 63 FR 58045 (October 29, 1998).

In August 1982, EPA published a final EIS for the designation of the New York Dredged Material Disposal Site (Mud Dump Site). The EIS assessed the environmental impacts of establishing an ocean disposal site for 100 million cubic yards (mcy) of dredged materials generated within the Port of New York and New Jersey. After completion of the EIS, EPA designated the Mud Dump Site as an Impact Category I disposal site (*see*, 40 CFR 228.10(c)) with a capacity of 100 mcy (*see*, 40 CFR 228.15(d)(6)). Approximately 68 mcy of dredged material was disposed of at the Mud Dump Site. In 1997, EPA prepared a Supplemental EIS, for the Designation of the Historic Area Remediation Site (HARS) in the New York Bight Apex (USEPA, 1997a). That document addressed the environmental considerations relevant to the HARS, and identified the Priority Remediation Area (PRA) within the HARS. At the time of the rule designating the HARS, the PCB matrix value for disposal at the site was 400 ppb. The promulgation of the 113 ppb HARS-specific PCB worm tissue criterion is a refinement based on new information since the designation of the HARS, which will have positive impacts on the marine environment. EPA does not consider this refinement as a substantial change in the designation of the HARS, and no additional NEPA review is required.

However, EPA received comments on the proposed rule questioning EPA's determination that no further NEPA evaluation is required to establish the 113 ppb HARS-specific PCB worm tissue criterion. Specifically, these comments questioned whether EPA was remiss in not evaluating the need for, and impacts associated with the use of, other disposal methods in light of the new PCB criterion. In point of fact, EPA does not evaluate such issues when designating ocean disposal sites because permission to use an ocean site for the disposal of dredged material can be granted only after a determination has been made that no alternative disposal options exist. Evaluations of alternative disposal options are more properly performed in the review process for individual ocean dumping permit applications. As such, EPA again concludes that no further NEPA documentation is needed to establish a 113 ppb HARS-specific PCB worm tissue criterion.

M. The Endangered Species Act

Under section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), Federal agencies are required to ''insure that any action authorized, funded, or carried on by such agency * * * is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species. * * *''. Under regulations implementing the Endangered Species Act, a federal agency is required to consult with either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on the species involved) if the agency's action ''may effect'' endangered or threatened species or their critical habitat. *See*, 50 CFR 402.14(a).

EPA initiated its consultation process with the U.S. Fish and Wildlife Service (USFWS) on April 6, 1995 for what was then the Mud Dump Site and surrounding areas. The consultation process was concluded with them on July 28, 1995, with the USFWS's concurrence that EPA's action was not likely to adversely affect federally listed species under its jurisdiction. The action covered by this final rule is more protective of the marine environment. Accordingly, the conclusions of our earlier consultation with the USFWS for the designation of the HARS are still valid.

EPA initiated threatened and endangered species consultation with the National Marine Fisheries Service (NMFS) on April 4, 1996. As directed by the NMFS, EPA prepared a Biological Assessment (BA) (USEPA, 1997c) to assess the impacts of the designation of the HARS on the Kemp's ridley and loggerhead sea turtles, and the humpback and fin whales. In May 1997, EPA sent the NMFS a copy of the BA, which concluded that the designation of the HARS is not likely to adversely affect the species in question; NMFS concurred with this conclusion. Since the BA utilized a PCB worm tissue matrix value of 400 ppb and this final rule proposes 113 ppb, any impacts to endangered or threatened species, or their critical habitats resulting from this action will be positive; the conclusion of the earlier consultation with NMFS is still valid.

N. Magnuson-Stevens Fishery Conservation and Management Act

The 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) require the designation of essential fish habitat (EFH) for federally managed species of fish and shellfish. Pursuant to section 305(b)(2) of the MSFCMA, federal agencies are required to consult with the National Marine Fisheries Service (NMFS) regarding any action they authorize, fund, or undertake that may adversely affect EFH. An adverse effect has been defined by the Act as follows: ''Any impact which reduces the quality and/or quantity of EFH. Adverse effects may include direct (*e.g.*, contamination or physical disruption), indirect (*e.g.*, loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.'' EFH became effective after the HARS was designated. However, prior to September 2000 all USACE permits and authorizations were subject to EFH review utilizing a PCB matrix value of 400 ppb and were found acceptable. Since September 2000, all USACE permits and authorizations have been subject to EFH review utilizing a PCB matrix value of 113 ppb and have been found acceptable. Since this action

proposes 113 ppb, any impacts to EFH species, or their critical habitats predicted from this action would be expected to be the same, as such, the consultation requirements of section 305(b)(2) of the MSFCMA do not apply to this rule.

O. Plain Language Directive

Executive Order 12866 requires each agency to write all rules in plain language. EPA has written this final rule in plain language to make this final rule easier to understand.

P. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 *FR* 34909, May 31, 2000) requires EPA to ''expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment.'' EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means ''those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.''

The HARS-specific PCB worm tissue criterion of 113 ppb is the non-cancer (hazard quotient of 1), and is the lower of the 282 ppb cancer (1×10^{-4}), and 329 ppb ecological PCB values (USEPA, 2000c). EPA expects that this proposed rule would afford additional protection of aquatic organisms at individual, population, community, or ecosystem levels of ecological structures, because the previous matrix value was 400 ppb. Additionally the 113 ppb HARS-specific PCB worm tissue criterion is roughly one-third lower than the 329 ppb PCB value for the protection of ecological health. EPA is promulgating the 113 ppb HARS-specific PCB worm tissue criterion as it is the lower of the human health (cancer and non-cancer) and ecological protection values. Therefore, EPA expects today's final rule would advance the objective of the Executive Order to protect marine areas.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: March 10, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

In consideration of the foregoing, EPA is amending part 228, Chapter I of title 40 of the Code of Federal Regulations as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (d)(6)(v) (E) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(d) * * *

(6) * * *

(v) * * *

(E) HARS-specific Polychlorinated Biphenyl (PCB) Tissue Criterion: Total PCB bioaccumulation worm test results for dredged material approved for placement at the HARS as Material for Remediation shall not exceed the HARS-specific PCB tissue criterion of 113 ppb. This HARS-specific PCB tissue criterion will be applied to the arithmetic mean concentration reported for the analyses of the worm tissue replicates exposed to the tested sediments, without the use of statistical confidence limits.

* * * * *

[FR Doc. 03–6302 Filed 3–14–03; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 300–2 and Chapter 304

[FTR Amendment 2003–02]

RIN 3090–AE19

Federal Travel Regulation; Payment of Travel Expenses From a Non-Federal Source

AGENCY: Office of Governmentwide Policy, Travel Management Policy Division, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR), Chapter 304 for payment of travel expenses from a non-Federal source. This final rule permits after-the-fact agency acceptance of some payments from a non-Federal source for travel expenses to a meeting.

DATES: This final rule is effective June 16, 2003, and applies to payment of expenses from a non-Federal source on or after June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Umeki Thorne, Program Analyst, telephone (202) 208–7636 for clarification of content. For status or publication schedules, contact the Regulatory and Federal Assistance Publications Division, Room 4035 GS Building, Washington, DC 20405, at (202) 208–7312.

SUPPLEMENTARY INFORMATION

A. Background

This final rule revises Interim Rule 3 published in the **Federal Register** at 56 FR 9878, March 8, 1991, and Interim Rule 4 published at 57 FR 53283, November 9, 1992.

This final rule sets forth allowable expenses authorized under 31 U.S.C. 1353 and 5 U.S.C. 5701–5709 to allow agencies the acceptance of payment from a non-Federal source for travel expenses and under the authority of 5 U.S.C. 4111(b) to accept payment for the reduction in meetings and training allowances. A proposed rule with request for comment was published in the **Federal Register** at 66 FR 22491, May 4, 2001. During the 60-day comment period, GSA received comments from eight Federal agencies. GSA carefully reviewed each comment. Changes based on comments received have been grouped by sections of the proposed rule and subject area and are discussed in the following general analysis.

Section 304–2.1 What Definitions Apply to This Chapter?

Section 304–2.1 sets the definitions of terms for this chapter. One Federal agency commented that the word ''definition'' should be replaced with the word ''term''. GSA is not persuaded that this change is needed. Therefore, the word ''definition'' remains unchanged. One Federal agency commented that under the definition of ''meeting(s) or similar functions'' there is no distinction between events essential to an agency's mission and those merely in furtherance of that mission's needs. GSA has considered this comment and has added a parenthetical within this definition to adequately describe a distinction that remains fundamental to the interpretation of 31 U.S.C. 1353. Under the definition of ''meeting(s) or similar functions'', this term is not intended to encompass long-term temporary duty or training travel.

Section 304–3.8 Must I Adhere to the Provisions of the Fly America Act When I Receive Air Transportation to a Meeting Furnished or Paid by a Non-Federal Source?

Section 304–3.8 exempts air transportation paid by a non-Federal source from the requirements of the Fly America Act (Act). One Federal agency commented that this section implies that an employee will have a working knowledge of the Act's requirements and that the explanation of the Act is confusing. GSA appreciates this comment. Although § 304–3.8 exempts air transportation paid by a non-Federal source from the requirements of the Fly America Act, additional language has been inserted within the answer of this section to address where an employee may find the regulations implementing the Fly America Act.

Section 304–3.11 Am I Limited to the Maximum Subsistence Allowances (per Diem or Actual Expense) Prescribed in Applicable Travel Regulations for Travel Expenses Paid by a Non-Federal Source?

Section 304–3.11 generally limits payment of travel expenses by a non-Federal source to the maximum subsistence allowances prescribed in the Federal Travel Regulation, or other applicable governmentwide travel entitlement for military and foreign service personnel. One Federal agency recommended that this policy also include conference lodging as a form of subsistence allowance. GSA agrees with this comment and has modified § 304–3.11 to include conference lodging as a form of maximum subsistence allowance for travel expenses paid by a non-Federal source.

Section 304–3.13 After I Begin Travel to a Meeting, What Should I Do If a Non-Federal Source Offers To Pay for One or More of My Travel Expenses Without My or My Agency's Prior Knowledge?

Section 304–3.13 of the proposed rule permits after-the-fact agency acceptance of payment from a non-Federal source for travel expenses to a meeting under certain circumstances.

Four comments were received from Federal agencies regarding after-the-fact authorization for acceptance of travel expenses. Comments from two Federal agencies are in approval of and appreciate this policy change. One Federal agency questions the reason for this policy change. One Federal agency opposes this policy change and recommended that this section be removed. GSA carefully reviewed these comments. The inclusion of this policy change will allow Federal employees the flexibility to accept payment from a non-Federal source only when the limited conditions under § 304–3.13 are met. Therefore, this policy change remains as published in the proposed rule.

In addition, one Federal agency commented that §§ 304–3.13(b)(3) and (4) should be revised and combined to specifically inform employees that they are subject to penalties specified in § 304–3.18 if they are not in compliance with the requirements of §§ 304–3.13(a) and 304–3.13(b). GSA considered this comment, and for better clarification has replaced § 304–3.13(b)(4) under a separate section as § 304–3.13(c).

Section 304–3.14 May a Non-Federal Source Pay for My Spouse to Accompany Me to a Meeting?

Section 304–3.14 establishes the conditions under which an agency may pay for a spouse to accompany an employee to a meeting. One Federal agency commented that this section omitted a current condition that determined when a spouse's attendance at a meeting may be in the interest of the agency. GSA inadvertently omitted this requirement and has thereby revised § 304–3.14 to include this requirement.

Section 304–3.19 Are There Other Situations When I May Accept Payment From a Non-Federal Source for My Travel Expenses and § 304–4.3 Under What Other Authority May We Accept Payment For Travel Expenses From a Non-Federal Source?

This part 304 includes new language in §§ sections 304–3.19 and 304–4.3 to clarify the distinction between the authority for an agency to accept payment for travel and related expenses to a meeting as defined in this part versus the authority for an employee to accept free attendance at a widely attended gathering under 5 CFR 2635.204(g)(2). We made this change in consultation with the Office of Government Ethics because of concerns that the widely attended gathering authority might be used to avoid the reporting requirements of this part 304. For travel to a meeting, part 304 is the only authority agencies may use to accept payment from a non-Federal source. There may be cases where the widely attended gathering authority could be used while an employee is on official travel. For example, when an agency accepts payment from a non-Federal source or pays for an employee's travel to attend a meeting, any event for which the widely attended gathering authority is used must be separate from the meeting. This is true regardless of whether the agency uses part 304 authority to accept travel expenses or the agency pays the travel expenses itself.

In addition to the distinction as to whether the employee is traveling to a meeting, or is attending a separate event, part 304 and the widely attended gathering authorities also differ in that use of the part 304 acceptance authority is appropriate when the employee is on official travel and performing an official function. By contrast, the rules governing widely attended gatherings state, ''For employees subject to a leave system, attendance at the event shall be on the employee's own time, or if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.'' (5 CFR 2635.204(g)(2)). Another distinction to note is that travel expenses may not be accepted under the widely attended gatherings exception. (5 CFR 2635.204(g)(4)).

Section 304–6.4 What Form Must We Use To Report Payments Received by the Agency From Non-Federal Sources?

Section 304–6.4 requires an agency head or designee to submit Standard Form (SF) 326, Semiannual Reports of Payments Accepted from a Non-Federal source. One Federal agency commented that the current policy does not mandate the requirement of this form and that the Office of Government Ethics (OGE) currently accepts an internal agency form that includes all of the information required by § 304–6.4. GSA appreciates this comment. It is not GSA's intent to make a significant substantive policy change through the required use of SF 326. Section 304–6.4 has been modified to allow agencies the ability to request an exemption from the use of SF 326 through OGE.

Section 304–6.6 How Do We Determine the Value of Payments in Kind That Are To Be Reported on SF 326?

Section 304–6.6 tells agencies how to determine the value of payments in kind for reporting on SF 326. One Federal agency commented that § 304–6.6(e) should include a statement that where a commercial rate is not available all employees must report the maximum lodging rate for the per diem locality where the meeting is held as established by GSA for CONUS, Department of Defense for OCONUS, and Department of State for foreign locations. GSA considered this comment as appropriate and has amended § 304–6.6(e) accordingly.

Section 304–9.4 What If the Employee Is Compensated by a Donor and by Us for the Same Expenses?

One Federal agency commented that in the answer to this question employees should be informed of The Federal Claims Collection Standards which provides detailed guidance regarding Governmentwide debt collection policies and procedures. GSA has considered this comment and has modified § 304–9.4 accordingly.

This final rule is written in the ''plain language'' style of regulation writing as a continuation of the General Services Administration's (GSA) effort to make the FTR easier to understand and use. Questions are in the first person, and answers are in the second person. GSA uses a ''we'' and ''you'' question when referring to an agency, and an ''I'' and ''you'' question when referring to the employee. However, the rules stated in either section apply to both the employee and agency. Another example of GSA's implementation of plain language is the use of the term ''meeting'' throughout this part instead of the phrase ''meeting(s) or similar functions.'' This change is indicated in the definition of ''meeting(s) or similar functions'' and no substantive change is intended by this change.

B. Significant Changes

The final rule permits after-the-fact agency acceptance of some payments from a non-Federal source for travel expenses to a meeting under the provisions prescribed in § 304–3.13.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501, *et seq.*

F. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 300–2 and Chapter 304

Government employees, Travel and transportation expenses.

Dated: December 16, 2002.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR part 300–2 and chapter 304 as follows:

CHAPTER 300—GENERAL

PART 300–2—HOW TO USE THE FTR

1. The authority citation for part 300–2 continues to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 121(c); 49 U.S.C. 40118; E.O. 11609, 1971–1975 Comp. p.586.

2. Amend § 300–2.22 by revising the table to read as follows:

§ 300–2.22 Who is subject to the FTR?

* * * * *

For	The employee provisions contained in	And the agency provisions are contained in
Chapter 301	Subchapters A, B, and C	Subchapter D.
Chapter 302	Subchapters A, B, C, D, E, and F	Subchapters A, B, C, D, E, and F.
Chapter 303	N/A	Part 303–70.
Chapter 304	Subchapter A	Subchapters B and C.

3. Revise Chapter 304 to read as follows:

Chapter 304—Payment of Travel Expenses From a Non-Federal Source

Subchapter A—Employee's Acceptance of Payment From A Non-Federal Source for Travel Expenses

Part

304–1 Authority
304–2 Definitions
304–3 Employee responsibility

Subchapter B—Agency Requirements

304–4 Authority
304–5 Agency responsibilities
304–6 Payment guidelines

Subchapter C—Acceptance of Payment for Training

304–7 Authority/applicability
304–8 Definitions
304–9 Contributions and awards

Subchapter A—Employee's Acceptance of Payment From a Non-Federal Source for Travel Expenses

PART 304–1—AUTHORITY

Sec.

304–1.1 To whom do the pronouns ''I'', ''you'', and their variants refer throughout this part?
304–1.2 Under what authority may I accept payment of travel expenses from a non-Federal source?

Authority: 31 U.S.C. 1353 and 5 U.S.C. 5707.

§ 304–1.1 To whom do the pronouns ''I'', ''you'', and their variants refer throughout this part?

Use of pronouns ''I'', ''you'', and their variants throughout this part refers to the employee.

§ 304–1.2 Under what authority may I accept payment of travel expenses from a non-Federal source?

Under the authority of this part and 31 U.S.C. 1353, you may accept payment of travel expenses from a non-Federal source on behalf of your agency, but not on behalf of yourself, when specifically authorized to do so by your agency and only for official travel to a meeting. Except as provided in § 304–3.13 of this subchapter, your agency must approve acceptance of such payments in advance of your travel.

PART 304–2—DEFINITIONS

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

§ 304–2.1 What definitions apply to this chapter?

The following definitions apply to this chapter:

Employee means an appointed officer or employee of an executive agency as defined in 5 U.S.C. 105, including a

special Government employee as defined in 18 U.S.C. 202, or an expert or consultant appointed under the authority of 5 U.S.C. 3109.

Meeting(s) or similar functions (meeting) means a conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee's official station. ''Meeting'' as defined in this chapter does not include a meeting or other event required to carry out an agency's statutory or regulatory functions (*i.e.*, a function that is essential to an agency's mission) such as investigations, inspections, audits, site visits, negotiations or litigation. ''Meeting'' also does not include promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal sources products or services, or long term TDY or training travel. A meeting need not be widely attended for purposes of this definition and includes but is not limited to the following:

(1) An event where the employee will participate as a speaker or panel participant focusing on his/her official duties or on the policies, programs or operations of the agency.

(2) A conference, convention, seminar, symposium or similar event where the primary purpose is to receive training other than promotional vendor training, or to present or exchange substantive information of mutual interest to a number of parties.

(3) An event where the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulations.

Non-Federal source means any person or entity other than the Government of the United States. The term includes any individual, private or commercial entity, nonprofit organization or association, international or multinational organization (irrespective of whether an agency holds membership in the organization or association), or foreign, State or local government (including the government of the District of Columbia).

Payment means a monetary payment from a non-Federal source to a Federal agency for travel, subsistence, related expenses by check or other monetary instrument payable to the Federal agency (*i.e.,* electronic fund transfer (EFT), money order, charge card, etc.) or payment in kind.

Payment in kind means transportation, food, lodging, or other travel-related services provided by a non-Federal source instead of monetary payments to the Federal agency for these services. Payment in kind also includes waiver of any fees that a non-Federal source normally collects from meeting attendees (*e.g.*, registration fees).

Travel, subsistence, and related expenses (travel expenses) means the same types of expenses payable under chapter 301 of this title, the Foreign Affairs Manual (FAM), and the Joint Travel Regulations (JTR) for transportation, food, lodging or other travel-related services for official travel (*e.g.*, baggage expenses, services of guides, drivers, interpreters, communication services, hire of conference rooms, lodging taxes, laundry/dry cleaning, taxi fares, etc). These expenses also include conference or training fees (in whole or in part), as well as benefits that cannot be paid under the applicable travel regulations, but which are incident to the meeting, provided in kind, and made available by the meeting sponsor(s) to all attendees. For example, this definition as applied to this chapter would allow an employee or spouse to attend a sporting event hosted by the sponsor(s) in connection with the meeting that is available to all participants. However, it would not allow the employee to accept tickets to a professional sporting event, concert or similar event, for use at a later date even if such tickets were given to all other participants. The Foreign Affairs Manual is obtainable from: Bureau of Administration, A/IM/CST/MMS/DIR, Room 264, U.S. Department of State, Washington, DC 20520; (202) 647–3602. The Joint Travel Regulations are obtainable from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20342–0001, or available for downloading from the internet at *http://www.dtic.mil/perdiem.*

PART 304–3—EMPLOYEE RESPONSIBILITY

Subpart A—General

Sec.

304–3.1 To whom do the pronouns ''I'', ''you'', and their variants refer throughout this part?
304–3.2 What is the purpose of this part?
304–3.3 May my agency or I accept payment for travel expenses to a meeting from a non-Federal source?
304–3.4 What payments may my agency or I accept from a non-Federal source?
304–3.5 May I solicit payment of my travel expenses from a non-Federal source to attend a meeting?
304–3.6 May I inform a non-Federal source of my agency's authority to accept payment for travel expenses to attend a meeting?
304–3.7 What must I do if I am contacted directly by a non-Federal source offering to pay my travel expenses to attend a meeting?
304–3.8 Must I adhere to the provisions of the Fly America Act when I receive air transportation to a meeting furnished or paid by a non-Federal source?
304–3.9 May I use premium-class other than first-class common carrier accommodations when a non-Federal source pays in full for my transportation expenses to attend a meeting?
304–3.10 May I use first-class common carrier accommodations when a non-Federal source pays in full for my transportation expenses to attend a meeting?
304–3.11 Am I limited to the maximum subsistence allowances (per diem, actual expense or conference lodging) prescribed in applicable travel regulations for travel expenses paid by a non-Federal source?
304–3.12 Must I receive advance approval from my agency before I perform travel paid by a non-Federal source to attend a meeting?
304–3.13 After I begin travel to a meeting, what should I do if a non-Federal source offers to pay for one or more of my travel expenses without my or my agency's prior knowledge?
304–3.14 May a non-Federal source pay for my spouse to accompany me to a meeting?
304–3.15 Must I provide my agency with information about any payment I receive on its behalf?

Subpart B—Reimbursement Claims

304–3.16 What must I submit to my agency for reimbursement when a non-Federal source pays all or part of my travel expenses to attend a meeting?

Subpart C—Reports

304–3.17 If I am required to file a confidential or public financial disclosure report, must I report travel payments I receive from a non-Federal source on that report?

Subpart D—Penalties

304–3.18 What happens if I accept a payment from a non-Federal source that is in violation of this part?

Subpart E—Relation to Other Authorities

304–3.19 Are there other situations when I may accept payment from a non-Federal source for my travel expenses?

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

Subpart A—General

§ 304–3.1 To whom do the pronouns ''I'', ''you'', and their variants refer throughout this part?

Use of pronouns ''I'', ''you'', and their variants throughout this part refers to the employee.

§ 304–3.2 What is the purpose of this part?

The purpose of this part is to establish Governmentwide policy and guidance

for acceptance by a Federal agency of payment for travel expenses from a non-Federal source for employees to attend meetings. It describes how such payments must be accepted by the agency for travel of agency employee(s) and/or his/her spouse for official Government travel. Except as provided in § 304–3.13 of this part, advance agency approval is required to receive such payments.

§ 304–3.3 May my agency or I accept payment for travel expenses to a meeting from a non-Federal source?

Yes, you or your agency may accept such a payment from a non-Federal source, but you may only accept when your agency specifically authorizes such acceptance under the requirements of this part. Except as provided in § 304–3.13 of this part, your agency must approve acceptance of such payment in advance of your travel.

§ 304–3.4 What payments may my agency or I accept from a non-Federal source?

You or your agency may accept payments other than cash from a non-Federal source for all of your official travel expenses to attend a meeting of mutual interest, or any portion of those travel expenses mutually agreed upon between your agency and the non-Federal source. You may not accept payments for travel that is not to attend a meeting under this part. However, you may be able to accept payments under other authorities (see § 304–3.19).

§ 304–3.5 May I solicit payment of my travel expenses from a non-Federal source to attend a meeting?

No, you may not solicit payment for travel expenses from a non-Federal source to attend a meeting.

§ 304–3.6 May I inform a non-Federal source of my agency's authority to accept payment for travel expenses to attend a meeting?

Yes, you or your agency may inform the non-Federal source of your agency's authority to accept payment for travel expenses to attend a meeting.

§ 304–3.7 What must I do if I am contacted directly by a non-Federal source offering to pay my travel expenses to attend a meeting?

If you are contacted directly by a non-Federal source offering to pay any part of your travel expenses to attend a meeting, you must inform your agency, so that the authorized agency official can determine whether to accept the payment.

§ 304–3.8 Must I adhere to the provisions of the Fly America Act when I receive air transportation to a meeting furnished or paid by a non-Federal source?

No, if the payment or ticket was paid in full directly by the non-Federal source or reimbursed to your agency by the non-Federal source, the provisions of the Fly America Act do not apply. (See §§ 301–10.131 through 301–10.143 of this title for the regulations implementing the Fly America Act.)

§ 304–3.9 May I use premium-class other than first-class common carrier accommodations when a non-Federal source pays in full for my transportation expenses to attend a meeting?

Yes, you may use premium other than first-class common carrier accommodations if your agency authorizes you to do so in accordance with § 304–5.5 of this chapter.

§ 304–3.10 May I use first-class common carrier accommodations when a non-Federal source pays in full for my transportation expenses to attend a meeting?

Generally no. You may not use first-class common carrier accommodations unless you meet one of the criteria for first class travel contained in §§ 301–10.123, 301–10.162 and 301–10.183 of this title and are authorized to do so by your agency in accordance with § 304–5.6 of this chapter.

§ 304–3.11 Am I limited to the maximum subsistence allowances (per diem, actual expense, or conference lodging) prescribed in applicable travel regulations for travel expenses paid by a non-Federal source?

Generally yes. Subsistence expenses are usually limited to the maximum subsistence allowances (per diem, actual expenses or conference lodging) prescribed in Chapter 301 of this title for travel in CONUS, by the Secretary of Defense for travel in non-foreign areas and by the Secretary of State for travel in foreign areas. However, acceptance of payment for, and when applicable, reimbursement by an agency to an employee and the accompanying spouse of such employee are not subject to the maximum per diem or actual subsistence expense rates when traveling in CONUS or in non-foreign areas under the following conditions:

(a) The non-Federal source pays the full amount of the subsistence expense, as authorized by your agency; and

(b) The subsistence expense paid by the non-Federal source is comparable in value to that offered to or purchased by other meeting attendees; and

(c) Your agency has approved acceptance of payment from the non-Federal source prior to your travel; if your agency has not approved any acceptance from the non-Federal source, you may not exceed the maximum allowances. See § 304–3.13.

Note: The maximum subsistence allowances established by the Secretary of State for travel to foreign areas may not be exceeded.

§ 304–3.12 Must I receive advance approval from my agency before I perform travel paid by a non-Federal source to attend a meeting?

Yes, you must receive advance approval from your agency before performing travel paid by a non-Federal source to attend a meeting except as provided in § 304–3.13.

§ 304–3.13 After I begin travel to a meeting, what should I do if a non-Federal source offers to pay for one or more of my travel expenses without my or my agency's prior knowledge?

(a) If your agency has already authorized acceptance of payment for some of your travel expenses for that meeting from a non-Federal source, then you may accept on behalf of your agency, payment for any of your additional travel expenses from the same non-Federal source as long as—

(1) The expenses paid or provided in kind are comparable in value to those offered to or purchased by other similarly situated meeting attendees; and

(2) Your agency did not decline to accept payment for those particular expenses in advance of your travel.

(b) If your agency did not authorize acceptance of any payment from a non-Federal source prior to your travel, then—

(1) You may accept, on behalf of your agency, payment from a non-Federal source as authorized in this section—

(i) Only the types of travel expenses that are authorized by your travel authorization (*i.e.*, meals, lodging, transportation, but not recreation or other personal expenses); and

(ii) Only travel expenses that are within the maximum allowances stated on your travel authorization (*e.g.*, if your travel authorization states that you are authorized to incur lodging expenses up to $100 per night, you may not accept payment from the non-Federal source for a $200 per night hotel room);

(2) You must request your agency's authorization for acceptance from the non-Federal source within 7 working days after your trip ends; and

(3) If your agency does not authorize acceptance from the non-Federal source, your agency must either—

(i) Reimburse the non-Federal source for the reasonable approximation of the market value of the benefit provided,

not to exceed the maximum allowance stated on your travel authorization; or

(ii) Require you to reimburse the non-Federal source that amount and allow you to claim that amount on your travel claim for the trip.

(c) If you accept payment from a non-Federal source for travel expenses in violation of paragraph (a) or paragraph (b) of this section, you may be subject to the penalties specified in § 304–3.18.

§ 304–3.14 May a non-Federal source pay for my spouse to accompany me to a meeting?

Yes, a non-Federal source may pay for your spouse to accompany you when it is in the interest of and authorized in advance by your agency. All limitations and requirements of this part apply to the acceptance of payment from a non-Federal source for travel expenses and/or agency reimbursement of travel expenses for your accompanying spouse. Your agency may determine that your spouse's presence at an event is in the interest of the agency if your spouse will—

(a) Support the mission of your agency or substantially assist you in carrying out your official duties;

(b) Attend a ceremony at which you will receive an award or honorary degree; or

(c) Participate in substantive programs related to the agency's programs or operations.

§ 304–3.15 Must I provide my agency with information about any payment I receive on its behalf?

Yes. Your agency must submit to the U.S. Office of Government Ethics (OGE) a semiannual report (SF 326) of all payments it accepts under this part. You must be prepared to give your agency the information it needs in order to submit its report.

Subpart B—Reimbursement Claims

§ 304–3.16 What must I submit to my agency for reimbursement when a non-Federal source pays all or part of my travel expenses to attend a meeting?

You must submit a travel claim listing all allowable travel expenses that you incurred which were not paid in kind by a non-Federal source. Do not claim travel expenses that were furnished in kind by a non-Federal source. Your reimbursement is limited to the types of expenses authorized in Chapter 301 of this title or analogous provisions of the Joint Travel Regulations or Foreign Affairs Manual. Reimbursement from your agency for expenses will not in any case exceed the amount of the expenses you incur. Such reimbursement will also adhere to established regulatory limitations except where your agency accepts payments under §§ 304–5.4, 304–5.5 or 304–5.6 of this chapter.

Subpart C—Reports

§ 304–3.17 If I am required to file a confidential or public financial disclosure report, must I report travel payments I receive from a non-Federal source on that report?

Generally, no. As long as payments you receive from a non-Federal source are made to or on behalf of your agency, you are not required to report them as gifts on any confidential or public disclosure report you are personally required to file pursuant to law or Office of Government Ethics (OGE) regulations (5 CFR part 2634). However, you may be required to report any such payments that you and/or your accompanying spouse receive on your own behalf, rather than on the agency's behalf, pursuant to other reporting requirements (*e.g.*, those required by the Ethics in Government Act of 1978).

Note: The confidential financial disclosure report is OGE Form 450 and the public financial disclosure report is SF 278.

Subpart D—Penalties

§ 304–3.18 What happens if I accept a payment from a non-Federal source that is in violation of this part?

If you accept payment from a non-Federal source in violation of this part—

(a) You may be required, in addition to any other penalty provided by law and applicable regulations, to pay the general fund of the Treasury, an amount equal to any payment you accepted; and

(b) In the case of reimbursement under paragraph (a) of this section, you will not be entitled to any reimbursement from the Government for your travel expenses that the payment was intended to cover.

Subpart E—Relation to Other Authorities

§ 304–3.19 Are there other situations when I may accept payment from a non-Federal source for my travel expenses?

Yes, you may also accept payment of travel expenses from a non-Federal source under the following authorities, in addition to this part:

(a) Under 5 U.S.C. 4111 for acceptance of contributions, awards, and other payments from tax-exempt entities for non-Government sponsored training or meetings (see regulations issued by the Office of Personnel Management at 5 CFR part 410).

(b) Under 5 U.S.C. 7342 for travel taking place entirely outside the United States which is paid by a foreign government, where acceptance is permitted by your agency and any regulations which may be prescribed by your agency.

(c) Under 5 U.S.C. 7324(b) when payment is for travel to be performed for a partisan rather than an official purpose in accordance with the Hatch Act (5 U.S.C. 7321–7326); or

(d) Pursuant to the applicable standards of ethical conduct regulations concerning personal acceptance of gifts. For example, under 5 CFR 2635.204(e), which authorizes executive branch employees to accept gifts based on outside business employment relationships. (Note: You may also be able to accept attendance at (but not other travel expenses to) a widely attended gathering under 5 CFR 2635.204(g)(2) when the gathering is not a meeting, as defined in this part, and you are not attending in your official capacity.)

SUBCHAPTER B—AGENCY REQUIREMENTS

PART 304–4—AUTHORITY

Sec.

304–4.1 To whom do the pronouns ''we'', ''you'', and their variants refer throughout this part?
304–4.2 What is the purpose of this part?
304–4.3 Under what other authority may we accept payment for travel expenses from a non-Federal source?

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

§ 304–4.1 To whom do the pronouns ''we'', ''you'', and their variants refer throughout this part?

Use of pronouns ''we'', ''you'', and their variants throughout this part refers to the agency.

§ 304–4.2 What is the purpose of this part?

The purpose of this part is to establish Governmentwide policy and guidance for acceptance by a Federal agency of payment for travel expenses from a non-Federal source for employees to attend meetings under 31 U.S.C. 1353. It prescribes how such payments may be accepted.

§ 304–4.3 Under what other authority may we accept payment for travel expenses from a non-Federal source?

You may accept payment for travel expenses to events other than meetings from a non-Federal source pursuant to an agency gift statute or similar statutory authority. However, this part 304 is the only authority you may use to accept (or authorize your employee to accept on your behalf) payment for travel expenses from a non-Federal source to attend a meeting. For example, you could not pay the travel expenses

for an employee to attend a meeting and then authorize the employee to use the widely attended gathering exception in 5 CFR 2635.204(g)(2) to accept free attendance at that same meeting. You would only be able to accept payment for the employee's attendance at that meeting under this part 304.

Note: Employees may also be able to accept payment for travel expenses from non-Federal sources in their individual capacities under the authorities referenced in § 304–3.19.

PART 304–5—AGENCY RESPONSIBILITIES

Sec.

304–5.1 When may we accept payment from a non-Federal source for travel to a meeting or authorize an employee to accept payment on our behalf?
304–5.2 Who must approve acceptance of payment from a non-Federal source for travel expenses to a meeting?
304–5.3 What does our approving official need to consider before authorizing acceptance of payment from a non-Federal source for travel expenses for a meeting?
304–5.4 May we authorize an employee to exceed the maximum subsistence allowances (per diem, actual expense, or conference lodging) prescribed in applicable travel regulations where we have authorized acceptance of payment from a non-Federal source for such allowances?
304–5.5 May we authorize an employee to travel by premium other than first-class common carrier accommodations if we accept payment in full from a non-Federal source for such transportation expenses?
304–5.6 May we authorize an employee to travel by first-class common carrier accommodations if we accept payment in full from a non-Federal source for such transportation expenses?
304–5.7 May we authorize acceptance of payment from more than one non-Federal source for a single trip?

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

§ 304–5.1 When may we accept payment from a non-Federal source for travel to a meeting or authorize an employee to accept payment on our behalf?

You may accept payment from a non-Federal source or authorize an employee and/or the employee's spouse to accept payment on your behalf only when-

(a) You have issued the employee (and/or the employee's spouse, when applicable) a travel authorization before the travel begins;

(b) You have determined that the travel is in the interest of the Government;

(c) The travel relates to the employee's official duties; and

(d) The non-Federal source is not disqualified due to a conflict of interest under § 304–5.3.

§ 304–5.2 Who must approve acceptance of payment from a non-Federal source for travel expenses to a meeting?

An official at the highest practical administrative level who can evaluate the requirements in § 304–5.3, must approve acceptance of such payments.

§ 304–5.3 What does our approving official need to consider before authorizing acceptance of payment from a non-Federal source for travel expenses for a meeting?

(a) The approving official must not authorize acceptance of the payment if he/she determines that acceptance of the payment under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. The approving official must be guided by all relevant considerations, including but not limited to the—

(1) Identity of the non-Federal source;

(2) Purpose of the meeting;

(3) Identity of other expected participants;

(4) Nature and sensitivity of any matter pending at the agency which may affect the interest of the non-Federal source;

(5) Significance of the employee's role in any such matter; and

(6) Monetary value and character of the travel benefits offered by the non-Federal source.

(b) The agency official may find that, while acceptance from the non-Federal source is permissible, it is in the interest of the agency to qualify acceptance of the offered payment by, for example, authorizing attendance at only a portion of the event or limiting the type or character of benefits that may be accepted.

§ 304–5.4 May we authorize an employee to exceed the maximum subsistence allowances (per diem, actual expense, or conference lodging) prescribed in applicable travel regulations where we have authorized acceptance of payment from a non-Federal source for such allowances?

(a) Generally, yes. Subsistence allowances are usually limited to the maximum subsistence allowances (per diem, actual expense, or conference lodging) prescribed in chapter 301 of this title for travel in CONUS, by the Secretary of Defense for travel in non-foreign areas, and by the Secretary of State for travel in foreign areas. However, the maximum subsistence allowances established by this title and by the Secretary of Defense may be exceeded as long as—

(1) The non-Federal source pays the full amount of the subsistence expenses, at issue; and

(2) The subsistence expense paid by the non-Federal source is comparable in value to that offered to or purchased by meeting attendees.

(b) The maximum subsistence allowances prescribed by the Secretary of State for travel to foreign areas may not be exceeded.

§ 304–5.5 May we authorize an employee to travel by premium other than first-class common carrier accommodations if we accept payment in full from a non-Federal source for such transportation expenses?

Yes, you may authorize an employee to travel by premium other than first-class common carrier accommodations as long as the—

(a) Non-Federal source makes full payment for such transportation services in advance of travel; and

(b) Transportation accommodations furnished are comparable in value to those offered to, or purchased by, other similarly situated meeting attendees.

§ 304–5.6 May we authorize an employee to travel by first-class common carrier accommodations if we accept payment in full from a non-Federal source for such transportation expenses?

Generally, no; however, you may authorize an employee to travel by first-class common carrier accommodations if the—(a) Travel meets at least one of the conditions in §§ 301–10.123, 301–10.162 and 301–10.183 of this title; and

(b) Transportation accommodations furnished are comparable in value to those offered to, or purchased by, other similarly situated meeting attendees.

§ 304–5.7 May we authorize acceptance of payment from more than one non-Federal source for a single trip?

Yes, you may accept payment from more than one non-Federal source for a single trip, as long as the total of such payments do not exceed the total cost of the trip.

PART 304–6—PAYMENT GUIDELINES

Subpart A—General

Sec.

304–6.1 May we accept a monetary payment in the form of cash from a non-Federal source?
304–6.2 What should we do if a non-Federal source does not pay the full cost for expenses that an employee will incur during travel?
304–6.3 What happens if an employee accepts payment from a non-Federal source that is in violation of this part?

Subpart B—Reports

304–6.4 What form must we use to report payments received by the agency from non-Federal sources?

304–6.5 What guidelines must we follow when using the Standard Form (SF) 326?

Subpart C—Valuation

304–6.6 How do we determine the value of payments in kind that are to be reported on Standard Form (SF) 326?
304–6.7 Must we report on the Standard Form (SF) 326 any information that is protected from disclosure by statute?
304–6.8 Will the reports be made available for public inspection?
304–6.9 Does acceptance by OGE of the Standard Form (SF) 326 constitute a determination by OGE that the data submitted is adequate or a concurrence by OGE in the agency's conflict of interest analysis?

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

Subpart A—General

§ 304–6.1 May we accept a monetary payment in the form of cash from a non-Federal source?

No, you may not accept a monetary payment in the form of cash from a non-Federal source. Monetary payment(s) received from a non-Federal source must be in the form of a check or similar instrument made payable to the agency.

§ 304–6.2 What should we do if a non-Federal source does not pay the full cost for expenses that an employee will incur during travel?

If you determine in advance of the employee's travel that payment from a non-Federal source will cover some but not all of the employee's allowable travel and subsistence expenses you should state on the employee's travel authorization that the employee will be reimbursed the difference between the full allowances and the payment from the non-Federal source. See chapter 301 of this Title, 6 Foreign Affairs Manual, Chapter 100, or the Joint Travel Regulations (JTR), Chapter 4, Parts L and Q, as applicable to determine the applicable maximum allowances.

§ 304–6.3 What happens if an employee accepts payment from a non-Federal source that is in violation of this part?

If an employee accepts payment from a non-Federal source in violation of this part—

(a) You may require the employee, in addition to any penalty provided by law and applicable regulations, to pay the general fund of the Treasury, an amount equal to the payment so accepted; and

(b) The employee shall not be entitled to any reimbursement from the Government for such expenses.

Subpart B—Reports

§ 304–6.4 What form must we use to report payments received by the agency from non-Federal sources?

Your agency head or designee must submit Standard Form (SF) 326, Semiannual Report of Payments Accepted From a Non-Federal Source (fully completed) to report payments received from non-Federal sources. This applies to all payments that are more than $250 per event for an employee and accompanying spouse. For purposes of the $250 threshold, payments for an employee and accompanying spouse shall be aggregated. If you wish to use a form other than SF 326 to report such payments, you may seek permission to do so by contacting the Office of Government Ethics at United States Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917.

§ 304–6.5 What guidelines must we follow when using the Standard Form (SF) 326?

When completing the SF 326—

(a) You must fully complete each block on SF 326 without exception (including payments accepted for an accompanying spouse).

(b) You must also—

(1) Submit the SF 326 no later than May 31 for payments received from the preceding October 1 through March 31;

(2) Submit a SF 326 no later than November 30 for payments received from the preceding April 1 through September 30; and

(c) Submit the SF 326 including negative reports, to: Director of the Office of Government Ethics (OGE), 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917.

Subpart C—Valuation

§ 304–6.6 How do we determine the value of payments in kind that are to be reported on Standard Form (SF) 326?

The following should be used in the determination of the value of payments in kind for reporting on SF 326:

(a) For conference, training, or similar fees waived or paid by a non-Federal source, you must report the amount charged other participants.

(b) For transportation or lodging, you must report the cost that the non-Federal source paid or usually would have been charged for such event.

(c) For meals or other benefits that are not provided as part of the transportation, lodging, or a conference, training or similar fee, you must report the cost to the non-Federal source or provide a reasonable approximation of the market value of the benefit.

(d) For chartered, corporate or other private aircraft—

(1) When common carrier is available, you must report the first-class rate that would have been charged by a commercial air carrier at the time the event took place.

(2) When a common carrier is not available, you must report the cost of chartering a similar aircraft using a commercially available service.

(e) Lodging where no commercial rate is available: You must report the maximum lodging rate established by GSA for CONUS, Department of Defense for non-foreign areas and the Secretary of State for foreign areas. These rates are available on the Internet at the GSA Web site *http://www.gsa.gov/perdiem,* with links to the non-foreign and foreign area rates.

§ 304–6.7 Must we report on the Standard Form (SF) 326 any information that is protected from disclosure by statute?

No. Information that is protected by statute from disclosure to the public should not be reported on the SF 326. However, if you omit otherwise reportable information from the SF 326 because the information may not be disclosed, you must notify OGE unless otherwise prohibited by law and, if requested by the Director of OGE, make the information available for inspection by an OGE employee with the requisite clearance.

§ 304–6.8 Will the reports be made available for public inspection?

Yes, OGE must make any report filed by an agency under this part (that is not protected from disclosure by statute) available for public inspection and copying on the later of the following two dates:

(a) Within 30 days after the applicable due date.

(b) Within 30 days after the date OGE actually receives the report.

§ 304–6.9 Does acceptance by OGE of the Standard Form (SF) 326 constitute a determination by OGE that the data submitted is adequate or a concurrence by OGE in the agency's conflict of interest analysis?

No. OGE is responsible for making the information provided by the agencies available to the public. It is each agency's responsibility to file the accurate and complete reports and to make the appropriate conflict of interest analysis.

Subchapter C—Acceptance of Payments for Training

PART 304–7—AUTHORITY/APPLICABILITY

Sec.

304–7.1 What is the purpose of this subchapter?
304–7.2 To whom does this subchapter apply?
304–7.3 Who is exempt from this subchapter?

Authority: 5 U.S.C. 4111(b); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 304–7.1 What is the purpose of this subchapter?

The purpose of this subchapter is to provide for reductions in per diem and other travel reimbursement when employees receive contributions, awards and other payments from non-Federal sources for training in non-Government facilities and attendance at meetings under 5 U.S.C. 4111.

§ 304–7.2 To whom does this subchapter apply?

This subchapter applies to—

(a) Civilian officers and employees of—

(1) Executive departments as defined in 5 U.S.C. 101;

(2) Independent establishments as defined in 5 U.S.C. 104;

(3) Government corporations subject to chapter 91 of title 31 U.S.C.;

(4) The Library of Congress;

(5) The Government Printing Office (GPO);

(6) The government of the District of Columbia; and

(b) Commissioned officers of the National Oceanic and Atmospheric Administration.

§ 304–7.3 Who is exempt from this subchapter?

The following, under 5 U.S.C. 4102 and the implementing regulation at 5 CFR 410.101(b), are exempt from this subchapter:

(a) A corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors.

(b) The Tennessee Valley Authority.

(c) An individual (except a commissioned officer of the National Oceanic and Atmospheric Administration) who is a member of a uniformed service during a period in which he is entitled to pay under 37 U.S.C. 204.

(d) The U.S. Postal Service, Postal Rate Commission and their employees.

PART 304–8—DEFINITIONS

Authority: 5 U.S.C. 4111(b); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 304–8.1 For the purpose of this subchapter, who is a donor?

A donor, for the purpose of this subchapter, is a non-profit charitable organization described by 26 U.S.C. 501(c)(3), that is exempt from taxation under 26 U.S.C. 501(a).

PART 304–9—CONTRIBUTIONS AND AWARDS

Sec.

304–9.1 To whom do the pronouns ''I'', ''you'', and their variants refer throughout this part?
304–9.2 May we allow an employee to accept contributions and awards pertaining to training and payments incident to attendance at meetings under this subchapter?
304–9.3 May we pay an employee for expenses that are fully reimbursed by a donor for training in a non-Government facility, or travel expenses incident to attendance at a meeting?
304–9.4 May we reimburse an employee for training expenses that are not fully paid by a donor?
304–9.5 What if the employee is compensated by a donor and by us for the same expenses?
304–9.6 Must we reduce an employee's reimbursement when a donor pays for items for which we are not authorized to reimburse the employee?
304–9.7 Must we obtain data from employees or donors for all expenses received?

Authority: 5 U.S.C. 4111(b); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 304–9.1 To whom do the pronouns ''I'', ''you'', and their variants refer throughout this part?

Use of pronouns ''I'', ''you'', and their variants throughout this part refers to the agency.

§ 304–9.2 May we allow an employee to accept contributions and awards pertaining to training and payments incident to attendance at meetings under this subchapter?

Yes, you may allow an employee to accept contributions and awards pertaining to training and payments incident to attendance at meetings when you specifically authorize them to do so in accordance with OPM guidelines issued under section 401(b) of Executive Order 11348 (see 5 CFR part 410) and section 303(j) of Executive Order 11348 (3 CFR, 1966–1970 Comp., p. 639). The OPM guidelines may be found at 5 CFR 410.501 through 410.503.

§ 304–9.3 May we pay an employee for expenses that are fully reimbursed by a donor for training in a non-Government facility, or travel expenses incident to attendance at a meeting?

No, you may not reimburse an employee for expenses that are fully reimbursed by a donor for training in a non-Government facility, or travel expenses incident to attendance at a meeting.

§ 304–9.4 May we reimburse an employee for training expenses that are not fully paid by a donor?

Yes, you may reimburse an employee for training expenses that are not fully paid by a donor an amount considered sufficient to cover the balance of expenses to the extent authorized by law and regulation, including 5 U.S.C. 4109 and 5 U.S.C. 4110.

§ 304–9.5 What if the employee is compensated by a donor and by us for the same expenses?

If you reimburse an employee for expenses that are also paid by a donor, you must establish and carry out policy in accordance with 5 U.S.C. 5514 and the Federal Claims Collection Standards (31 CFR parts 900–904) to recover any excess amount paid to the employee.

§ 304–9.6 Must we reduce an employee's reimbursement when a donor pays for items for which we are not authorized to reimburse the employee?

No, when a donor pays for travel expenses that the Government is not authorized to pay (such as travel expenses for an employee's family) no reduction in reimbursement to the employee is required.

§ 304–9.7 Must we obtain data from employees or donors for all expenses received?

Yes, you must set agency policy to ensure collection of expense data in such detail as you deem necessary to carry out this part.

[FR Doc. 03–6126 Filed 3–14–03; 8:45 am]

BILLING CODE 6820–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–608, MB Docket No. 01–116, RM–10069]

Digital Television Broadcast Service and Television Broadcast Service; Hibbing, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Duluth-Superior Area Educational Television Corporation, substitutes DTV channel *31 for channel *18 at Hibbing, Minnesota. *See* 66 FR 32296, June 14, 2001. DTV

channel *31 can be allotted to Hibbing, Minnesota, in compliance with sections 73.622(a) and 73.623(c) of the Commission's criteria as set forth in the Public Notice, released November 22, 1999, DA 99–2605 at coordinates 47–22–53 N. and 92–57–15 W. with a power of 500, a height above average terrain HAAT of 212 meters with DTV service population of 117 thousand. Since the community of Hibbing is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 01–116, adopted February 27, 2003, and released March 6, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Minnesota, is amended by removing TV channel *18-at Hibbing.

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Minnesota, is amended by adding DTV channel *31 at Hibbing.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–6237 Filed 3–14–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF03

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for Final Rule To List the Contiguous United States Distinct Population Segment of the Canada Lynx

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), in response to the December 26, 2002, memorandum opinion and order of the United States District Court for the District of Columbia, in the case of *Defenders of Wildlife* v. *Norton,* Civil Action No. 00–2996 (GK) and pursuant to the Endangered Species Act of 1973, as amended (Act), provides this notice opening a comment period on the contiguous United States Distinct Population Segment (DPS) of the Canada lynx (*Lynx canadensis*) (lynx). This comment period has been opened to acquire information regarding issues identified by the Court that we need to consider in the above-referenced case. Moreover, we invite comment on specific information that has become available since the listing of the lynx that pertains to the issues we will consider on remand. Upon close of the comment period, the Service will evaluate the status of the lynx in the contiguous United States considering the range of the species.

DATES: Comments must be postmarked or e-mailed by April 16, 2003.

ADDRESSES: Written comments and materials concerning this notice should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Montana Field Office, 100 N. Park Avenue, Suite 320, Helena, Montana 59601; or e-mail *fw6_lynx@fws.gov.* Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lori Nordstrom, Biologist, Montana Field Office, (*see* **ADDRESSES** section) (telephone 406/449–5225 extension 208; facsimile 406/449–5339; e-mail *lori_nordstrom@fws.gov*). The Internet is the best mechanism for obtaining the specific information that has become available since the listing of the lynx that we intend to consider for this remanded decision. This information can be retrieved from the Internet at *http://mountain-prairie.fws.gov/endspp/lynx.* If you do not have access to the Internet and would like copies of these documents, please call the Montana Field Office at the above phone number.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2000 (65 FR 16052), the Service published a final rule listing the contiguous United States DPS of the lynx as threatened under the Act. As described in the final rule, the range of the lynx where listed includes portions of the States of Colorado, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, Oregon, Utah, Vermont, Washington, Wisconsin, and Wyoming.

After the final rule was published, plaintiffs in the case of *Defenders of Wildlife* v. *Norton,* Civil Action No. 00–2996 (GK)(D.D.C.) challenged the listing of the lynx as threatened, alleging violations of the Act and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Plaintiffs argued that the Service acted arbitrarily and capriciously when it—(1) Failed to treat the four lynx geographic regions as separate DPSs, (2) determined that the lack of guidance for conservation of lynx in National Forest Land and Resource Plans and Bureau of Land Management Land Use Plans is the single factor threatening the contiguous United States DPS of lynx, (3) failed to designate critical habitat for the lynx, and (4) determined that the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion of the range of the DPS.

On December 26, 2002, the Court issued its memorandum opinion and order, deciding that the Service's determination that ''[c]ollectively, the Northeast, Great Lakes and Southern Rockies do not constitute a significant portion of the range of the DPS'' must be set aside and ''remanded to the agency for further consideration of the lynx's status under the ESA consistent with the analysis set forth in the accompanying memorandum opinion.'' The Court explained that the Service's determination about the four regions was ''counterintuitive and contrary'' to the plain meaning of the Act's phrase ''significant portion of the range.'' The

Court required us to complete a new determination in 180 days. The Court did not address the plaintiffs' issues concerning the threats and the DPSs. The Court also ordered the Service to ''undertake prompt rulemaking'' in order to designate critical habitat for lynx and ordered injunctive relief directed at section 7 consultation.

This notice addresses the issues we will consider on remand. This notice does not address critical habitat for the lynx. We will request public comment on a proposed rule for critical habitat when it is published.

Significant Portion of Its Range

The Act defines the term ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act generally defines the term ''endangered species'' as a species which is in danger of extinction throughout all or a significant portion of its range. In the final rule, we found that ''[c]ollectively, the Northeast, Great Lakes and Southern Rockies do not constitute a significant portion of the range of the DPS'' and listed the species as threatened in 14 States. As directed by the Court, we are re-evaluating that determination.

Therefore, our re-evaluation will include an analysis of—(1) The quantity of lynx habitat and (2) the quality of lynx habitat in its range. In assessing habitat quality for lynx, we examine a variety of elements, such as primary prey (snowshoe hare) abundance, forest type, forest structure, snow conditions, denning habitat, inherent habitat patchiness, and connectivity with larger lynx populations and habitat in Canada. Lynx reproduction and recruitment into the population are indicators of habitat quality. Some qualitative information addressing some of these elements is contained in the administrative record for the final rule listing the lynx. In the brief time available to us, we will also re-examine available data on habitat quantity and any other factors relevant to the new determinations required by the court.

Listing decisions under the Act must be based on the best scientific information available. Additional information has become available since the lynx was listed in March 2000 that will be helpful to our analysis of what constitutes the ''significant portion'' of the lynx's range.

Public Comments Solicited

We are reopening the comment period on our determination concerning the significant portion of the range of the lynx. In particular, we are seeking comment on—(1) The quantity of lynx habitat and (2) the quality of lynx habitat. We also invite comments on other elements relevant to our determination concerning the significant portion of the range of the lynx. Our re-assessment will not be limited solely to the information identified in this notice or available on our website.

We intend to examine the following information that has become available since the listing of the lynx in March 2000 and may be pertinent to our analysis of a significant portion of the range for lynx—(1) Research on the historical occurrence and habitat ecology of lynx in eastern North America, (2) research on lynx movements, survival, habitat use, reproduction, and interspecific competition in Maine, (3) evidence of recent lynx occurrence and reproduction in Minnesota, (4) a report on historic lynx occurrence in Michigan, (5) research on the ecology of lynx in western Montana, (6) information from lynx reintroductions into Colorado, (7) information from the National Lynx Survey, (8) any available estimates of amount of lynx habitat on Federal lands, and (9) any additional information that may be applicable to our determination concerning the significant portion of the range issue that States, Tribes, or others have not already submitted to us prior to the listing in March 2000. This information will be included in the administrative record for this remanded determination.

The information identified above can be retrieved from the Internet at *http://mountain-prairie.fws.gov/endspp/lynx.* The Internet is the best method for making this information rapidly available. If you cannot access this information through the Internet, please call the Montana Field Office (*see* **ADDRESSES** section). Your written comments on the information identified above, or any additional information to help us assess the significant portion of the range for lynx, must be postmarked or emailed by the date specified above under **DATES** to the Service's Montana Field Office (*see* **ADDRESSES** section). The comment period is necessarily short because of the time given by the Court (180 days from the decision) to complete our remanded decision.

Author

The author of this notice is Lori Nordstrom, U.S. Fish and Wildlife Service, Montana Field Office (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 10, 2003.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–6291 Filed 3–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000407096–0096–01; I.D. 031003B]

Fisheries of the Northeastern United States; Northeast (NE)Multispecies Fishery; Commercial Haddock Harvest

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

ACTION: Notice of removal of haddock trip limit.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) is suspending the haddock trip limit for the groundfish fishery for the remainder of the 2002 fishing year. The Regional Administrator has projected that less than 75 percent of the haddock target total allowable catch (TAC) will be harvested for the 2002 fishing year under the restrictive trip limits. This action is intended to allow fishermen to catch more of the haddock TAC, without exceeding it. Therefore, this action removes the haddock trip limit for the remainder of the 2002 fishing year.

DATES: Effective March 17, 2003 through April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Chinn, Fishery Management Specialist, 978–281–9218.

SUPPLEMENTARY INFORMATION: Framework Adjustment 33 to the NE Multispecies Fishery Management Plan, which became effective May 1, 2000, implemented the current haddock trip limit regulations (65 FR 21658, April 24, 2000). To ensure that haddock landings do not exceed the appropriate target TAC, Framework 33 established a haddock trip limit of 3,000 lb (1,360.8 kg) per NE Multispecies day-at-sea (DAS) fished and a maximum trip limit of 30,000 lb (13,608 kg) of haddock for the period May 1 through September 30; and 5,000 lb (2,268 kg) of haddock per DAS and 50,000 lb (22,680 kg) per trip

from October 1 through April 30. Framework 33 also provided a mechanism to adjust the haddock trip limit based upon the percentage of TAC that is projected to be harvested. Section 648.86(a)(1)(iii)(B) specifies that, if the Regional Administrator projects that less than 75 percent of the haddock target TAC will be harvested in the fishing year, the trip limit may be adjusted. Further, this section stipulates that NMFS will publish notification in the **Federal Register** informing the public of the date of any changes to the trip limit.

The Regional Administrator has projected that, for fishing year 2002, Georges Bank haddock landings are estimated to be about 16,209,000 lb (7,352 mt), accounting for about 63 percent of the assumed target TAC (11,680 mt). Based on the March 2002 ''Final Report of the Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish,'' the projected Georges Bank haddock target TAC for the 2002 fishing year is 17,337 mt (based on an average of the target TAC for the 2002 and 2003 calendar years). The projected 2002 landings for Georges Bank haddock with the trip limits in effect would use only about 42 percent of the target TAC (17,337 mt). Given that under current management measures less than 75 percent of the 2002 fishing year haddock target TAC is projected to be harvested by April 30, 2003, the Regional Administrator has determined that suspending the haddock trip possession limits will provide the industry with the opportunity to harvest at least 75 percent of the TAC for the 2002 fishing year.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: March 12, 2003

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–6304 Filed 3–12–03; 3:06 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 51
Monday, March 17, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–162–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model ATP 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 BAE Systems (Operations) Limited Model ATP airplanes. This proposal would require installing a baulking device for the pintle pin in the nose landing gear (NLG). This action is necessary to prevent failure of the NLG due to an unlocked pintle pin migrating from its support housings, and consequent jamming or collapse of the NLG. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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. 2002–NM–162–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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; 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 2002–NM–162–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. 2002–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited Model ATP airplanes. The CAA advises that there have been reports of the nose landing gear (NLG) failing to retract and/or lock down on Model ATP airplanes and on certain British Aerospace Model HS 748 series airplanes. Investigation revealed that incorrect assemblies of the NLG installed during scheduled maintenance on those models caused the pintle pins to become unlocked during functional checks on two Model ATP airplanes and on three Model HS 748 series airplanes. This condition, if not corrected, could result in failure of the NLG due to an unlocked pintle pin migrating from its support housings, and consequent jamming or collapse of the NLG.

The subject area on certain Model HS 748 series airplanes is similar to that on Model ATP airplanes. Therefore, both of these models may be subject to the same unsafe condition. The FAA may consider further rulemaking to address the identified unsafe condition on certain Model HS 748 series airplanes.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin ATP–32–105 dated April 9, 2002, including Accomplishment Report, which describes procedures for installing a baulking device for the pintle pin in the NLG. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–04–2002, in

order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

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 bulletin described previously, except that the proposed AD does not require completing the Accomplishment Report.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $900 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,300, or $2,100 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:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2002–NM–162–AD.

Applicability: All Model ATP 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 (b) of this AD. The request should include an assessment of the effect of the installation, 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 nose landing gear (NLG) due to an unlocked pintle pin migrating from its support housings, and consequent jamming or collapse of the NLG, accomplish the following:

Installation

(a) Within 3 years after the effective date of this AD, install a baulking device for the pintle pin in the NLG by accomplishing the actions specified in the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin ATP–32–105, dated April 9, 2002, excluding the Accomplishment Report. The actions must be done per the service bulletin.

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, Transport Airplane Directorate, FAA. 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 sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–04–2002.

Issued in Renton, Washington, on March 11, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6260 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–04–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 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 EMBRAER Model EMB–135 and EMB–145 series airplanes. This proposal would require a one-time inspection of the trailing arm cardan of each main landing gear (MLG) to identify a certain part number; a one-time inspection of certain trailing arm cardans to detect cracking, if necessary; and replacement of incorrect trailing arm cardans with cardans having a certain part number. This action is necessary to ensure that correct trailing arm cardans of the MLGs are installed. Installation of affected cardans could lead to accelerated fatigue cracking, which, if not detected and corrected in a timely manner, could cause the cardan(s) to fracture, resulting in consequent failure of the MLG(s). This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–04–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. 2003–NM–04–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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert D. Breneman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; 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 2003–NM–04–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. 2003–NM–04–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and EMB–145 series airplanes. The DAC advises that, during a sampling program, fatigue cracks were found on certain trailing arm cardans of the main landing gears (MLG). This condition, if not detected and corrected in a timely manner, could cause the cardan to fracture, resulting in consequent failure of the affected MLG.

Explanation of Relevant Service Information

EMBRAER has issued Alert Service Bulletin 145–32–A080, Change 01, dated August 22, 2002. This alert service bulletin describes procedures for a one-time detailed inspection to detect cracking of the trailing arm cardan of each MLG, and replacement of trailing arm cardans having part number (P/N) 2309–2041–001 with new cardans having P/N 2309–2041–401 or 2309–2041–003.

Alert Service Bulletin 145–32–A080, Change 01, refers to EMBRAER Service Bulletin 145–32–0035, Change 01, dated November 10, 1999, as an additional source of service information for replacement of subject trailing arm cardans with cardans having P/N 2309–2041–003.

Accomplishment of the actions specified in EMBRAER Alert Service Bulletin 145–32–A080, Change 01, dated August 22, 2002, is intended to adequately address the identified unsafe condition. The DAC classified EMBRAER Alert Service Bulletin 145–32–A080, Change 01, as mandatory and issued Brazilian emergency airworthiness directive 2002–08–01, dated August 28, 2002, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of these type designs 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 a one-time inspection of the trailing arm cardan of each MLG to identify cardans having a certain part number which are

subject to accelerated fatigue cracking. For certain airplanes, this AD would also require a detailed inspection to detect cracking of the trailing arm cardan of each MLG, and replacement of the cardan with a new cardan. The detailed inspection and replacement would be required to be accomplished in accordance with EMBRAER Alert Service Bulletin 145–32–A080, Change 01, described previously.

Differences Between Proposed AD and Brazilian Airworthiness Directive

Operators should note that the applicability of the parallel Brazilian airworthiness directive affects, in part, Model EMB–135ER/LR and EMB–145 series airplanes equipped with certain MLG struts, except for certain struts modified by EMBRAER Service Bulletin 145–32–0035, original issue, or further revisions approved by the DAC. The affected trailing arm cardans (P/N 2309–2041–001) were originally installed during production only on airplanes having serial numbers (S/N) 145004 through 145087 inclusive. However, because MLGs are interchangeable on these airplane models, there is a possibility that airplanes having S/N 145001 through 145003 inclusive, and 145088 through 145617 inclusive, may have an MLG with the subject trailing arm cardan that was installed by operators during normal maintenance. Therefore, the applicability of this proposed AD includes airplanes having S/N 145001 through 145617 inclusive. We have determined that a one-time inspection of the trailing arm cardan of each MLG to identify affected cardans is necessary on those airplanes.

We have received verification that the affected cardans installed during production have already been removed from U.S.-registered airplanes and MLGs in stock. Therefore, we have extended the compliance time for this inspection (intended to also identify affected cardans installed during normal maintenance) to within 45 days after the effective date of this AD, instead of within 7 days, as required by the Brazilian airworthiness directive.

These issues have been coordinated and concurred with by the DAC.

Cost Impact

The FAA estimates that 401 Model EMB–135 and EMB–145 series 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. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $24,060, or $60 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 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:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2003–NM–04–AD.

Applicability: Model EMB–135 and EMB–145 series airplanes having serial numbers (S/N) 145001 through 145617 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) 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 correct trailing arm cardan of each main landing gear (MLG) are installed, accomplish the following:

Identification of Certain Part Number (P/N)

(a) Within 45 days after the effective date of this AD: Perform a one-time inspection of the trailing arm cardans of the MLGs to identify cardans having P/N 2309–2041–001.

Corrective Actions

(b) If any trailing arm cardan having P/N 2309–2041–001 is found installed during the inspection required by paragraph (a) of this AD: Prior to further flight, perform a detailed inspection to detect cracking of that trailing arm cardan of the MLG, per ''Part I'' of the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145–32–A080, Change 01, dated August 22, 2002.

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

(1) If no cracking is detected: Within 60 days or 500 flight hours after the effective date of this AD, whichever occurs first, replace the trailing arm cardan of the MLG with a new cardan having P/N 2309–2041–401 or 2309–2041–003, per ''Part II'' of the Accomplishment Instructions of the alert service bulletin.

(2) If any cracking is detected: Prior to further flight, replace the trailing arm cardan of the MLG with a new cardan having P/N 2309–2041–401 or 2309–2041–003, per ''Part II'' of the Accomplishment Instructions of the alert service bulletin.

Note 3: EMBRAER Alert Service Bulletin 145–32–A080, Change 01, dated August 22, 2002, refers to EMBRAER Service Bulletin 145–32–0035, Change 01, dated November 10, 1999, as an additional source of service information for replacement of subject trailing arm cardans with cardans having P/N 2309–2041–003.

Previously Accomplished Inspection and Replacement

(c) Inspection and replacement accomplished prior to the effective date of this AD per EMBRAER Alert Service Bulletin 145–32–A080, dated August 16, 2002, are acceptable for compliance with the actions required by paragraph (b) of this AD.

Parts Installation

(d) As of the effective date of this AD, no person shall install a trailing arm cardan, P/N 2309–2041–001, on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. 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 4: 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

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

Note 5: The subject of this AD is addressed in Brazilian emergency airworthiness directive 2002–08–01, dated August 28, 2002.

Issued in Renton, Washington, on March 11, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6259 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–358–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, and DC–10–40F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas airplanes, that would have required inspections of the linear variable differential transducers (LVDTs) of the autopilot for discrepancies, and follow-on actions, if necessary. This new action revises the proposed rule by expanding the applicability. The actions specified by this new proposed AD are intended to prevent failure of the LVDTs, which could result in an automatic pitch trim malfunction or an autopilot disconnect, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 11, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–358–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–358–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: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; 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 No. 2001–NM–358–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–358–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), MD–10–10F, and MD–10–30F airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 23, 2002 (67 FR 54593). That NPRM would have required inspections of the linear variable differential transducers (LVDTs) of the autopilot for discrepancies, and follow-on actions, if necessary. That NPRM was prompted by information received from the manufacturer that certain McDonnell Douglas airplanes having LVDTs were delivered with undersize nylok elements on the threaded extension end. That condition, if not corrected, could result in failure of the LVDTs and an automatic pitch trim malfunction or an autopilot disconnect, and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Proposal

The applicability statement of the NPRM specified that it would apply to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), MD–10–10F, and MD–10–30F airplanes; as listed in Boeing Alert Service Bulletin DC10–22A126, dated October 31, 2001; and Boeing Alert Service Bulletin DC10–22A127, dated December 17, 2001. We inadvertently omitted specifying Model DC–10–40 and DC–10–40F airplanes; however, those airplanes are listed in the specified service bulletins. In addition, it has been determined that Model MD–10–10F and MD–10–30F airplanes have a different design and are not affected by the NPRM. For the convenience of affected operators, the FAA has changed the applicability statement of this supplemental NPRM to reflect these changes.

Comments

Due consideration has been given to the comments received in response to the NPRM:

Request To Change Paragraph (a)(1)

One commenter asks that the language in paragraph (a)(1) of the NPRM which specifies, ''including replacing the LVDT with a new LVDT and doing an automatic pitch trim adjustment/test'' be changed. The commenter states that the manufacturer has repaired several LVDTs with the affected serial numbers and those LVDTs are being installed on the airplanes. The commenter suggests that the language state, ''including replacing the LVDT with a new LVDT, or LVDT with an affected serial number that was repaired after January 22, 2001, by the parts manufacturer; and doing an automatic pitch trim adjustment/test.''

We do not agree with the commenter. There is no specific designation or modification level for identifying the correct nylok strip size to be installed on a repaired LVDT; only a label titled ''Rework'' and the date are engraved on those units. All returned LVDT units are marked ''Rework'' after repair, regardless of the reason for repair, and returned to operators with the same serial number. We acknowledge that certain LVDT units have been repaired by the parts manufacturer by adding the correct nylok strip size. However, we do not have any data validating proper control and identification of the nylok strip size required for installation in an LVDT with an affected serial number. In light of these factors, we find that no change to the supplemental NPRM is necessary in this regard.

The same commenter requests clarifying the text in paragraph (a)(1) of the NPRM which specifies, ''If no discrepancy is found, install a shield assembly per Condition 2 of the service bulletin.'' The commenter states that Condition 2 of the service bulletin specifies that no further action is needed if no discrepancy is found. The commenter believes that if no discrepancy is found, the existing shield on the LVDT would be reinstalled if removed during any inspection/repair process. The commenter adds that the text in the NPRM implies installing something additional, which is not the case.

We agree with the commenter and have clarified paragraph (a)(1) of this supplemental NPRM.

Request To Change Paragraph (b)

The same commenter asks that paragraph (b) of the NPRM be changed to state, ''As of the effective date of this AD, no one may install a LVDT on any airplane autopitch trim system with a serial number listed in the 'Affected Serial Numbers' table in Figure 1 of Boeing Alert Service Bulletin DC10–22A127, dated December 17, 2001; unless the LVDT serial number has been repaired by OEM Kavlico after January 22, 2001.''

We do not agree with the commenter. The intent of paragraph (b) of this supplemental NPRM is to prohibit any LVDT with a serial number listed in the ''Affected Serial Numbers'' table in Figure 1 of the service bulletin from being installed on any airplane after the effective date of this AD. No change to the supplemental NPRM is necessary in this regard.

Explanation of Editorial Change

We have changed the service bulletin citations in this supplemental NPRM to exclude the Evaluation Forms. The forms are intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletins; however, this AD does not include such a requirement.

Conclusion

Since the change in applicability expands the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 394 airplanes of the affected design in the worldwide fleet. The FAA estimates that 252 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the inspection specified in Boeing Alert Service Bulletin DC10–22A126, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $15,120, or $60 per airplane.

It would take approximately 1 work hour per airplane to accomplish the inspections specified in Boeing Alert Service Bulletin DC10–22A127, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed inspections on U.S. operators is estimated to be $15,120, or $60 per airplane.

Should an operator be required to perform the follow-on actions specified in Boeing Alert Service Bulletin DC10–22A126, the cost estimates are as follows:

- Condition 2–Repair/inspect: 1 work hour per airplane at $60 per work hour.
- Condition 4–Realign: 1 work hour per airplane at $60 per work hour.
- Condition 5–Replace LVDT: 1 work hour per airplane at $60 per work hour; estimated parts cost of $900.
- Condition 6–Replace hangar: 1 work hour per airplane at $60 per work hour; estimated parts cost of $100.

Should an operator be required to perform the follow-on actions specified in Boeing Alert Service Bulletin DC10–22A127, the cost estimates are as follows:

- Option 1–Replace LVDT and do adjustment/test: 2 work hours per

airplane at $60 per work hour; estimated parts cost of $900.

• Option 2–Install a heat shrinkable sleeve and inspect: 2 work hours per airplane at $60 per work hour.

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 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:

McDonnell Douglas: Docket 2001–NM–358–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, and DC–10–40F airplanes; as listed in Boeing Alert Service Bulletin DC10–22A126, dated October 31, 2001; and Boeing Alert Service Bulletin DC10–22A127, dated December 17, 2001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the linear variable differential transducers (LVDTs) of the autopilot, which could result in an automatic pitch trim malfunction or an autopilot disconnect, and consequent reduced controllability of the airplane, accomplish the following:

Detailed Inspections/Follow-On Actions

(a) Within 90 days after the effective date of this AD: Do the detailed inspections of the LVDTs of the autopilot for discrepancies as required by paragraphs (a)(1) and (a)(2) of this AD.

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

(1) Inspect the LVDTs for affected serial numbers (with undersize nylok elements) per Figure 1 of Boeing Alert Service Bulletin DC10–22A127, dated December 17, 2001, excluding Evaluation Form. If any affected serial number is found, before further flight, do either Option 1 (including replacing the LVDT with a new LVDT and doing an automatic pitch trim adjustment/test), or Option 2 (including installing a heat-shrinkable sleeve over the LVDT jamnut and doing repetitive inspections for any loose jamnut every 500 flight hours until the LVDT is replaced with a new LVDT), of Condition 1 of the service bulletin, per the service bulletin. If any discrepancy is found, before further flight, replace the LVDT with a new LVDT. If no discrepancy is found, no further action is required by this paragraph.

(2) Inspect the shear rivets of the LVDTs of the drive assembly of the automatic pitch trim for discrepancies (shearing and/or looseness), per Boeing Alert Service Bulletin DC10–22A126, dated October 31, 2001, excluding Evaluation Form. If any discrepancy is found, before further flight, do Conditions 2 through 6 (including repairing the driver assembly and inspecting the LVDT within 9 months after doing the repair; doing an automatic pitch trim adjustment/test; aligning the LVDT; replacing the existing LVDT with a new LVDT; and replacing the hangar assembly with a new assembly), as applicable, of the service bulletin, per the service bulletin. If no discrepancy is found, no further action is required by this paragraph.

Part Installation

(b) As of the effective date of this AD, no one may install an LVDT with a serial number listed in the ''Affected Serial Numbers'' table in Figure 1 of Boeing Alert Service Bulletin DC10–22A127, dated December 17, 2001, excluding Evaluation Form, on any airplane.

Alternative Methods of Compliance

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

Note 3: 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

(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 March 11, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6258 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14454; Airspace Docket No. 03–AEA–01]

Establishment of Class E Airspace; Lake Placid, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Lake Placid Airport (LKP), Lake Placid, NY. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) to serve flights operating into Lake Placid Airport under Instrument Flight Rules (IFR) makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 16, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–114454/Airspace Docket No. 03–AEA–01 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–114454/Airspace Docket No. 03–AEA–01''. The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace area at Lake Placid, NY. The development of SIAPs to serve flights operating IFR into Lake Placid Airport makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K dated August 30, 2002 and effective September 16, 2002, is proposed to be amended as follows:

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

* * * * *

AEA NY E5, Lake Placid, NY [NEW]

Lake Placid Airport
(Lat. 44°15′52″ N., long. 73°57′43″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Lake Placid Airport, excluding that portion that coincides with the Saranac Lake, NY Class E airspace area.

* * * * *

Issued in Jamaica, New York on February 21, 2003.

Richard J. Ducharme,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–6334 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 255 and 399

[Docket Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations; Statements of General Policy

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Department is correcting a notice of proposed rulemaking that appeared in the **Federal Register** on November 15, 2002 (67 FR 69366). The notice requested comments on proposals to change the Department's existing rules on airline computer reservations systems (14 CFR part 255) and on a possible clarification of its Statements of General Policy (14 CFR part 399) on the requirements for the disclosure of service fees by travel agencies. The notice contained two language errors that misstated the reasoning underlying the Department's proposals and request for comment. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: The sentence appearing at the bottom of the middle column on 67 FR 69386 that cites *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.,* 472 U.S. 585 (1985), should have read, ''A monopolist generally may not engage in conduct that is economically rational only if it eliminates competition.'' The fifth sentence in the first full paragraph on 67 FR 69418 that discusses the proposed policy of requiring a separate listing of agency service fees that do not exceed a specified amount incorrectly suggested, if read out of context, that we were proposing to regulate the level of service fees. We instead are requesting comment on a proposal whereby fees below a specified level would be listed separately while fees above that level would be included in the fare amount. The sentence should therefore read, ''In addition, we are imposing a limit on service fee amounts that may be listed separately to ensure that service fees are not used merely to make the advertised fare seem lower.'' This latter correction is consistent with the advice previously given on our intent, as stated in the letter from Paul M. Ruden, Senior Vice President, American Society of Travel Agents, to Thomas Ray, filed in the docket for this proceeding on November 14, 2002.

Issued in Washington, DC on March 12, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–6447 Filed 3–13–03; 1:59 pm]

BILLING CODE 4910–62–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB97

Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend Rule 4.5, which provides an exclusion from the definition of the term ''commodity pool operator'' (CPO) for certain persons, and Rules 4.13 and 4.14, which provide exemption from CPO and commodity trading advisor (CTA) registration, respectively, for certain other persons, so as to expand the availability of the relief provided by these rules. The Commission also is proposing rule amendments to facilitate communications by CPOs and CTAs, including proposals that would: (1) Permit certain communications prior to Disclosure Document distribution; (2) relieve CPOs from duplicative disclosure and reporting requirements in the ''master/feeder fund'' context; (3) establish criteria for CPOs to distribute periodic Account Statements electronically; and (4) harmonize the various signature requirements of Part 4. Further, the Commission is affirming, with certain modifications, the no-action relief it previously has issued with respect to the trading criteria of Rule 4.5 for certain persons and the need to register as a CPO or CTA for certain other persons.

DATES: Comments must be received by May 1, 2003.

ADDRESSES: Comments on the proposed rules should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by email to *secretary@cftc.gov.* Reference should be made to ''Proposed Rules for CPO and CTA Registration and Other Regulatory Relief.''

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, or Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5450 or (202) 418–5445, respectively; facsimile number: (202) 418–5536, or (202) 418–5547, respectively; and electronic mail: *bgold@cftc.gov* or *ccummings@cftc.gov,* respectively.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
- A. Statutory and Regulatory Authorities
- B. The Prior Rule 4.5 Proposal
- C. The Advance Notice of Proposed Rulemaking (ANPR)
- D. Roundtable on CPO and CTA Issues

II. Comments on the Prior Rulemaking Activities
- A. Comments on the Prior Rule 4.5 Proposal
- B. Comments on the ANPR

III. The Proposals
- A. Proposed Amendment to Rule 4.5: Deleting Trading Criteria for Exclusion from the CPO Definition
- B. Proposed Amendments to Rule 4.13: Expanding and Adding CPO Registration Exemptions
- 1. Proposed Amendments to Rule 4.13(a)(2): Expanding the current exemption
- 2. Proposed Rule 4.13(a)(3): Adding a limited trading exemption
- 3. Proposed Rule 4.13(a)(4): Adding an exemption where pool participants meet specified sophistication criteria
- 4. Additional provisions under Rule 4.13
- 5. Alternative proposal for relief
- C. Proposed Amendments to Rule 4.14: Expanding and Adding CTA Registration Exemptions
- 1. Proposed Amendments to Rule 4.14(a)(8)
- a. Exemption for state-registered investment advisers (IAs)
- b. Exemption where advice is provided to foreign funds
- c. Exemption where advice is to Rule 4.13(a)(3) and 4.13(a)(4) pools
- 2. Proposed Rule 4.14(a)(10): Counting Legal Organizations as a Single ''Person''
- D. Proposed Amendments to Rules 4.21, 4.22 and 4.31
- 1. Permitting communications prior to Disclosure Document distribution
- 2. Removing duplicative requirements in the ''master/feeder fund'' context
- 3. Distributing Account Statements electronically
- 4. Providing facsimile signatures on Account Statements and Annual Reports
- 5. Conforming signature requirements

IV. Temporary No-Action Relief
A. Temporary No-Action Relief for Rule 4.5 Eligible Persons
B. CPO and CTA Temporary Registration No-Action Relief
1. Relief for CPOs
a. In General
b. CPOs who operate ''Funds-of-Funds''
2. Relief for CTAs
3. Claim of Registration No-Action Relief
4. One-Way Disclosure by CPOs and CTAs
5. Effect of Filing a Claim of No-Action Relief
a. For CPOs
b. For CTAs
C. Other Matters
1. Effect of Final Rulemaking on No-Action Relief
2. Continued Availability of No-Action Relief from Commission Staff
V. Other Matters
A. Regulatory Flexibility Act
B. Paperwork Reduction Act
C. Cost-Benefit Analysis

I. Background

A. Statutory and Regulatory Authorities

Section 1a(5) of the Commodity Exchange Act (Act) defines the term ''commodity pool operator'' to mean:

> [A]ny person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, * * *.[1]

Section 4m(1) of the Act[2] provides, in relevant part, that it is unlawful for any CPO, ''unless registered under [the] Act, to make use of the mails or any means or instrumentality of interstate commerce'' in connection with its business as a CPO. Thus, except for the narrow exceptions currently provided in Rules 4.5 and 4.13, the operator of a collective investment vehicle that trades commodity interest contracts, whether for *bona fide* hedging purposes[3] or otherwise, must be registered with the CFTC as a CPO.[4]

Section 1a(6)(A) of the Act defines the term ''commodity trading advisor'' to mean any person who:

> (i) For compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value or the advisability of trading in—
>
> (I) Any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility;
>
> (II) Any commodity option authorized under section 4c; or
>
> (III) Any leverage transaction authorized under section 19; or
>
> (ii) For compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i).[5]

Section 1a(6) also excludes certain persons not at issue here from the CTA definition, and provides the Commission with authority to exclude additional persons from that definition. Section 4m(1) of the Act also requires CTAs to register as such with the Commission and, along with Section 4m(3) and Rule 4.14, provides exemption from CTA registration.[6]

If a person is exempt from registration as a CPO or CTA, its associated persons (APs) are not required to register as such. Further, neither the exempt CPO or CTA, nor any of its APs, is required to become a member of a registered futures association.

Generally, CPOs and CTAs who are, or who are required to be, registered with the Commission, must provide prospective pool participants or advisory clients, as the case may be, with a Disclosure Document containing specified information[7]—*e.g.*, the business background of the CPO or CTA and its principals, past performance, fees and other expenses, and conflicts of interest—and they must make and keep specified books and records.[8] These CPOs also must provide unaudited periodic financial reports and certified annual reports to participants in their pools.[9] Additionally, regardless of registration status, all persons who come within the CPO or CTA definition are subject to certain operational[10] and advertising requirements[11] under Part 4, to all other provisions of the Act and the Commission's rules prohibiting fraud that apply to CPOs and CTAs, and to all other relevant provisions of the Act and the Commission's rules that apply to all commodity interest market participants, such as the prohibitions on manipulation and the trade reporting requirements.

B. The Prior Rule 4.5 Proposal

Rule 4.5 makes available to certain persons (eligible persons) an exclusion from the definition of CPO with respect to their operation of certain entities (qualifying entities) that would otherwise be treated as commodity pools under the Act, but that are already subject to extensive operating requirements of another federal or state regulator.[12] These eligible persons and their qualifying entities include: (1) Investment companies registered as such under the Investment Company Act of 1940 (ICA); (2) state-regulated insurance companies with respect to their operation of insurance company separate accounts; (3) state-or federally-regulated financial depository institutions with respect to their operation of separate units of investment; and (4) trustees, named fiduciaries and certain designated fiduciaries of or employers maintaining pension plans subject to Title I of the Employee Retirement Income Security Act of 1974 with respect to the operation of such plans.[13] In order to claim exclusion from the CPO definition under Rule 4.5, an eligible person must file a Notice of Eligibility with the National Futures Association (NFA)[14] and the Commission.[15] The Notice must

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[1] 7 U.S.C. 1a(g) (2000). Section 1a(5) also provides the Commission with authority to exclude persons from the CPO definition.

Commission Rule 4.10(d)(1) correspondingly defines the term ''pool'' to mean ''any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.'' Unless otherwise noted, Commission rules cited to herein are found at 17 CFR Ch. I (2000). Both the Act and the Commission's rules issued thereunder can be accessed through the Commission's Web site: *http://www.cftc.gov/cftc/cftclawreg.htm.*

CFTC Staff Letters from 1995 on can be accessed through the Commission's Web site *http://www.cftc.gov/opaletters.htm.*

[2] 7 U.S.C. 6m(1) (2000).

[3] The Commission's definition of *bona fide* hedging is set forth in Rule 1.3(z).

[4] Rule 4.5 provides an exclusion from the CPO definition for certain otherwise regulated ''eligible persons'' with respect to their operation of certain ''qualifying entities,'' as those terms are defined in the rule, so long as they restrict the extent of their non-hedging activity in commodity interests as prescribed by the rule. As is discussed below, the Commission proposed to amend Rule 4.5, and by this **Federal Register** release is proposing further amendment of Rule 4.5.

Rule 4.13 provides an exemption from CPO registration for the operators of essentially ''family, club or small pools,'' as those pools are described in the rule. *See* 44 FR 1918, 1919 (Jan. 8, 1979). As is discussed below, the Commission also is proposing to amend Rule 4.13.

[5] 7 U.S.C. 1a(6)(A) (2000).

[6] As is discussed below, the Commission similarly is also proposing to amend Rule 4.14.

[7] Rule 4.21 for CPOs and Rule 4.31 for CTAs.

[8] Rule 4.23 for CPOs and Rule 4.33 for CTAs.

[9] Rule 4.22

[10] Rule 4.20 for CPOs and Rule 4.30 for CTAs.

[11] Rule 4.41.

While Rules 4.7 and 4.12(b) provide relief for certain registered CPOs from the Disclosure Document, periodic and annual reporting, and recordkeeping requirements of Rules 4.21, 4.22, and 4.23, they do not affect the applicability of Rules 4.20 and 4.41 to these CPOs. Similarly, CTAs who have claimed relief under Rule 4.7 continue to remain subject to Rules 4.30a nd 4.41.

[12] *See, generally,* 50 FR 15868 (Apr. 23, 1985) for background information on Rule 4.5.

[13] Rules 4.5(a) and (b).

[14] NFA is a futures association registered as such with the Commission under section 17 of the Act, 7 U.S.C. 21 (2000).

[15] Rule 4.5(c).

Additionally, Rule 4.5 provides that certain pension plans are not commodity pools. Because this exclusion is self-executing, no notice must be

Continued

contain specified representations about how the person will operate the qualifying entity, including, as is discussed below, a requirement to restrict the amount of the entity's commodity interest trading with respect to its non-hedging activity.

Based upon its staff's experience in administering Rule 4.5, the Commission has made various revisions to the rule subsequent to the rule's initial adoption. These revisions have expanded the range of persons eligible to claim relief under the rule [16] and the trading strategies that may be undertaken in accordance with the rule.[17] Based upon staff's most recent experience with Rule 4.5, the Commission published for public comment a proposed revision to the non-hedge operating criteria and, in connection therewith, the Commission issued temporary no-action relief (Prior Rule 4.5 Proposal).[18] Based upon further consideration, and in connection with the CPO registration exemptions it is proposing below, by this **Federal Register** release the Commission is withdrawing the Prior Rule 4.5 Proposal and, in lieu thereof, is proposing another amendment to Rule 4.5. Pending the conclusion of the instant rulemaking, the no-action position the Commission issued in connection with the Prior Rule 4.5 Proposal will, subject to clarification as discussed below in Section IV of this release, remain in effect.

C. The Advance Notice of Proposed Rulemaking (ANPR)

To address certain market developments and changed circumstances applicable to persons who do not qualify for an exclusion from the CPO definition under Rule 4.5 or an exemption from CPO or CTA registration under the existing statutory and regulatory framework, the Commission issued the ANPR.[19] As the Commission stated:

When the Commission adopted Rule 4.13, there were fewer than a dozen designated commodity interest contracts based on stock indices, interest rates or other financial instruments. Since 1979, however, the Commission has designated, and trading has commenced in, more than 180 commodity interest contracts based on various financial instruments. These contracts frequently have attracted the interest of operators of collective investment vehicles, some of whom have registered with the Commission as CPOs so that they can use commodity interest contracts in their investment and risk management strategies. Others, however, have avoided participation in the commodity interest markets. While Rules 4.5 and 4.13 do provide CPO registration relief, their criteria are too restrictive for many operators of collective investment vehicles to meet.

Over time, persons who traditionally gave advice to collective investment vehicles solely on securities trading have become interested in providing trading advice to collective investment vehicles on commodity interest contracts based on various financial instruments as well. Absent the availability of an exemption, these persons have had to either register with the Commission as CTAs or refrain from providing any such commodity interest advice. 67 FR 68785, 68786.

By the ANPR, the Commission published for public comment two proposals it had received that would provide additional exemptions from CPO registration (one of these also would provide an additional exemption from CTA registration). These proposals were submitted by NFA and the Managed Funds Association (MFA).[20] NFA proposed: (1) An exemption from CPO registration where the operator restricts its pool's non-hedge commodity interest positions to a limited amount of pool assets (*i.e.*, it may commit no more than 5 percent of the pool's liquidation value to establish such positions), and restricts its pool's participants to ''accredited investors'' as defined in Rule 501(a) [21] under the Securities Act of 1933 (Securities Act); [22] and (2) an exemption from CTA registration for those persons that advise pools operated by CPOs that have claimed either an exemption from registration under the proposed NFA rule or an exclusion from the CPO definition under Rule 4.5 (NFA Proposal). MFA proposed an exemption from CPO registration for pool operators that restrict participation in their pools to certain ''qualified eligible persons'' (QEPs) as defined in Rule 4.7 and certain ''accredited investors'' (MFA Proposal). By the ANPR the Commission also issued temporary registration no-action relief for certain CPOs and CTAs.[23]

Based upon the comments received on the ANPR,[24] and as a result of its own further consideration, the Commission is proposing herein CPO and CTA registration exemptions based on the NFA and MFA Proposals. Pending the conclusion of this rulemaking, the CPO and CTA registration no-action relief that the Commission issued in connection with its publication of the ANPR will, subject to modification and clarification as discussed below, remain in effect.

D. Roundtable on CPO and CTA Issues (Roundtable)

Section 125 of the Commodity Futures Modernization Act of 2000 (CFMA) [25] required the Commission to ''conduct a study of the [Act] and the Commission's rules, regulations and orders governing the conduct of persons required to be registered under the Act.'' Pursuant to this directive, the Commission conducted such a study, and in June 2002, issued its findings in a ''Report on the Study of the Commodity Exchange Act and the Commission's Rules and Orders Governing the Conduct of Registrants under the Act (Report).'' [26] In September 2002, the Commission held a ''Roundtable on CPO and CTA Issues'' to address, among others, issues identified in the Report relating to overlapping regulatory jurisdiction faced by members of the managed funds industry.[27] As a result of the testimony provided at the Roundtable, and also based on prior staff activity in this area, by this **Federal Register** release the Commission is proposing additional regulatory relief for CPOs and CTAs. This relief would: (1) Permit certain communications by CPOs and CTAs with prospective and existing pool participants and advisory clients prior to Disclosure Document distribution; (2) relieve CPOs from duplicative disclosure and reporting requirements in the ''master/feeder fund'' context; (3) establish criteria for CPOs to distribute

filed to claim it. Accordingly, the amendment to Rule 4.5(c) that the Commission is today proposing does not apply to these plans or their operation. *See* Rule 4.5(a)(4)(i)–(iv).

[16] *See* 58 FR 43791 (Aug. 18, 1993). The Commission also has expanded the class of persons who are ''non-pools'' under Rule 4.5. *See* 65 FR 24127 (Apr. 25, 2000).

[17] *See* 58 FR (Jan. 28, 1993). The original limitation of the rule encompassed all commodity interest trading. Currently, unlimited hedging may be engaged in under the rule, while non-hedging activity remains limited.

[18] 67 FR 65743 (Oct. 28, 2002). Both the Prior Rule 4.5 Proposal and the comment letters the Commission received thereon may be accused through *http://www.cftc.gov/foia/fedreg02/foia.fedreg02.htm#SECTIONA.*

[19] 67 FR 68785 (Nov. 13, 2002). Both the ANPR and the comment letters the Commission received thereon may be accessed through: *http://www.cftc.gov/foia/fedreg02/foiafedreg02.htm#SECTIONA.*

[20] MFA is a non-profit membership organization for investment professionals in the hedge fund, futures and alternative investments industries.

[21] 17 CFR 230.501(a)(2002).

[22] 15 U.S.C. 77a *et seq.* (2002).

[23] *See* 67 FR 68786, 68788–89.

[24] Section II of the **Federal Register** release discusses the comments the Commission received on the ANPR, as well as the comments the Commission received on the Prior Rule 4.5 Proposal.

[25] Pub. L. No. 106–554, Appendix E, § 125, 114 Stat. 2763A–365 (2000).

[26] The Report may be accessed through *http://www.cftc.gov/files/opa/opaintermediarystudy.pdf.*

[27] Comments received in connection with the Roundtable may be accessed through *http://www.cftc.gov/opa/press02/opa4700–02.htm.*

periodic Account Statements electronically; and (4) harmonize the various signature requirements of Part 4. Each of the proposals is discussed below.

II. Comments on the Prior Rulemaking Activities

A. Comments on the Prior Rule 4.5 Proposal

The Commission received five comment letters in response to the Prior Rule 4.5 Proposal.[28] All of the commenters supported the proposed amendment, with various commenters stating that it would provide increased trading flexibility under Rule 4.5 in general and accommodate security futures products in particular. Commenters did, however, request certain clarifications of the terms and application of the non-hedge tests employed in the Prior Rule 4.5 Proposal—*e.g.*, suggesting that ''aggregate notional value'' be determined on a net basis and that, at all times, qualifying entities should be able to satisfy one test or the other. As is discussed below in this **Federal Register** release, the Commission has taken these requests for clarification into account in both the rules it is proposing and the no-action positions it is maintaining.

B. Comments on the ANPR

The Commission received twenty-three comment letters in response to the ANPR.[29] All of these commenters similarly encouraged Commission efforts to expand registration exemptions for CPOs and CTAs. While commenters generally supported both the NFA and MFA Proposals, several specifically urged adoption of the MFA Proposal, stating that it would bring more participants into the commodity interest markets. Additionally, one commenter suggested that the Commission adopt registration exemptions based on the temporary registration no-action relief issued in connection with the ANPR, and several commenters suggested that the Commission adopt the NFA Proposal, the MFA Proposal and the temporary registration no-action relief. Commenters offered various recommendations as to CPO and CTA registration exemption rules the Commission should adopt in furtherance of the ANPR. In particular, commenters requested clarification of the application of exemptive relief in the fund-of-funds context. The Commission similarly has taken these comments into account in the proposals it is making below.

III. The Proposals

The relief the Commission is proposing today is consistent with the purpose and intent of the CFMA, and with the input the Commission has received in connection with its prior initiatives (*i.e.*, the Prior Rule 4.5 Proposal, the ANPR, and the Roundtable). Accordingly, it is intended to allow greater flexibility and innovation, and to take into account market developments and the current investment environment, by modernizing the requirements for determining who should be excluded from the CPO definition, and who should remain within the CPO and CTA definitions but be exempt from registration. Thus, this relief is intended to encourage and facilitate participation in the commodity interest markets by additional collective investment vehicles and their advisers, with the added benefit to all market participants of increased liquidity.

A. Proposed Amendment to Rule 4.5: Deleting Trading Criteria for Exclusion From the CPO Definition

Currently, Rule 4.5(c)(2)(i) provides that the Notice of Eligibility must contain a representation that the eligible person will operate the qualifying entity such that the entity:

> Will use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of [Rule] 1.3(z)(1); *Provided, however,* That in addition, with respect to positions in commodity futures or commodity option contracts which do not come within the meaning and intent of [Rule] 1.3(z)(1), a qualifying entity may represent that the aggregate initial margin and premiums required to establish such positions will not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; And, *Provided further,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in [Rule] 190.01(x) may be excluded in computing such 5 percent.

This representation has come to be known as the ''Five Percent Test.''

Because futures margins have generally been set at levels near or below 5 percent of contract value, the Five Percent Test has permitted the notional value of non-hedging commodity futures and option positions to approximate the liquidation value of an entity's portfolio. Recently, however, eligible persons and qualifying entities have expressed concern to Commission staff over the Five Percent Test, because margin levels for certain stock index futures have come to significantly exceed 5 percent of contract value, thereby limiting the use of such contracts in non-hedging strategies to a much greater extent than other types of contracts with lower margins. They also have expressed concern that a similar constraint could arise with respect to security futures contracts, because the required margin for security futures is 20 percent of contract value.[30] In response to these concerns, the Commission proposed to amend Rule 4.5 by adding as an alternative to the Five Percent Test a limitation based on the notional value of non-hedge positions, *i.e.*, that:

> the aggregate notional value of [non-hedge commodity interest] positions does not exceed the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into. For [this purpose], the term ''notional value'' shall be calculated for each such futures position by multiplying the size of the contract, in contract units, by the current market price per unit and for each such option position by multiplying the size of the contract, in contract units, by the strike price per unit.[31]

However, by this **Federal Register** release and in furtherance of the ANPR, the Commission is proposing to provide an additional exemption from CPO registration relief based *solely* on pool participant sophistication, without any requirement that the pool operator must be subject to another regulatory scheme and without any restriction whatsoever on the purpose or scope of the pool's commodity interest trading.[32] Since the eligible persons and qualifying entities of Rule 4.5 are, as stated in the title of the rule, ''otherwise regulated,'' the Commission believes that, like the unregulated CPOs for whom it is proposing relief below, these persons

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[28] Letters were submitted by: a registered futures association; an investment company trade association; a bar association; a contract market; and an investment adviser.

One commenter suggestsed that the Commission adopt specified additional categories of eligible persons and non-pools under Rule 4.5. This suggestion is, however, outside the scope of this proposed rulemaking. The Commission nonetheless intends to consider it in the future.

[29] Letters were submitted by: a registered futures association; two futures industry trade associations; four hedge funds and their managers; one exempt CPO; one national securities exchange; two contract markets; seven law firms; two attorneys; two bar associations; and one certified public accounting firm.

[30] *See* CFTC Rule 41.45(b)(1) and Securities and Exchange Commission (SEC) Rule 242.403(b)(1), 67 FR 53146, 53174 and 53179, respectively (Aug. 14, 2002).

[31] 67 FR 65743, 65746.

[32] The Commission is proposing this relief, which is based on the MFA Proposal, in new Rule 4.13(a)(4), discussed below.

and entities may not need to be subject to any commodity interest trading criteria to qualify for relief under Rule 4.5. The Commission further believes that the absence of such criteria may render obsolete the current disclosure requirement in Rule 4.5(c)(2)(iii).

Accordingly, the Commission is proposing to delete paragraphs (c)(2)(i) and (c)(2)(iii) from Rule 4.5. This would result in paragraphs (c)(2)(ii) and (c)(2)(iv) of the rule, which concern the other representations that the Notice of Eligibility must contain, being redesignated as paragraphs (c)(2)(i) and (c)(2)(ii), respectively. Thus, the Rule 4.5 operating criteria would continue to include: (1) A prohibition against marketing a qualifying entity as a commodity pool or otherwise as a vehicle to trade commodity interests; and (2) a requirement to submit to special calls to demonstrate compliance with eligibility for relief under Rule 4.5. The Commission believes it is appropriate to maintain the marketing restriction because, unlike the case with the proposed CPO registration exemption, members of the retail public may participate in the trading vehicles subject to Rule 4.5. The Commission nonetheless requests comment on the merits of maintaining current Rule 4.5(c)(2)(ii) (which would be redesignated as Rule 4.5(c)(2)(i)).

B. Proposed Amendments to Rule 4.13: Expanding and Adding CPO Registration Exemptions

1. Proposed Amendments to Rule 4.13(a)(2): Expanding the Current Exemption

Rule 4.13(a)(2) currently provides that a person is exempt from registration as a CPO if:

(2)(i) The total gross capital contributions it receives for units of participation in all of the pools that it operates or that it intends to operate do not in the aggregate exceed $200,000; and

(ii) None of the pools operated by it has more than 15 participants at any time. For purposes of computing the number of participants for paragraph (a)(2)(ii) of this section, the following participants shall be excluded:

(A) The pool's operator, commodity trading advisor, and the principals thereof; and

(B) Any relative, spouse or relative of such spouse living in the same household as such participant.

The Commission adopted the exemptive criteria of Rule 4.13(a)(2) in 1981.[33] In light of the rate of inflation in the more than twenty years since that time and Commission staff's experience in administering Rule 4.13(a)(2), the Commission is proposing various amendments that will update and clarify the rule, making it available to more persons.

First, the Commission is proposing to increase the total of the gross capital contributions criterion under Rule 4.13(a)(2) to $400,000 from $200,000.[34] This proposed amount ($400,000) reflects adjustments to the current amount ($200,000) based on the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor.[35]

Second, the Commission is proposing to expand the range of participants excluded from the ''no more than 15 participants'' limitation of the rule and to clarify that the contributions of these participants do not count toward the capital contributions limit of the rule.[36] This clarification would require a reorganization of Rule 4.13(a)(2) such that, as proposed, the rule would provide that a person is exempt from CPO registration if:

(2)(i) None of the pools operated by it has more than 15 participants at any time; and

(ii) The total gross capital contributions it receives for units of participation in all of the pools it operates or that it intends to operate do not in the aggregate exceed $400,000.

(iii) For the purposes of determining eligibility for exemption under paragraph (a)(2) of this section, the person may exclude the following participants and their contributions:

(A) The pool's operator, commodity trading advisor, and the principals thereof;

(B) A child, sibling or parent of any of these persons;

(C) The spouse of any person specified in paragraph (a)(2)(iii)(A) or (B) of this section; and

(D) Any relative of a person specified in paragraph (a)(2)(iii)(A), (B) or (C) of this section, its spouse or a relative of its spouse, who has the same principal residence as such person.

2. Proposed Rule 4.13(a)(3): Adding a Limited Trading Exemption

Proposed Rule 4.13(a)(3) is based on the NFA Proposal and also on the Commission's Prior Rule 4.5 Proposal. It would provide an exemption from CPO registration where the pool a person operates engages in a limited amount of commodity interest trading—*i.e.*, by committing a limited amount of the liquidation value of the pool's portfolio to establish commodity interest trading positions, whether entered into for *bona fide* hedging purposes or otherwise, *or* where the aggregate net notional value of the pool's commodity interest trading does not exceed fifty percent of the pool's liquidation value. The Commission's proposal does, however, differ from the NFA Proposal in certain respects. It would limit the amount that could be committed to establish commodity interest positions to two percent of the liquidation value of a pool's portfolio, whereas the NFA Proposal would establish a five percent limit. The Commission believes that the lower amount it is proposing may be more appropriate than the NFA amount because it is closer to the ''*de minimis*'' level of commodity interest trading that the rule is intended to encompass, and, further, because the level of investor qualification proposed under the rule—*i.e.*, that of an ''accredited investor''—is not a particularly high threshold to meet.[37] Moreover, the rule would provide, through its alternative test, another means for CPOs to come within

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[33] *See* 46 FR 26004, 26006 (May 8, 1981).

[34] One of the commenters on the ANPR suggested a similar increase.

[35] *See http://data.bls.gov/cgi-bin/cpicalc.pl,* where the ''CPI Inflation Calculator'' made available on that page (for values less than $10,000) determines that $2,000 in 1981 has the same buying power as $3958.20 in 2002.

[36] *See* CFTC Staff Letter 99–41 (Aug. 27, 1999), where, in permitting a CPO to exlcude the contributions of itself and its spouse in determining whether the contribution limit (of $200,000) of Rule 4.13(a)(2) has been met, Commission staff explained:

Paragraph (a)(2)(i) of Rule 4.13 does not address whether the gross capital contributions to a pool by its operator or advisor should be excluded from the $200,000 limit in the rule, even though a pool's operator, advisor, and the principals thereof specifically are excluded from the ''no more than fifteen participants'' limit in paragraph (a)(2)(ii) of the rule. That paragraph provides that for the purposes of computing the number of participants allowable in a pool for which the operator thereof seeks to claim an exemption from registration under Rule 4.13(a)(2), the pool's operator, advisor and their principals are excluded. This provision was patterned after Rule 501(e)(1)(i) under the Securities Act of 1933 (''the '33 Act''), which provides that for the purposes of computing the number of non-accredited purchasers allowed to participate in an exempt offering under Rule 506 under the '33 Act, 'the following purchasers shall be excluded: any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as the purchaser.' Since Rule 506 provides an exemption from the registration of securities otherwise required under the '33 Act for limited offers and sales *without regard to the dollar amount of the offering,* the exemptive rules under the '33 Act need not, and do not, make any mention of excluding the capital contributions of persons who are excluded from the computation of non-accredited purchasers. (Footnotes omitted).

[37] Rule 501(a) under the Securities Act defines a natural person ''accredited investor'' as:

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000; [or]

(6) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

The chart below illustrates that a significant number of commodity interest contracts could be established under the proposed ''Two Percent Test.''

its exemptive criteria.[38] The Commission also believes that, unlike the NFA Proposal, Rule 4.13(a)(3) should not differentiate between trading for *bona fide* hedging and non-hedging purposes, because, as stated above, the rule is intended to apply to *de minimis* situations, where commodity interest trading—regardless of its purpose—is strictly limited. The Commission notes that two commenters on the ANPR suggested that the Commission should not distinguish between hedge and non-hedging positions, claiming that such distinctions between these two types of trading are difficult to administer. However, one commenter specifically suggested that the Commission should distinguish between hedge and non-hedge activity in setting a *de minimis* standard. Accordingly, the Commission specifically requests comments on whether under the rule there should be: (1) A higher percentage of assets that may be committed to establish commodity interest positions; and (2) any greater ability to trade commodity interests for *bona fide* hedging purposes than for non-hedging purposes, including whether there should be any restriction whatsoever on trading for hedging purposes. To assist persons in providing such comments, set forth below is a chart with examples of the application of the various tests under the NFA's and the Commission's proposals, with ''LV'' standing for the pool's liquidation value and ''NT'' standing for the notional test.

Contracts	LV ($)	50% LV ($)	5% LV ($)	2% LV ($)	Initial Margin 9/26/02 ($)	Settlement level 9/25/02	Contract Value ($)	Contracts 5% Test	Contracts 2% Test	Contracts NT	Contracts 50% LV NT
S&P	10m	5m	500,000	200,000	17,813	819.29	204,822.50	28	11	48	24
T-Note	10m	5m	500,000	200,000	1,755	114,160.00	114,160.00	284	113	87	43

In response to comments, the Commission is clarifying in Proposed Rule 4.13(a)(3)(i) that the pool may at any time meet *either* of these tests; compliance with the criteria of a test is determined at the time the most recent position is established; the criterion of paragraph (a)(3)(i)(B) applies on a net basis; and the calculation of ''notional value'' under paragraph (a)(3)(i)(B) now includes the number of futures and options contracts and any multiplier specified in those contracts.[39] While the Commission believes either criterion is an appropriate *limited trading* standard, it nonetheless specifically requests comment on the proposed ''Two Percent Test.''

As with the NFA Proposal, this new rule would require that each participant in the pool is an ''accredited investor'' and would require a person claiming relief thereunder to ''not market participations in the pool as or in a vehicle for trading in the commodity futures or commodity options markets.'' In response to comments on the ANPR, the Commission is further clarifying in Proposed Rule 4.13(a)(3) that a CPO claiming relief thereunder could also operate certain other pools—*i.e.*, the pools meeting the criteria of Rule 4.13(a)(4), discussed below—without voiding the availability of the relief under either rule.[40]

3. Proposed Rule 4.13(a)(4): Adding an Exemption Where Pool Participants Meet Specified Sophistication Criteria

Proposed Rule 4.13(a)(4) is based on the MFA Proposal. It provides that a person is exempt from CPO registration if interests in the pool for which it seeks to claim relief (1) are exempt from registration under the Securities Act of 1933, and (2) are offered and sold without marketing in the United States (U.S.). In addition, the CPO must reasonably believe that: (1) Natural person participants are ''qualified eligible persons [QEPs],'' as that term is defined in Rule 4.7(a)(2);[41] and (2) non-natural person participants are QEPs under Rule 4.7 or ''accredited investors.'' While the MFA Proposal would include *any* natural person who is a QEP under Rule 4.7, the Commission does not believe that proposed Rule 4.13(a)(4) needs to be so broad in light of both the absence of any trading limitations therein and the other, alternative criteria being proposed in Rule 4.13(a)(3). Thus, the Commission believes that the Rule 4.7(a)(2) standards for natural persons—*e.g.*, persons who are ''qualified purchasers'' under Section 2(a)(51)(A) of the ICA[42]—may be more appropriate for the rule. The Commission nonetheless specifically requests comment on what investor qualifications would be appropriate under Rule 4.13(a)(4) and whether all natural person QEPs should be included for purposes of proposed Rule 4.13(a)(4).

Here, too, and in response to the comments received on the ANPR, Rule 4.13(a)(4) would make clear that a CPO claiming relief thereunder could also operate pools meeting the criteria of Rule 4.13(a)(3) without voiding the availability of the relief under either rule.

4. Additional Provisions Under Rule 4.13

Under the proposed amendments, Rule 4.13 would also contain introductory text and certain additional provisions, which would be based on the provisions of the existing rule, the NFA Proposal, the MFA Proposal and the comments on the ANPR. Generally speaking, these provisions concern: certain disclosures that a CPO who has claimed relief under the rule must make

[38] The Commission has patterned this alternative test on the temporary registration no-action relief it issued for CPOs and CTAs in the ANPR, which in turn the Commission had based on the Prior Rule 4.5 Proposal.

[39] The Commission also is making these clarifications in the temporary no-action relief it is maintaining below.

[40] This provision, and the reciprocal provision of Rule 4.13(a)(4), do not include persons and pools meeting the criteria of Rule 4.13(a)(1) or 4.13(a)(2). This is because Rule 4.13(a)(1) is available where, among other things, only one pool is being operated and Rule 4.13(a)(2) would take the operations of such pools into account in computing whether the contribution and participant limitations of the rule had been met.

[41] Specifically, natural persons who come within the MFA Proposal but not proposed Rule 4.14(a)(4) include persons who are ''accredited investors'' *and* who meet the Portfolio Requirement of Rule 4.7(a)(1)(v), in that they own securities having an aggregate market value of at least $2,000,000, have futures margin and option premiums on deposit of at least $200,000, or own a portfolio with a proportionate combination of these two types of assets.

[42] 15 U.S.C. 80a–2(a)(51)(A) (2000), which defines a natural person ''qualified purchaser'' as:

(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 80a-3(c)(7) of this title with that person's qualified purchaser spouse) who owns not less than $5,000,000 in investments, as defined by the [SEC]; or

(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments.

Rule 2a51–1(b) under the ICA defines ''investments'' generally to include (when held for investment purposes, as defined in the rule): securities; real estate; commodity interests; physical commodities; and cash and cash equivalents. Pursuant to ICA Rule 2a51–1(e), the amount of outstanding indebtedness incurred to acquire investments must be deducted from the amount of owned and invested investments when determining if the person is a ''qualified purchaser.''

to prospective participants (proposed paragraph (a)(5)); the notice of registration exemption that the CPO would be required to file (proposed paragraph (b));[43] the CPO's obligations with respect to books and records, special calls, annual reports, and monthly statements[44] (proposed paragraph (c)); the CPO's obligations in the event it subsequently applies for registration (proposed paragraph (d));[45] and the effect of registration on a CPO who: (1) Is eligible for exemption under Rule 4.13 but registers as a CPO nonetheless (proposed paragraph (e)(1)); or (2) operates one or more pools for which it is required to register, and is registered, as a CPO and one or more pools for which it is eligible to claim an exemption from registration under Rule 4.13(a)(3) or 4.13(a)(4) (proposed paragraph (e)(2)).[46]

5. Alternative Proposal for Relief

As an alternative to the foregoing proposals for certain CPOs, and the following proposals for certain CTAs, the Commission seeks comment on adoption of a notice registration scheme. The notice registration approach would be identical to the proposed exemption approach with respect to information required to be filed with the Commission and compliance with Part 4 requirements. Specifically, the Commission seeks comment on whether a notice registration scheme could make it more clear to the public and other regulatory authorities that this group of CPOs and CTAs remains subject to the CFTC's jurisdiction under the CEA, the Bank Secrecy Act and other statutes, while providing the same amount of regulatory relief as the proposed exemption.

[43] In addition to current requirements, the CPO would be required to provide its main facsimile number and main email address.

[44] Consistent with current Rule 4.13, the requirement to furnish monthly statements would be applicable solely to CPOs claiming relief under paragraph (a)(1) or (a)(2) of the rule.

[45] Also consistent with the current provisions of Rule 4.13, the obligation to file an annual report for its pool in the event the CPO subsequently applies for registration would be applicable to CPOs claiming relief under paragraph (a)(1) or (a)(2) of the rule. This obligation would not also be applicable to CPOs claiming relief under paragraph (a)(3) or (a)(4) of the rule, because the pool's annual report would not provide information sufficient to determine whether or not the CPO had been in compliance with the applicable criteria (*i.e.*, trading limitations and/or investor qualifications) throughout the pool's fiscal year.

[46] For the reasons provided above in its discussions of proposed paragraphs (a)(3) and (a)(4), the Commission has not included CPOs eligible for relief under paragraph (a)(1) or (a)(2) in proposed paragraph (e)(2).

C. Proposed Amendments to Rule 4.14: Expanding and Adding CTA Registration Exemptions

1. Proposed Amendments to Rule 4.14(a)(8)

a. Exemption for State-Registered Investment Advisers (IAs)

Currently, Rule 4.14(a)(8) provides an exemption from CTA registration for certain IAs registered as such, or excluded from such registration, under the Investment Advisers Act of 1940 (IAA)[47] who provide commodity interest trading advice to Rule 4.5 trading vehicles and who meet certain other criteria— *e.g.*, they do not otherwise hold themselves out as a CTA.

When the Commission adopted Rule 4.14(a)(8) in 1987,[48] absent the availability of an exemption, an IA was required to be registered under the IAA to be eligible for the CTA registration exemption provided by the rule. As a result of the National Securities Markets Improvement Act of 1996[49] and SEC rules issued thereunder, IAs may not register with the SEC unless they have $25 million under management;[50] IAs who do not meet this criterion must register with state regulatory authorities.[51] To update Rule 4.14(a)(8), and in response to Roundtable comments, the Commission is proposing to amend the rule so as to make it equally available to SEC-registered or excluded-from-registration IAs *and* state-registered IAs (proposed Rule 4.14(a)(8)(i)). Further, to conform the rule with the changes the Commission is proposing to make to Rule 4.5, as are discussed above (*e.g.*, deletion of the existing limitation on non-hedge commodity interest trading), the Commission is proposing to delete from Rule 4.14(a)(8) the current requirement that the IA's commodity interest advice ''[e]mploys only such strategies as are consistent with eligibility status under § 4.5.''

b. Exemption Where Advice Is Provided to Foreign Funds

Also in response to Roundtable comments, and to acknowledge and codify Commission staff's activity in this area,[52] the Commission is proposing relief from CTA registration for those IAs who provide commodity interest trading advice to commodity pools organized and operated outside of the U.S., its territories and possessions that meet certain criteria—for example, only non-U.S. persons may be pool participants, except for the pool's operator, advisor and their principals. (Proposed Rule 4.14(a)(8)(i)(C)(*2*)).

c. Exemption Where Advice Is Provided to Rule 4.13(a)(3) and 4.13(a)(4) Pools

Further, and based on the NFA Proposal, the Commission is proposing CTA registration relief for advisors to commodity pools that meet the requirements of the new exemptions being proposed based upon participant sophistication or trading limitations. (Proposed Rule 4.14(a)(8)(i)(D)). In response to the comments on the ANPR, the Commission also has included a proviso in this proposal to make clear that a person may claim relief from CTA registration if it also advises the other trading vehicles specified in the rule—*e.g.*, qualifying entities under Rule 4.5. (Proposed Rule 4.14(a)(8)(i)(A)).

The foregoing relief would remain subject to compliance with the existing criteria of Rule 4.14(a)(8)—*i.e.*, that the person provides commodity interest trading advice solely incidental to its business of providing securities or other investment advice to the trading vehicles specified in the rule and that it is not otherwise holding itself out as a CTA. (Proposed Rules 4.14(a)(8)(ii)(A) and (B)).

Several commenters on the registration no-action relief issued through the ANPR noted that, like the NFA Proposal, it only provided relief in the context of pools. They claimed that CTA registration relief should be available with respect to accounts that meet the criteria of Rule 4.14(a)(3) or 4.14(a)(4)—regardless of the form of the account (*i.e.*, collective trading vehicle or individual account). In response, the Commission notes that because of the intermediation of these collective trading vehicles by CPOs to whom the Commission is herein proposing registration relief, it is appropriate to so restrict CTA registration relief. The Commission further notes the expanded availability of the relief from CTA registration in Section 4m(1) of the Act that it is proposing below.

2. Proposed Rule 4.14(a)(10): Counting Legal Organizations as a Single ''Person'

Section 4m(1) of the Act provides an exemption from CTA registration for any person:

who, during the course of the preceding twelve months, has not furnished commodity

[47] 15 U.S.C. 80b–1 *et. seq.* (2000).

[48] *See* 52 FR 41975 (Nov. 2, 1987).

[49] Pub L. No. 104–290, 110 Stat. 3416 (1996).

[50] SEC Rule 275.203A–1, 17 CFR 275.203A–1 (2002), provides that an IA is not required to register with the SEC unless it has at least $30 million in assets under management, but may register with the; SEC if if has between $25 million and $30 million in assets under management.

[51] 17 CFR 275.203A–1 (2002).

[52] *See e.g.*, CFTC Staff Letter No. 00–96 (Oct. 4, 200).

trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor.

Where the ''person'' is a legal entity, the CFTC has ''looked through'' the entity and counted its owners for the purpose of determining whether the ''not more than fifteen persons'' criterion has been met.

Congress patterned Section 4m(1) after Section 203(b)(3) of the IAA,[53] which provides an exemption from IA registration for any IA:

who, during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to [certain trading vehicles].

However, by Rule 203(b)(3) under the IAA,[54] the SEC has permitted IAs to count certain non-natural persons as a single client for the purpose of computing the ''fewer than fifteen clients'' criterion.

In response to Roundtable comments on this difference in regulatory treatment, the Commission is proposing in new Rule 4.14(a)(10) to provide an exemption from registration for any CTA who meets the criteria of Section 4m(1) of the Act. (Proposed paragraph (a)(10).) For the purpose of this exemption, the CTA may deem certain persons a single person. In making this proposal, the Commission is patterning the single ''persons'' specified therein on the single ''clients'' specified in SEC Rule 203(b)(3).

3. Additional Provisions Under Rule 4.14

Under the proposed amendments, Rule 4.14 would also contain introductory text and certain additional provisions, which would be based on the provisions of the current rule, the NFA Proposal and the comments on the ANPR. Generally speaking, these provisions concern: the notice of registration exemption that a CTA seeking exemption under paragraph (a)(8) must file (proposed paragraph (a)(8)(iii));[55] the CTA's obligations with respect to books and records and special calls (proposed paragraph (a)(8)(iv)); and the effect of registration on a CTA who: (1) is eligible for exemption under Rule 4.14, but registers as a CTA nonetheless (proposed paragraph (c)(l)); or (2) provides commodity interest trading advice to one or more clients for which it is required to register and one or more clients for which it is eligible to claim an exemption from registration under Rule 4.14(a)(8) (proposed paragraph (c)).

D. Proposed Amendments to Rules 4.21, 4.22 and 4.31

1. Permitting Communications Prior to Disclosure Document Distribution

Commission Rules 4.21 and 4.31 prohibit CPOs and CTAs from soliciting prospective pool participants or clients prior to providing a Disclosure Document. However, the Commission has increasingly received comments, including testimony from Roundtable participants, that Rules 4.21(a) and 4.31(a) unnecessarily restrict communications by CPOs and CTAs. In response, the Commission is proposing to amend these rules to provide that the Disclosure Documents referred to therein must be delivered by no later than the time a CPO delivers a subscription agreement for the pool for which it is soliciting or a CTA delivers an advisory agreement for the trading program for which it is soliciting.[56] To ensure compliance with the purpose of the Disclosure Document—*i.e.*, that prospective investors are fully informed about all material facts before committing their funds,[57] and consistent with the Roundtable comments, these proposed rule amendments would require that ''any material distributed in advance of the delivery of the Disclosure Document is consistent with or amended by the information contained in the Disclosure Document and with the obligations of the [CPO or CTA] under the Act, the Commission's regulations issued thereunder, and the laws of any other applicable federal or state authority.'' [58]

2. Removing Duplicative Requirements in the ''Master/Feeder Fund'' Context

As explained above, Rule 4.21 requires each person registered (or required to be registered) as a CPO to deliver a Disclosure Document to prospective participants in the commodity pool for which it is soliciting. Rule 4.22 requires the CPO to distribute periodic Account Statements [59] and an Annual Report [60] to the participants in the pool. Where the prospective or actual participant is another commodity pool, the CPO need only deliver a Disclosure Document and distribute periodic Account Statements and an Annual Report to the pool operator of the other commodity pool; the CPO need not also deliver and distribute this information to each of the participants in the other pool.

Commission staff has provided relief on numerous occasions from the requirements of Rules 4.21 and 4.22 where the CPOs of two pools (*i.e.*, a master fund and a feeder fund) were closely affiliated,[61] a practice supported by Roundtable comments. Accordingly, the Commission is proposing to codify this relief in new Rules 4.21(a)(2), 4.22(a)(4) and 4.22(c)(6). Because Rules 4.7 and 4.12(b) provide relief from certain of the specific requirements of Rules 4.21 and 4.22, these proposed new rules would also include references to materials that must be furnished pursuant to Rule 4.7(b)(1) or 4.12(b)(2)(i), Rule 4.7(b)(2) or 4.12(b)(2)(ii), and Rule 4.7(b)(3) or 4.12(b)(2)(iii), respectively, thereby further reducing the reporting burdens under Rules 4.7 and 4.12.

3. Distributing Account Statements Electronically

The Commission is also proposing to amend Rule 4.22 to establish the procedures pursuant to which a CPO may distribute periodic Account Statements to pool participants by electronic means, provided the CPO obtains the prior consent of each such participant. This proposal is patterned on the Commission's recent amendments to Rules 1.33 and 1.46,[62] which permit futures commission merchants to deliver monthly

[53] 15 U.S.C. 80b–3(b)(3) (2002).

[54] 17 CFR 275.203(b)(3) (2002).

[55] In addition to current requirements, the CTA would be required to provide its main facsimile number and main e-mail address.

[56] Because this proposal would obviate the Rule 4.21(a)(2) ''profile document'' and ''term sheet'' exceptions to the current Disclosure Document delivery requirement of Rule 4.21(a)(1), the Commission also is proposing to delete these exceptions from the rule.

[57] *See, e.g.*, 44 FR 1918, 1920.

[58] *See, e.g.*, Section 4m(2) of the Act, 7 U.S.C. 6m(2) (2000), which provides in pertinent part that:

Nothing in this Act shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.

[59] Rule 4.22(a).

[60] Rule 4.22 (c).

In addition to the other amendments it is proposing to Rule 4.22, the Commission is proposing to delete from paragraph (c) of the rule the now obsolete requirement that the ''first fiscal year for which an Annual Report is due shall be the first fiscal year that begins on or after January 1, 1979.''

[61] *See, e.g.*, CFTC Staff Letter No. 02–102 (Aug. 29, 2002).

[62] *See* 66 FR 53510 (Oct. 23, 2001).

statements electronically to their customers. Moreover, it would codify the Commission's prior interpretation that permitted, and provided guidance on, electronic distribution of Account Statements.[63]

As proposed, before a CPO could electronically distribute Account Statements to a participant, new paragraph (b)(2) of Rule 4.22 would require the CPO to obtain a signed consent from the participant acknowledging that the CPO had disclosed the following information to it: the participant's right to receive Account Statements in paper form or electronically; the electronic medium or source through which the CPO will distribute the Account Statements; the duration of the period during which the consent to receive Account Statements electronically will be effective; any charges for electronic distribution; and the participant's right to revoke consent to electronic distribution at any time. For a participant that is not an ''institutional customer,'' [64] the CPO would be required to obtain the participant's signed consent acknowledging the disclosures, prior to the transmission of any Account Statement by means of electronic media. Institutional customers would not need to provide written consent. New paragraph (h)(4) of Rule 4.22 would establish the signature requirements for an Account Statement distributed electronically, by providing that ''for each pool for which the CPO distributes an Account Statement by means of electronic media, the CPO must make and keep * * * a manually signed copy'' of the oath or affirmation required under Rule 4.22(h).[65]

The Commission understands that there may be special concerns surrounding the electronic distribution of Annual Reports that are required to be certified by an independent public accountant and, in particular, surrounding the attachment of the certification itself that the public accountant provides with the report.[66] Accordingly, the Commission is not now proposing any criteria pursuant to which a CPO may distribute the Annual Report electronically but, instead, the Commission is seeking comment on what those criteria should be.

4. Providing Facsimile Signatures on Account Statements and Annual Reports

In the preamble of the **Federal Register** release announcing the adoption of the oath or affirmation requirement of Rule 4.22(h), the Commission explained that ''a facsimile signature would be appropriate,'' provided the CPO maintains the Account Statement or Annual Report containing the manual signature from which the facsimile signature was made, and that an Annual Report that is filed with the Commission contains the manual signature.[67] The Commission is proposing to codify this explanation in new paragraph (h)(4)(i) of Rule 4.22. Inasmuch as the Commission recently has delegated to NFA the review of, among other documents, pool Annual Reports,[68] this provision would refer to the Annual Report that the CPO files with a registered futures association.

5. Conforming Signature Requirements

Certain Part 4 rules, including several of the rules being proposed in this **Federal Register** release, provide that the various documents required thereunder must be signed by CPOs and CTAs. In particular, Rules 4.7(d), 4.12(b), 4.13(b), and 4.22(h) provide that the documents required thereunder must be signed by a CPO or CTA as follows: if it is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer.

Upon review of this list of permitted signatories, the Commission believes that it may be unnecessarily restrictive in that it leaves no room for other organizational structures under which CPOs and CTAs operate—*e.g.*, limited liability companies. Accordingly, the Commission is proposing to amend Rules 4.7(d), 4.12(b) and 4.13(b) to provide that the documents required thereunder ''must be signed by a duly authorized representative'' of the CPO or CTA. This would be consistent with existing signature requirements under Rules 4.5 and 4.14.[69] And, as the Commission stated in connection with the adoption of Rule 4.5, a ''duly authorized representative'' is ''a representative who has been authorized to bind the person on whose behalf [a document is produced] to the information and the representations contained in [the document].'' [70] However, because the document required under Rule 4.22(h) pertains to the accuracy and completeness of certain financial reports (*i.e.*, commodity pool Account Statements and Annual Reports), the Commission specifically is proposing that this oath or affirmation be signed ''by a representative duly authorized to bind the pool operator.''

IV. Temporary No-Action Relief

By this **Federal Register** release, the Commission is, with certain modifications and clarifications made in response to comments on both the Prior Rule 4.5 Proposal and the ANPR, confirming the temporary no-action relief it issued in the Prior Rule 4.5 Proposal and the ANPR.[71] Specifically, in addition to providing temporary no-action relief where the pool a CPO operates engages in a limited amount of commodity interest trading, the Commission is clarifying that: at any time, either the limited trading or notional test must be met; compliance with the criterion of a test is determined at the time the most recent position is established; the notional test criterion applies on an aggregate net basis; and the calculation of ''notional value'' includes the number of futures and options contracts and any multiplier specified in those contracts.

A. Temporary No-Action Relief for Rule 4.5 Eligible Persons

The Commission will not commence any enforcement action against an eligible person for failure to register as a CPO in accordance with Section 4m(1) of the Act, where the eligible person operates a qualifying entity such that at any time, with respect to non-hedge positions in commodity futures or commodity option contracts, either of the following tests is met:

(i) The aggregate initial margin and premiums required to establish such positions, determined at the time the most recent position was established, does not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; *Provided*, That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in Rule 190.01(x) may be excluded in computing such five percent; or

(ii) The aggregate net notional value of such positions, determined at the time the

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[63] *See* 62 FR 39104, 39110–39111 (July 22, 1997).

[64] Rule 1.3(g) defines ''institutional customer'' to have the same meaning as ''eligible contract participant'' as defined in Section 1a(12) of the Act.

[65] *See* 61 FR 42146, 42158 n.91 (Aug. 14, 1996), after which the Commission has patterned this proposal.

[66] Rule 4.7(b)(3) permits a CPO who has claimed relief under the rule to distribute an Annual Report that is not certified, but that nonetheless must be presented and computed in accordance with generally accepted accounting principles consistently applied.

[67] *See* 46 FR 26004, 26011 (May 8, 1981).

[68] *See* 67 FR 77470 (Dec. 18, 2002).

[69] *See also*, 67 FR 38869 (June 6, 2002), wherein the Commission adopted a similar signatory provision in connection with amendments to its registration rules to facilitate on-line registration.

[70] 50 FR 15868, 15874.

[71] *See* 67 FR 65743, 65745 and 67 FR 68785, 68788–89, respectively, and the examples provided therein.

most recent position was established, does not exceed the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into. For this purpose, the term ''notional value'' should be calculated for each such futures position by multiplying the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the current market price per unit and for each such option position by multiplying the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the strike price per unit.

Neither eligible persons who have claimed relief under Rule 4.5 nor eligible persons who claim such relief in the future need to take any additional action to operate their qualifying entities in accordance with the notional test. Rather, making the representations currently required by the rule in a Notice filed with the NFA and the Commission—including the representation concerning the Five Percent Test—is all that is required.

This relief will remain in effect until such time as the Commission takes final action on the amendment to Rule 4.5 it is proposing herein. This relief is, however, subject to the condition that, upon adoption of any amendment to Rule 4.5, the eligible person must comply in full with the terms of any amendment the Commission may adopt. When the Commission adopts a final rule, it will, if necessary, provide affected eligible persons and qualifying entities with sufficient time within which to comply with the rule adopted or to liquidate positions entered into in accordance with the no-action relief.

B. CPO and CTA Temporary Registration No-Action Relief

1. Relief for CPOs

a. In General

The Commission will not commence any enforcement action against a CPO for failure to register as a CPO under Section 4m(1) of the Act, where each pool for which the CPO claims registration no-action relief hereunder meets and remains in compliance with the following criteria:

a. Participation in the pool is restricted to: ''accredited investors'' as defined in Rule 501(a) under the Securities Act; ''knowledgeable employees'' as defined in Rule 3c–5 under the Investment Company Act of 1940;[72] Non-U.S. persons as defined in CFTC Rule 4.7(a)(1)(iv); and the persons described in CFTC Rule 4.7(a)(2)(viii)(A); and

(ii) At any time, the pool's commodity interest trading, whether entered into for *bona fide* hedging purposes or otherwise,[73] meets either of the following tests:

(A) The aggregate initial margin and premiums required to establish commodity interest positions, determined at the time the most recent position was established, does not exceed two percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into; *Provided,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in Rule 190.01(x) may be excluded in computing such two percent; or

(B) The aggregate net notional value of the pool's commodity interest positions, determined at the time the most recent position was established, does not exceed fifty percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into. For this purpose, the term 'notional value' should be calculated for each such futures position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the current market price per unit and for each such option position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the strike price per unit.

b. CPOs Who Operate ''Funds-of-Funds''

In a footnote to the ANPR, the Commission addressed the situation where a commodity pool indirectly trades commodity interests as a ''fund of funds.'' [74] As the Commission stated:

The operator of a 'fund of funds' (an Investor Fund) that indirectly trade[s] commodity interests through participation in one or more funds that directly trades commodity interests (each an Investee Fund) could claim exemption from registration under the No-Action Relief where that Investor Fund trades commodity interests solely through participation in one or more Investee Funds, and the CPO of each such Investee Fund has itself claimed the No-Action Relief. The operator of an Investor Fund that additionally directly trades commodity interests could also claim the no-action relief, so long as the portion of the Investor Fund that directly trades commodity interests does not exceed the limit referred to above.

The Commission provided the following example of this situation:

For example, assume that the Investor Fund has a liquidation value of $1 million, four-fifths of which is invested in four Investee Funds whose operators have claimed the No-Action Relief. With the remaining one-fifth of liquidation value, or $200,000, the operator of the Investor Fund may have the Fund directly trade commodity interests, provided that the notional value of the Fund's commodity interest positions does not exceed fifty percent of the Fund's liquidation value, adjusted for unrealized profits and unrealized losses on positions directly entered into by the Fund.

The Commission went on to state that:

If, however, the notional value of those positions exceeded fifty percent of the liquidation value of $200,000, the operator would only be able to claim the No-Action Relief if the operator knew that the notional value of all of the Investor Fund's commodity interest positions (*i.e.*, those held outright and those held through investment in the four Investee Funds) was fifty percent of the Investor Fund's liquidation value. To be in possession of such information, the operator would need to have direct knowledge of, and immediate access to, the notional value of the commodity interest positions of each Investee Fund. The operator of the Investor Fund could have this knowledge and access where, for example, it was the same person as, or an affiliate of, the CPOs of the Investee Funds.

In response to these examples, the Commission received two sets of comments. One set claimed that, under these examples, it appeared that fund-of-funds CPOs wishing to claim the no-action relief could invest only in pools operated by CPOs who had themselves already claimed the no-action relief, to the disadvantage of registered CPOs. The other set of comments claimed that the requirements for ''direct knowledge of'' and ''immediate access to'' Investee Funds set unnecessarily high standards. The Commission believes these comments have merit. Accordingly, by this **Federal Register** release the Commission confirms that: (1) The CPO of a fund-of-funds may claim the registration no-action relief provided herein if the CPO of each of the Investee Funds into which the fund-of-funds invests either has registered with the Commission as a CPO or has claimed the no-action relief with respect to the Investee Fund; and (2) regardless of whether the CPO of the Investee Fund was an unregistered CPO that had claimed the registration no-action relief or a registered CPO, in each case the Investor Fund's CPO would be entitled to rely upon a representation by the Investee Fund's CPO that the CPO was operating the Investee Fund in compliance with the requirements of the no-action relief. Additionally, by this **Federal Register** release, the Commission generally seeks comment on how to treat ''funds-of-funds'' in the context of CPO registration and Rule 4.13.

2. Relief for CTAs

The Commission will not commence enforcement action against a CTA for failure to register as a CTA under Section 4m(1) of the Act, where the CTA

[72] 17 CFR 270.3c–5 (2002).

[73] *See* Rule 1.3(z).

[74] *See* 67 FR at 68788, n. 15.

meets and remains in compliance with the following criteria:

a. It claims relief from CPO registration under the no-action relief provided herein and its commodity interest trading advice is directed solely to, and for the sole use of, the pool or pools that it operates; [75] or

b. It is registered as an investment adviser under the Investment Advisers Act of 1940 or with the applicable securities regulatory agency of any State, or it is exempt from such registration, or it is excluded from the definition of the term ''investment adviser'' pursuant to section 202(a)(2) or 202(a)(11) of the Investment Advisers Act of 1940, provided that:

(A) The person's commodity interest trading advice:

(*1*) Is directed solely to, and for the sole use of, pools operated by CPOs who are eligible to claim relief from CPO registration under the no-action relief;

(*2*) Is solely incidental to its business of providing securities advice to each such pool;

(*3*) Is consistent with the criteria of the CPO registration no-action relief; [76] and

(B) The person is not otherwise holding itself out as a CTA.

By this **Federal Register** release, the Commission similarly confirms that, regardless of whether a pool to which the CTA sought to provide commodity interest trading advice was operated by an unregistered CPO that had claimed registration no-action relief or a registered CPO, in each case the CTA would be entitled to rely upon a representation by the CPO that the CPO was operating the pool in compliance with the requirements of the CPO registration no-action relief stated above.

3. Claim of Registration No-Action Relief

As stated in the ANPR, this registration no-action relief for CPOs and CTAs is not self-executing. Rather, a CPO or CTA eligible for the no-action relief must file a Claim to perfect the relief and must make a one-way disclosure to its participants and clients, respectively, whether prospective or existing. A Claim of Registration No-Action Relief will be effective upon filing, so long as the Claim is materially complete.

Specifically, the Claim of Registration No-Action Relief must:

a. State the name, main business address, and main business telephone number of the CPO or CTA claiming the relief;

b. State the capacity (*i.e.*, CPO, CTA or both) and, where applicable, the name of the pool(s), for which the Claim is being filed;

c. Represent that the CPO and CTA qualifies for the no-action relief, that it will comply with the criteria of the no-action relief, and that it will provide the CFTC-specified disclosure, set forth below;

d. Be signed by a duly authorized representative of the CPO or CTA; and

e. Be filed with the NFA at its headquarters office in Chicago, Illinois (Attn: Director of Compliance), with a copy to the Commission at its headquarters office in Washington, DC (Attn: Division of Clearing and Intermediary Oversight, Audit and Financial Review Section), prior to the date upon which the CPO or CTA first engages in business that otherwise would require registration as such.

4. One-Way Disclosure by CPOs and CTAs

a. For CPOs: To comply with the terms of a Claim of Registration No-Action Relief that it has filed, a CPO must provide the following disclosure to prospective and existing participants in each pool it operates or intends to operate prior to engaging in activities that otherwise would require it to register as a CPO:

Pursuant to No-Action Relief issued by the Commodity Futures Trading Commission, [Name of CPO] is not required to register, and is not registered, with the Commission as a CPO. Among other things, the No-Action Relief requires this CPO to file a Claim of No-Action Relief with the National Futures Association and the Commission. It also requires that at all times either: (a) The aggregate initial margin and premiums required to establish commodity interest positions does not exceed two percent of the liquidation value of the pool's portfolio; or (b) the aggregate net notional value of this pool's commodity interest positions does not exceed fifty percent of the liquidation value of the pool's portfolio.

You should also know that this registration No-Action Relief is temporary. In the event the Commission ultimately adopts a registration exemption rule that differs from the No-Action Relief, [Name of CPO] must comply with that rule to be exempt from CPO registration. If [Name of CPO] determines not to comply with that rule, it must either register with the Commission or cease having this pool trade commodity interests. A reasonable opportunity to trade for liquidation only will be provided.

b. For CTAs: To comply with the terms of a Claim of Registration No-Action Relief that it has filed, a CTA must provide the following disclosure to each pool it advises or intends to advise prior to engaging in activities that otherwise would require it to register as a CTA:

Pursuant to No-Action Relief issued by the Commodity Futures Trading Commission, [Name of CTA] is not required to register, and is not registered, with the Commission as a CTA. Among other things, the No-Action Relief requires this CTA to file a claim of No-Action Relief with the National Futures Association and the Commission. It also requires that this CTA provide advice solely to pools whose CPOs have filed a corresponding claim of No-Action Relief.

You should also know that this registration No-Action Relief is temporary. In the event the Commission ultimately adopts a registration exemption rule that differs from the No-Action Relief, [Name of CTA] must comply with that rule to be exempt from CTA registration. If [Name of CTA] determines not to comply with that rule, it must either register with the Commission or cease providing commodity interest trading advice to this pool. A reasonable opportunity to trade for liquidation only will be provided.

5. Effect of Filing a Claim of No-Action Relief

Persons that have filed a Claim of No-Action Relief will be exempt from Commission registration requirements under Section 4m(1) of the Act. Such persons will remain subject, however, to prohibitions in the Act and the Commission's rules against fraud that apply to all CPOs and CTAs regardless of registration status. They also will remain subject to all other relevant provisions of the Act and the Commission's rules that apply to all commodity interest market participants, such as the prohibitions on manipulation and the trade reporting requirements.

C. Other Matters

1. Effect of Final Rulemaking on No-Action Relief

The no-action relief the Commission is announcing today by this **Federal Register** release will remain in effect until such time as the Commission takes final action on the related rules it is proposing herein. Any final rules that the Commission adopts as a result of this proposed rulemaking will supersede this no-action relief. In the event final rules differ from the requirements of the no-action relief, the Commission will provide affected eligible persons, CPOs and CTAs with sufficient time within which to comply with such requirements, or, in the event an eligible person, CPO or CTA is unable or unwilling to so comply, with sufficient time to register with the Commission (or, if applicable, to withdraw a previously filed Claim of No-Action Relief) and to cease engaging in business as a CPO or CTA. Following

[75] This provision is patterned after Rule 4.14(a)(5).

[76] In response to comments received by the Commission, this provision was simplified by replacing the words ''Employs only strategies that are'' with ''Is.''

the effective date of final rules, no new positions may be entered into in accordance with the no-action relief, but the Commission will, if necessary, provide a reasonable opportunity to liquidate previously-entered positions if a person does not wish to comply with the exemptions provided or register under the Act.

2. Continued Availability of No-Action Relief From Commission Staff

The Commission is aware that there may be persons that do not meet the criteria of the no-action relief under Rule 4.5 for eligible persons or Section 4m(1) of the Act for CPOs and CTAs but that nonetheless, under their particular facts or circumstances, merit relief. The Commission also is aware that, in the past, its staff has provided no-action relief from the criteria of Rule 4.5 and from the registration requirement of Section 4m(1) of the Act on a case-by-case basis. Consistent with that practice, the Commission directs its staff to continue to issue such relief in appropriate cases.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[77] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[78] With respect to CPOs, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Rule 4.13(a)(2).[79] Therefore, the requirements of the RFA do not apply to CPOs who do not meet those criteria. With respect to CTAs, the Commission has previously stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of the proposal.[80] The Commission believes that the instant proposed rules will not place any burdens, whether new or additional, on CPOs and CTAs who would be affected hereunder. This is because the instant proposals, if adopted, would provide registration relief for more CPOs and CTAs and, for CPOs and CTAs who are not eligible for that relief, they would reduce, streamline and simplify existing requirements.

The Commission's definitions of small entities do not address the persons and qualifying entities set forth in Rule 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by federal and state authorities other than the Commission. Assuming, *arguendo,* that Rule 4.5 eligible persons or qualifying entities would be small entities for purposes of the RFA, the Commission believes that the proposed amendment to Rule 4.5 would not have a significant economic impact on them because it would permit greater operational flexibility for persons currently claiming relief under the rule, and it would make relief under the rule available to more persons (each of whom would only have to file a notice to be relieved from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs).

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to Section 605(b) of the RFA[81] that the proposed rules will not have a significant economic impact on a substantial number of small entities. However, the Commission invites the public to comment on this finding.

B. Paperwork Reduction Act

This proposed rulemaking affects information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget for its review.

Collection of Information

Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants, OMB Control Number 3038–0005.

The expected effect of the proposed amended rules will be to reduce the burden previously approved by OMB for this collection of information by 31,025.97 hours because, while it will result in an increase in the number of filings under Rules 4.5, 4.13 and 4.14, it will result in a larger decrease in the information collection requirements under the disclosure, reporting and recordkeeping rules that otherwise would be applicable.

Specifically:

The burden associated with Commission Rule 4.5 is expected to be increased by 25 hours:

Estimated number of respondents: 325.

Annual responses by each respondent: 2.

Estimated average hours per response: .5.

Annual reporting burden: 325 hours.

This annual reporting burden of 325 hours represents an increase of 25 hours as a result of the proposed amendment to Rule 4.5.

The burden associated with Commission Rule 4.13 is expected to be increased by 187.5 hours:

Estimated number of respondents: 600.

Annual responses by each respondent: 1.

Estimated average hours per response: .5.

Annual reporting burden: 300.

This annual reporting burden of 300 hours represents an increase of 187.5 hours as a result of the proposed amendments to Rule 4.13.

The burden associated with Commission Rule 4.14 is expected to be increased by 5 hours:

Estimated number of respondents: 60.

Annual responses by each respondent: 1.

Estimated average hours per response: .5.

Annual reporting burden: 30.

This annual reporting burden of 30 hours represents an increase of 5 hours as a result of the proposed amendments to Rule 4.14.

The burden associated with Commission Rule 4.21 is expected to be decreased by 1540 hours:

Estimated number of respondents: 100.

Annual responses by each respondent: 2.

Estimated average hours per response: 2.8.

Annual reporting burden: 560.

This annual reporting burden of 560 hours represents a decrease of 1,540 hours as a result of the proposed amendments to Rules 4.5, 4.13 and 4.21.

The burden associated with Commission Rule 4.22(a) is expected to be decreased by 7,796.25 hours:

Estimated number of respondents: 100.

Annual responses by each respondent: 9.

Estimated average hours per response: 3.85.

Annual reporting burden: 3,465.

This annual reporting burden of 3,465 hours represents a decrease of 7,796.25 hours as a result of the proposed amendments to Rules 4.5, 4.13 and 4.22.

[77] 5 U.S.C. 601 *et seq.*

[78] 47 FR 18618 (April 30, 1982).

[79] *Id.* at 18619–20.

[80] *Id.* at 18620.

[81] 5 U.S.C. 605(b).

The burden associated with Commission Rule 4.22(c) is expected to be reduced by 4,050 hours:

Estimated number of respondents: 100.

Annual responses by each respondent: 2.

Estimated average hours per response: 9.

Annual reporting burden: 1,800.

This annual reporting burden of 1,800 hours represents a decrease of 4,050 hours as a result of the proposed amendments to Rules 4.5, 4.13 and 4.22.

The burden associated with Commission Rule 4.23 is expected to be reduced by 11,700 hours:

Estimated number of respondents: 100.

Annual responses by each respondent: 1.

Estimated average hours per response: 52.

Annual reporting burden: 5,200

This annual reporting burden of 5,200 hours represents a decrease of 11,700 hours as a result of the proposed amendments to Rules 4.5, 4.13 and 4.22.

The burden associated with Commission Rule 4.31 is expected to be reduced by 577.22 hours:

Estimated number of respondents: 310.

Annual responses by each respondent: 1.33.

Estimated average hours per response: 1.4.

Annual reporting burden: 577.22.

This annual reporting burden of 577.22 hours represents a decrease of 577.22 hours as a result of the proposed amendments to Rule 4.14.

The burden associated with Commission Rule 4.33 is expected to be reduced by 29,880 hours:

Estimated number of respondents: 310.

Annual responses by each respondent: 1.

Estimated average hours per response: 18.

Annual reporting burden: 5,580.

This annual reporting burden of 5,580 hours represents a decrease of 5,580 hours as a result of the proposed amendments to Rule 4.14.

As stated, these changes will result in an overall reduction of 31,025.97 hours in burden for this collection.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of 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.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW., Washington, DC 20581, (202) 418–5160.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed amendments are intended to facilitate increased flexibility and consistency, and to rationalize application of Commission regulations to entities subject to other regulatory frameworks. The Commission is considering the costs and benefits of these rules in light of the specific provisions of Section 15(a) of the Act:

1. Protection of Market Participants and the Public

While certain of the proposed amendments are expected to lessen the burden imposed upon CPOs and CTAs, any exclusion or exemption of persons from regulatory requirements would be based on such factors as financial sophistication of pool participants and advisory clients or a low level of exposure to commodity interest markets. Accordingly, the proposed amendments should have no effect on the Commission's ability to protect market participants and the public.

2. Efficiency and Competition

The proposed amendments are expected to benefit efficiency and competition by removing barriers to participation in the commodity interest markets, resulting in greater liquidity and market efficiency.

3. Financial Integrity of Futures Markets and Price Discovery

The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the commodity futures and options markets.

4. Sound Risk Management Practices

The proposed amendments should increase the available range of risk management alternatives for Rule 4.5 eligible persons, as well as for CTAs and CPOs.

5. Other Public Interest Considerations

The proposed amendments will also take into account certain effects of legislative changes (*e.g.*, in the case of exemption for registered investment advisers) and the passage of time (*e.g.*, revising the contribution limit for the small commodity pool exemption and permitting electronic delivery of pool Account Statements).

After considering these factors, the Commission has determined to propose the amendments discussed above. The

Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

For the reasons presented above, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6(c), 6*l*, 6m, 6n, 6*o*, 12a and 23.

2. Section 4.5 is proposed to be amended by:

a. deleting paragraph (c)(2)(i);

b. redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(i);

c. deleting paragraph (c)(2)(iii); and

d. redesignating paragraph (c)(2)(iv) as paragraph (c)(2)(ii).

3. Section 4.7 is proposed to be amended by revising paragraph (d)(1)(vii) to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible clients.

* * * * *

(d) * * *

(1) * * *

(vii) Be manually signed by a duly authorized representative of the commodity pool operator or commodity trading advisor;

* * * * *

4. Section 4.12 is proposed to be amended by revising paragraph (b)(3)(vi) to read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(b) * * *

(3) * * *

(vi) Be manually signed by a duly authorized representative of the pool operator; and

* * * * *

5. Section 4.13 is proposed to be amended by:

a. adding introductory text;

b. deleting the ''or'' at the end of paragraph (a)(1)(iv);

c. revising paragraph (a)(2);

d. adding new paragraphs (a)(3), (a)(4) and (a)(5);

e. revising paragraph (b);

f. redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and revising the redesignated paragraphs; and

g. adding a new paragraph (c), to read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

This section is organized as follows: Paragraph (a) specifies the criteria that must be met to qualify for exemption from registration under this section; paragraph (b) governs the notice that must be filed to claim exemption from registration; paragraph (c) sets forth the continuing obligations of a person who has claimed exemption under this section; paragraph (d) specifies information certain persons must provide if they subsequently register; and paragraph (e) specifies the effect of registration on a person who has claimed an exemption from registration under this section or who is eligible to claim an exemption from registration under this section.

(a) * * *

(2)(i) None of the pools operated by it has more than 15 participants at any time; and

(ii) The total gross capital contributions it receives for units of participation in all of the pools it operates or that it intends to operate do not in the aggregate exceed $400,000.

(iii) For the purpose of determining eligibility for exemption under paragraph (a)(2) of this section, the person may exclude the following participants and their contributions:

(A) The pool's operator, commodity trading advisor, and the principals thereof;

(B) A child, sibling or parent of any of these persons;

(C) The spouse of any person specified in paragraph (a)(2)(iii)(A) or (B) of this section; and

(D) Any relative of a person specified in paragraph (a)(2)(iii)(A), (B) or (C) of this section, its spouse or a relative of its spouse, who has the same principal residence as such person;

(3)(i) At any time, each pool for which the operator claims exemption from registration under this paragraph (a)(3) meets either of the following tests with respect to its commodity interest positions, whether entered into for *bona fide* hedging purposes or otherwise:

(A) The aggregate initial margin and premiums required to establish such positions, determined at the time the most recent position was established, will not exceed two percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into; *Provided,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) of this chapter may be excluded in computing such two percent; or

(B) The aggregate net notional value of such positions, determined at the time the most recent position was established, does not exceed fifty percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into. For the purpose of this paragraph, the term ''notional value'' shall be calculated for each such futures position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the current market price per unit, and for each such option position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the strike price per unit;

(ii) It reasonably believes, at the time of investment (or, in the case of an existing pool, at the time of conversion to a pool meeting the criteria of paragraph (a)(3) of this section), that each person who participates in the pool is an ''accredited investor,'' as that term is defined in § 230.501 of this title; *Provided,* That nothing in paragraph (a)(3) of this section will prohibit the person from claiming an exemption under this section if it additionally operates one or more pools for which it meets the criteria of paragraph (a)(4) of this section; and

(iii) It does not market participations in the pool as or in a vehicle for trading in the commodity futures or commodity options markets; or

(4) For each pool for which the operator claims exemption from registration under this paragraph (a)(4):

(i) Interests in the pool are exempt from registration under the Securities Act of 1933, and such interests are offered and sold without marketing to the public in the United States;

(ii) It reasonably believes, at the time of investment (or, in the case of an existing pool, at the time of conversion to a pool meeting the criteria of paragraph (a)(4) of this section), that:

(A) Each natural person participant (including the person's self-directed employee benefit plan, if any), is a ''qualified eligible person,'' as that term is defined in § 4.7(a)(2); and

(B) Each non-natural person participant is a ''qualified eligible person,'' as that term is defined in § 4.7, or an ''accredited investor,'' as that term is defined in § 230.501(a)(1) through (3), (a)(7) and (a)(8) of this title; *Provided,* That nothing in paragraph (a)(4) of this section will prohibit the person from claiming an exemption under this section if it additionally operates one or more pools that meet the criteria of paragraph (a)(3) of this section.

(5)(i) Eligibility for exemption under this section is subject to the commodity pool operator furnishing in writing to each prospective participant in the pool:

(A) A statement that the pool operator is exempt from registration with the Commission as a commodity pool operator and that therefore, unlike a registered commodity pool operator, it is not required to deliver a Disclosure Document and a certified annual report to participants in the pool; and

(B) A description of the criteria pursuant to which it qualifies for such exemption from registration.

(ii) The pool operator must make these disclosures by no later than the time it delivers a subscription agreement for the pool to a prospective participant in the pool.

(b)(1) A commodity pool operator who desires to claim the relief from registration provided by this section must file a notice of exemption from commodity pool operator registration with the National Futures Association (Attn: Director of Compliance). The notice must:

(i) Provide the name, main business address, main business telephone number, main facsimile number and main email address of the pool operator claiming the exemption and the name of the pool for which it is claiming exemption;

(ii) Contain the section number pursuant to which the operator is filing the notice (*i.e.*, § 4.13(a)(1), (a)(2), (a)(3), (a)(4), or both (a)(3) and (a)(4)) and represent that the pool will be operated in accordance with the criteria of that paragraph or paragraphs; and

(iii) Be signed by a duly authorized representative of the pool operator.

(2) The commodity pool operator must file the notice by no later than the time it delivers a subscription agreement for the pool to a prospective participant in the pool; *Provided,* That where the operator is registered with the Commission as a commodity pool operator, it must notify its pool's participants in writing that it intends to withdraw from registration and claim the exemption, and it must provide each such participant with a right to redeem its interest in the pool prior to the operator filing a notice of exemption from registration.

(3) The notice will be effective upon filing, provided the notice is materially complete.

(4) A commodity pool operator who has filed a notice of exemption from registration under this section must, in the event that any of the information contained or representations made in the notice becomes inaccurate or incomplete, file a supplemental notice with the National Futures Association to that effect which, if applicable, includes such amendments as may be necessary to render the notice accurate and complete. This supplemental notice must be filed within 15 business days after the pool operator becomes aware of the occurrence of such event.

(c)(1) Each commodity pool operator who has filed a notice of exemption from registration under this section must:

(i) Make and keep all books and records prepared in connection with its activities as a pool operator for a period of five years from the date of preparation;

(ii) Keep such books and records readily accessible during the first two years of the five-year period. All such books and records must be available for inspection upon the request of any representative of the Commission, the United States Department of Justice, or any other appropriate regulatory agency; and

(iii) Submit to such special calls as the Commission may make to demonstrate eligibility for and compliance with the applicable criteria for exemption under this section.

(2) In the event the pool operator distributes an annual report to participants in the pool for which it has filed the notice, the annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and, if certified by an independent public accountant, so certified in accordance with § 1.16 of this chapter as applicable.

(3) Each commodity pool operator who has filed a notice of exemption from registration pursuant to paragraph (a)(1) or (a)(2) of this section must:

(i) Promptly furnish to each participant in the pool a copy of each monthly statement for the pool that the pool operator received from a futures commission merchant pursuant to § 1.33 of this chapter; and

(ii) Clearly show on such statement, or on an accompanying supplemental statement, the net profit or loss on all commodity interests closed since the date of the previous statement.

(d) Each person who applies for registration as a commodity pool operator subsequent to claiming relief under paragraph (a)(1) or (a)(2) of this section must include with its application the financial statements and other information required by § 4.22(c)(1) through (5) for each pool that it has operated as an operator exempt from registration. That information must be presented and computed in accordance with generally accepted accounting principles consistently applied. If the person is granted registration as a commodity pool operator, it must comply with the provisions of this part with respect to each such pool.

(e)(1) Subject to the provisions of paragraph (e)(2) of this section, if a person who is eligible for exemption from registration as a commodity pool operator under this section nonetheless registers as a commodity pool operator, the person must comply with the provisions of this part with respect to each commodity pool identified on its registration application or supplement thereto.

(2) If a person operates one or more commodity pools described in paragraph (a)(3) or (a)(4) of this section, and one or more commodity pools for which it must be, and is, registered as a commodity pool operator, the person is exempt from the requirements applicable to a registered commodity pool operator with respect to the pool or pools described in paragraph (a)(3) or (a)(4) of this section; *Provided,* That the person:

(i) Furnishes in writing to each prospective participant in a pool described in paragraphs (a)(2), (a)(3) or (a)(4) of this section that it operates:

(A) A statement that it will operate the pool as if the person was exempt from registration as a commodity pool operator;

(B) A description of the criteria pursuant to which it will so operate the pool; and

(ii) Complies with paragraph (c) of this section.

6. Section 4.14 is proposed to be amended by:

a. adding introductory text;

b. revising paragraph (a)(8);

c. removing the period and adding a semi-colon followed by the word ''or'' at the end of paragraph (a)(9)(ii);

d. adding new paragraph (a)(10); and

e. revising paragraph (c), to read as follows:

§ 4.14 Exemption from registration as a commodity trading advisor.

This section is organized as follows: Paragraph (a) specifies the criteria that

must be met to qualify for exemption from registration under this section, including the notice of exemption from registration and continuing obligations of persons who have claimed exemption under paragraph (a)(8) of this section; paragraph (b) concerns ''cash market transactions''; and paragraph (c) specifies the effect of registration on a person who has claimed an exemption from registration under this section or who is eligible to claim an exemption from registration under this section.

(a) * * *

(8) It is registered as an investment adviser under the Investment Advisers Act of 1940 or with the applicable securities regulatory agency of any State, or it is exempt from such registration, or it is excluded from the definition of the term ''investment adviser'' pursuant to the provisions of sections 202(a)(2) and 202(a)(11) of the Investment Advisers Act of 1940, *Provided,* That:

(i) The person's commodity interest trading advice is directed solely to, and for the sole use of, one or more of the following:

(A) ''Qualifying entities,'' as that term is defined in § 4.5(b), for which a notice of eligibility has been filed;

(B) Collective investment vehicles that are excluded from the definition of the term commodity ''pool'' under § 4.5(b); and

(C) Commodity pools that are organized and operated outside of the United States, its territories or possessions, where:

(*1*) The commodity pool operator of each such pool has not so organized and is not so operating the pool for the purpose of avoiding commodity pool operator registration;

(*2*) With the exception of the pool's operator, advisor and their principals, solely ''Non-United States persons,'' as that term is defined in § 4.7(a)(1)(iv), will contribute funds or other capital to, and will own beneficial interests in, the pool;

(*3*) No person affiliated with the pool conducts any marketing activity for the purpose of, or that could reasonably have the effect of, soliciting participation from other than Non-United States persons; and

(*4*) No person affiliated with the pool conducts any marketing activity from within the United States, its territories or possessions; and

(D) A commodity pool operator who has claimed an exemption from registration under § 4.13(a)(3) or 4.13(a)(4), or, if registered as a commodity pool operator, who may treat each pool it operates that meets the criteria of § 4.13(a)(3) or 4.13(a)(4) as if it were not so registered;

(ii) The person:

(A) Provides commodity interest trading advice solely incidental to its business of providing securities or other investment advice to qualifying entities, collective investment vehicles and commodity pools as described in paragraph (a)(8)(i) of this section; and

(B) Is not otherwise holding itself out as a commodity trading advisor.

(iii)(A) A commodity trading advisor who desires to claim the relief from registration provided by this paragraph (a)(8) must file a notice of exemption from commodity trading advisor registration with the National Futures Association (ATTN: Director of Compliance). The notice must:

(*1*) Provide the name, main business address, main business telephone number, main facsimile number and main email address of the trading advisor claiming the exemption;

(*2*) Contain the section number pursuant to which the advisor is filing the notice (*i.e.*, § 4.14(a)(8)(i)or (a)(8)(ii), or both (a)(8)(i) and (a)(8)(ii)) and represent that it will provide commodity interest advice to its clients in accordance with the criteria of that paragraph or paragraphs; and

(*3*) Be signed by a duly authorized representative of the trading advisor.

(B) The commodity trading advisor must file the notice by no later than the time it delivers an advisory agreement for the trading program pursuant to which it will offer commodity interest advice to a client; *Provided,* That where the advisor is registered with the Commission as a commodity trading advisor, it must notify its clients in writing that it intends to withdraw from registration and claim the exemption and must provide each such client with a right to terminate its advisory agreement prior to the advisor filing a notice of exemption from registration.

(C) The notice will be effective upon filing, provided the notice is materially complete.

(D) A commodity trading advisor who has filed a notice of registration exemption under this section must, in the event that any of the information contained or representations made in the notice becomes inaccurate or incomplete, file a supplemental notice with the National Futures Association to that effect which, if applicable, includes such amendments as may be necessary to render the notice accurate and complete. This supplemental notice must be filed within 15 business days after the trading advisor becomes aware of the occurrence of such event.

(iv) Each commodity trading advisor who has filed a notice of registration exemption under this paragraph (a)(8) must:

(A)(*1*) Make and keep all books and records prepared in connection with its activities as a trading advisor, including all books and records demonstrating eligibility for and compliance with the applicable criteria for exemption under this section, for a period of five years from the date of preparation; and

(*2*) Keep such books and records readily accessible during the first two years of the five-year period. All such books and records must be available for inspection upon the request of any representative of the Commission, the United States Department of Justice, or any other appropriate regulatory agency; and

(B) Submit to such special calls as the Commission may make to demonstrate eligibility for and compliance with the applicable criteria for exemption under this section;

* * * * *

(10) During the course of the preceding 12 months, it has not furnished commodity trading advice to more than 15 persons and it does not hold itself out generally to the public as a commodity trading advisor.

(i) For the purpose of paragraph (a)(10) of this section, the following are deemed a single person:

(A) A natural person, and:

(*1*) Any minor child of the natural person;

(*2*) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(*3*) All accounts of which the natural person and/or the persons referred to in paragraph (a)(10)(i)(A) of this section are the only primary beneficiaries; and

(*4*) All trusts of which the natural person and/or the persons referred to in paragraph (a)(10)(i)(A) of this section are the only primary beneficiaries;

(B)(*1*) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(10)(i)(A)(*4*) of this section), or other legal organization (any of which are referred to elsewhere in this section as a ''legal organization'') that receives commodity interest trading advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to elsewhere in this section as an ''owner''); and

(*2*) Two or more legal organizations referred to in paragraph (a)(10)(i)(B)(*1*) of this section that have identical owners.

(ii) *Special rules.* For the purpose of paragraph (a)(10) of this section:

(A) An owner must be counted in its own capacity as a person if the commodity trading advisor provides advisory services to the owner separate and apart from the advisory services provided to the legal organization; *Provided,* That the determination that an owner is a client will not affect the applicability of paragraph (a)(10) of this section with regard to any other owner;

(B)(*1*) A general partner of a limited partnership, or other person acting as a commodity trading advisor to the partnership, may count the limited partnership as one person; and

(*2*) A manager or managing member of a limited liability company, or any other person acting as a commodity trading advisor to the company, may count the limited liability company as one person.

(C) A commodity trading advisor that has its principal office and place of business outside of the United States, its territories or possessions must count only clients that are residents of the United States, its territories and possessions; a commodity trading advisor that has its principal office and place of business in the United States or in any territory or possession thereof must count all clients.

(iii) *Holding Out.* Any commodity trading advisor relying on paragraph (a)(10) of this section shall not be deemed to be holding itself out generally to the public as a commodity trading advisor, within the meaning of section 4m(1) of the Act, solely because it participates in a non-public offering of interests in a collective investment vehicle under the Securities Act of 1933.

* * * * *

(c)(1) Subject to the provisions of paragraph (c)(2) of this section, if a person who is eligible for exemption from registration as a commodity trading advisor under this section nonetheless registers as a commodity trading advisor, the person must comply with the provisions of this part with respect to those clients for which it could have claimed an exemption from registration under this section.

(2) If a person provides commodity interest trading advice to a client described in paragraph (a) of this section and to a client for which it must be, and is, registered as a commodity trading advisor, the person is exempt from the requirements applicable to a registered commodity trading advisor with respect to the clients so described; *Provided,* That the person furnishes in writing to each prospective client described in paragraph (a) of this section a statement that it will provide commodity interest trading advice to the client as if it was exempt from registration as a commodity trading advisor.

7. Section 4.21 is proposed to be amended by revising paragraph (a) to read as follows:

§ 4.21 Required delivery of pool Disclosure Document.

(a)(1) Subject to the provisions of paragraph (a)(2) of this section, each commodity pool operator registered or required to be registered under the Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with §§ 4.24 and 4.25 by no later than the time it delivers to the prospective participant a subscription agreement for the pool; *Provided,* That any material distributed in advance of the delivery of the Disclosure Document is consistent with or amended by the information contained in the Disclosure Document and with the obligations of the commodity pool operator under the Act, the Commission's regulations issued thereunder, and the laws of any other applicable federal or state authority.

(2) For the purpose of the Disclosure Document delivery requirement, including any offering memorandum delivered pursuant to § 4.7(b)(1) or 4.12(b)(2)(i), the term ''prospective pool participant'' does not include a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of the offered pool.

* * * * *

8. Section 4.22 is proposed to be amended by:

a. revising paragraph (a) introductory text;

b. adding new paragraph (a)(4),

c. redesignating paragraph (b) as paragraph (b)(1),

d. adding a new paragraph (b)(2),

e. revising paragraph (c) introductory text,

f. adding a new paragraph (c)(6),

g. revising paragraph (h)(1),

h. revising paragraph (h)(3), and

i. adding new paragraph (h)(4), to read as follows:

§ 4.22 Reporting to pool participants.

(a) Except as provided in paragraph (a)(4) of this section, each commodity pool operator registered or required to be registered under the Act must periodically distribute to each participant in each pool that it operates, within 30 calendar days after the last date of the reporting period prescribed in paragraph (b) of this section, an Account Statement, which shall be presented in the form of a Statement of Income (Loss) and a Statement of Changes in Net Asset Value, for the prescribed period. These financial statements must be presented and computed in accordance with generally accepted accounting principles consistently applied. The Account Statement must be signed in accordance with paragraph (h) of this section.

* * * * *

(4) For the purpose of the Account Statement delivery requirement, including any Account Statement distributed pursuant to § 4.7(b)(2) or 4.12(b)(2)(ii), the term ''participant'' does not include a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of a pool in which the commodity pool has invested.

(b)(1) * * *

(2)(i) The Account Statement may be distributed to a pool participant by means of electronic media if the participant so consents; *Provided,* That a commodity pool operator must, prior to the transmission of any Account Statement by means of electronic media, disclose: The right of the participant to receive the Account Statement in paper form or by means of electronic delivery; the electronic media through which the Account Statement will be delivered; the duration, whether indefinite or not, of the period during which consent will be effective; any charges for electronic delivery; and that consent to electronic delivery may be revoked by the participant at any time.

(ii) The pool operator must obtain a signed consent acknowledging disclosure of the information set forth in paragraph (b)(2)(i) of this section prior to the transmission of any Account Statement by electronic media to any participant who does not qualify as an institutional customer under § 1.3(g) of this chapter.

(c) Except as provided in paragraph (c)(6) of this section, each commodity pool operator registered or required to be registered under the Act must distribute an Annual Report to each participant in each pool that it operates, and must file two copies of the Report with the Commission, within 90 calendar days after the end on the pool's fiscal year or the permanent cessation of trading, whichever is earlier, but in no event longer than 90 days after funds are returned to pool participants; *Provided, however,* That if during any calendar year the commodity pool operator did

not operate a commodity pool, the pool operator must so notify the Commission within 30 calendar days after the end of such calendar year. The Annual Report must be signed pursuant to paragraph (h) of this section and must contain the following:

* * * * *

(6) For the purpose of the Annual Report distribution requirement, including any annual report distributed pursuant to § 4.7(b)(3) or 4.12(b)(2)(iii), the term ''participant'' does not include a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of a pool in which the commodity pool has invested; *Provided,* That the Annual Report of such investing pool contain financial statements that include such information as the Commission may specify concerning the operations of the pool in which the commodity pool has invested.

* * * * *

(h)(1) Each Account Statement and Annual Report, including an account statement or annual report provided pursuant to § 4.7(b) or 4.12(b), must contain an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; *Provided, however,* That it shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in the document is not accurate and complete.

* * * * *

(3) Subject to the provisions of paragraph (h)(4) of this section, the oath or affirmation must be manually signed by a representative duly authorized to bind the pool operator.

(4)(i) An Account Statement or Annual Report may contain a facsimile signature, *Provided,* That:

(A) The CPO maintains in accordance with § 4.23 the Account Statement or Annual Report containing the manual signature from which the facsimile signature was made; and

(B) The Annual Report the CPO files with a registered futures association is manually signed.

(ii) For each pool for which the CPO distributes an Account Statement by means of electronic media, the CPO must make and keep in accordance with § 4.23 a manually signed copy of the Statement.

9. Section 4.31 is proposed to be amended by revising paragraph (a) to read as follows:

§ 4.31 Required delivery of Disclosure Document to prospective clients.

(a) Each commodity trading advisor registered or required to be registered under the Act must deliver or cause to be delivered to a prospective client a Disclosure Document containing the information set forth in §§ 4.34 and 4.35 for the trading program pursuant to which the trading advisor seeks to direct the client's commodity interest account or to direct the client's commodity interest trading by means of a systematic program that recommends specific transactions by no later than the time the trading advisor delivers to the prospective client an advisory agreement to direct or guide the client's account; *Provided,* That any material distributed in advance of the delivery of the Disclosure Document is consistent with or amended by the information contained in the Disclosure Document and with the obligations of the commodity trading advisor under the Act, the Commission's regulations issued thereunder, and the laws of any other applicable federal or state authority.

* * * * *

Issued in Washington, DC, on March 10, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–6180 Filed 3–14–03; 8:45 am]

BILLING CODE 6351–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AF69

Revised Medical Criteria for Evaluating Mental Disorders

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are planning to update and revise the rules that we use to evaluate mental disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Social Security Act (the Act). We invite you to send us comments and suggestions for updating and revising these rules.

After we have considered your comments and suggestions, as well as information about advances in medical knowledge, treatment, and methods of evaluating mental impairments, and our program experience, we intend to publish for public comment a Notice of Proposed Rulemaking (NPRM) that will propose specific revisions to the rules.

As part of our long-term planning for the disability programs, we are also interested in your ideas for how we may be able to improve our programs for people who have mental disorders, especially those who would like to work.

DATES: To be sure your comments are considered, we must receive them by June 16, 2003.

ADDRESSES: You may give us your comments using: our Internet site facility (*i.e.*, Social Security Online) at: *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*, e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830; or, by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Disability and Income Security Programs, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted in our Internet site at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*, or you may inspect them on regular business days by making arrangements with the contact person shown below.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online): *http://www.ssa.gov/regulations/*.

FOR FURTHER INFORMATION CONTACT: Cathy Lively, Office of Disability and Income Security Programs, Social Security Administration, 4422 Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–1180 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet web site, Social Security Online, at *http://www.ssa.gov*.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice?

We are planning to update and revise the rules that we use to evaluate mental disorders of adults and children who apply for, or receive, disability benefits under title II and SSI payments based on disability under title XVI of the Act. The purpose of this notice is to give you an opportunity to send us comments and

suggestions for updating and revising those rules as we begin the rulemaking process. We are also asking for your comments and ideas about how we can improve our disability programs in the future for people with mental disorders.

Who Should Send Us Comments and Suggestions?

Anyone who has an interest in the rules that we use to evaluate mental disorders of adults and children should comment. We are interested in getting comments and suggestions from people who apply for or receive disability benefits from us, members of the general public, advocates and organizations who advocate for people who have mental disorders, experts in the evaluation of mental disorders, researchers, people who make disability determinations for us, and any other people who have ideas for us to consider.

Will We Respond to Your Comments From This Notice?

No, we will not respond directly to comments you send us because of this notice. However, after we consider your comments in response to this notice, along with other information such as medical research and our program experience, we will decide how to revise the rules we use to evaluate mental disorders. When we propose specific revisions to the rules, we will publish an NPRM in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on the revisions we propose when we publish the NPRM, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

Which Rules Are We Considering for Updating and Revision?

We are considering two regulations sections and two sections of our listings for revision. The two regulations sections are §§ 404.1520a and 416.920a, and are both titled, ''Evaluation of mental impairments.'' These rules discuss the special technique we use to evaluate all claims of adults who have mental disorders. The two sections of our listings are sections 12.00 and 112.00. These are the listings for mental disorders for adults (Part A, 12.00) and children (Part B, 112.00).

Where Can You Find These Rules on the Internet?

You can find all of these rules on our Internet site.

- § 404.1520a is at *http://www.ssa.gov/OP_Home/cfr20/404/404–1520a.htm*.
- § 416.920a is at *http://www.ssa.gov/OP_Home/cfr20/416/416–0920a.htm*.
- Sections 12.00 and 112.00 are in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at *http://www.ssa.gov/OP_Home/cfr20/404/404-ap09.htm*.
- You can also look up sections 12.00 and 112.00 at this site: *http://www.ssa.gov/disability/professionals/bluebook/*.

If you do not have Internet access, you can find the Code of Federal Regulations in some public libraries, Federal depository libraries, and public law libraries.

Why Are We Updating and Revising Our Rules for Evaluating Mental Disorders?

- The current listings for mental disorders for adults (12.00) and children (112.00) will no longer be in effect on July 2, 2003, unless we extend them or revise and promulgate them again, so we must consider now whether to update and revise them.
- Although we have made some changes to the listings since we first published them, including changes to the listings in 2000 (65 FR 50746, corrected at 65 FR 60584), we have not comprehensively revised the adult listings since 1985 and the childhood listings since 1990.
- Many of our rules for adults are based on the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders,* Third Edition (Washington, DC: APA, 1980), also called the DSM–III. That manual has been updated three times over the years since we first published comprehensive revisions of the adult mental disorders listings. Our childhood listings are based on the revision of the Third Edition (the DSM–III–R), which has been updated twice since we first published comprehensive revisions of those listings. We want to update the terms in our listings so they are consistent with current medical terminology. (The current edition is the *Diagnostic and Statistical Manual of Mental Disorders,* Fourth Edition, Text Revision, Washington, DC, American Psychiatric Association, 2000, also called the DSM–IV–TR.)
- There is also new information about mental retardation (MR) that we need to consider. We recently funded research through the National Research Council (NRC) that assessed our current criteria for evaluating MR in the context of state-of-the-art scientific knowledge and clinical practice. In its final report, *Mental Retardation: Determining Eligibility for Social Security Benefits,* the NRC made a number of recommendations to us for revising our rules, and we are considering the recommendations now. If you would like to review the report and send us comments on the recommendations, you can find it at *http://www.nap.edu/books/0309083230/html/*.
- We will also be considering information from other sources, including the following recent documents, for relevance to our policy for evaluating MR:
- Schroeder, Stephen R.; Gerry, Martin; Gertz, Gabrielle; and Velazques, Fiona, *Usage of the Term ''Mental Retardation''; Language, Image, and Public Education* (Kansas University Center on Developmental Disabilities, Center for the Study of Family, Neighborhood and Community Policy, The University of Kansas, June 14, 2002). You can find this report online at *http://www.ssa.gov/disability/MentalRetardationReport.pdf*.
- *Mental Retardation: Definition, Classification, and Systems of Supports,* 10th Edition (American Association on Mental Retardation, Washington, DC, 2002).

What Should You Comment About?

We are interested in any comments and suggestions you have for revising any or all parts of §§ 404.1520a and 416.920a and sections 12.00 and 112.00 of our listings. For example, we are interested in knowing if:

- You have concerns about any of the current listings provisions for adults or children; such as whether you think we should change any of our criteria or whether you think a listing is difficult to use or understand.
- You would like to see our listings include something that they do not include now.

You can also comment about the recommendations in the NRC report and about information in the other two sources we cite above and make any other comments or suggestions to help us improve our rules for evaluating whether adults and children who have mental disorders qualify for benefits.

In addition to your comments about our regulations, we are also interested in any ideas you have about how the disability requirements of the Act and our regulations affect people who have mental disorders and:

- Need access to treatment or rehabilitation,
- Want to work, or
- May benefit from some employment.

For example, we know that many people who have mental disorders might not need benefits from us if they could get treatment before their disorders make them unable to work. Others may be disabled and unable to work, but may not need to remain unemployed, if they receive treatment or other interventions. Many people with permanent disorders can work if they have a supporting safety net (including title II disability benefits and SSI payments). Work can also be therapeutic for some people. Although the Act and our regulations include some access to health care through Medicare and Medicaid, some provision for vocational rehabilitation, and a number of work incentives, these provisions are generally for people who already qualify for benefits under our disability programs.

We are interested in your ideas for how we may be able to improve our programs for people who have mental disorders, especially those who would like to work full-time or part-time with supports. Your ideas can address our existing rules and regulations or suggest changes to the law. We will consider your ideas as we develop the NPRM we intend to publish for public comment, and, where applicable, as part of our long-term planning for the disability program.

Other Information

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define Disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	And you are . . .	Disability means you have a medically determinable impairment(s) as described above and that results in . . .
Title II	an adult or a child	the inability to do any substantial gainful activity (SGA).
Title XVI	a person age 18 or older	the inability to do any SGA.
Title XVI	a person under age 18	marked and severe functional limitations.

What Are the Listings?

The listings are examples of impairments that we consider severe enough to prevent a person from doing any gainful activity, or that result in ''marked and severe functional limitations'' in children seeking SSI payments under title XVI of the Act. Although we publish the listings only in appendix 1 to subpart P of part 404 of our rules, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (*See* §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (*See* §§ 404.1526 and 416.926.)

We use the listings only to decide that people are disabled or that they are still disabled. We will never deny your claim or decide that you no longer qualify for benefits simply because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the ''sequential evaluation process'' that we use to evaluate all disability claims. (*See* §§ 404.1520, 416.920, and 416.924.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Bind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: February 14, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–6278 Filed 3–14–03; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 72, 75, and 90

RIN 1219–AB14; 1219–AB18

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust; Determination of Concentration of Respirable Coal Mine Dust

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rules; notice of public hearings; close of record.

SUMMARY: MSHA will hold public hearings to receive comments on the proposed rule addressing Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust (Plan Verification), and the notice of reopening addressing Determination of Concentration of Respriable Coal Mine Dust (Single Sample), both published in the **Federal Register** on March 6, 2003.

These hearings will be held pursuant to section 101 (30 U.S.C. 811) of the Federal Mine Safety and Health Act of 1977 (Mine Act).

DATES: Post-hearing comments must be received on or before June 4, 2003.

The public hearing dates and locations are listed in the Public Hearings section below under **SUPPLEMENTARY INFORMATION.**

If individuals or organizations wish to make an oral presentation for the record, please submit your request at least 5 days prior to the hearing date.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send us your requests to make oral presentations at the public hearings. Clearly identify your requests and send them (1) By mail to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939; (2) By fax to (202) 693–9441; or (3) By electronic mail to: *comments@msha.gov.*

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations and Variances, MSHA; phone: (202) 693–9440; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 6, 2003, (68 FR 10784), MSHA published a proposed rule in the **Federal Register** that would require mine operators to verify through sampling the effectiveness of the dust control parameters for each mechanized mining unit (MMU) specified in the approved mine ventilation plan. For samples to be valid, the operator would be required to sample on a production shift during which the amount of material produced by an MMU is at or above the verification production level using only the dust control parameters listed in the ventilation plan.

The use of approved powered, air-purifying respirators (PAPRs) and/or verifiable administrative controls would be allowed as a supplemental means of compliance when MSHA determines that all feasible engineering or environmental controls are being used. The proposed rule would also rescind operator compliance sampling in underground coal mines. The use of a personal, continuous dust monitor (PCDM), once developed and approved, could be used by an operator in conjunction with the dust control parameters specified in the mine ventilation plan. The proposed rule would significantly improve miners' health protection by limiting the exposure of individual miners to respirable coal mine dust.

Also, on March 6, 2003 (68 FR 10940), the Secretaries of Labor and Health and Human Services published a notice, ''Determination of Concentration of Respirable Coal Mine Dust (Single Sample),'' reopening the rulemaking record on a July 7, 2000 joint proposed rule that would determine that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. In that proposed rule the Secretaries proposed to rescind a previous 1972 finding by the Secretary of the Interior and the Secretary of Health, Education and Welfare, on the accuracy of single shift sampling (63 FR 42068).

The Agency will hold public hearings to receive further comment on the Plan Verification proposed rule and the Single Sample proposed rule.

II. Public Hearings

The public hearings will begin at 8 a.m. each day and end after the last scheduled speaker.

The public hearings will be held on the following dates and at the following locations:

Date	Location	Phone
May 6, 2003	Holiday Inn at the Meadows 340 Racetrack Road Washington, PA 15301	(724) 222–6200
May 8, 2003	Country Inn & Suites by Carlson 105 Alex Lane Charleston, WV 25304	(304) 925–4300
May 13, 2003	Holiday Inn 4101 U.S. Highway 41 North Evansville, IN 47711	(812) 424–6400
May 15, 2003	Sheraton Suites Lexington 2601 Richmond Road Lexington, KY 40509	(859) 268–0060
May 20, 2003	Holiday Inn Birmingham Airport 5000 Richard Arrington Blvd. Birmingham, AL 35212	(205) 591–6900
May 22, 2003	Holiday Inn Grand Junction 755 Horizon Drive Grand Junction, CO 81506	(970) 243–6790

III. Conduct of Public Hearings

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. You do not have to make a written request to speak. Speakers will speak in the order that they sign in. Any unalloted time will be made available for persons making same-day requests. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Although formal rules of evidence or cross-examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. The transcripts will be made available for public review and can be accessed from MSHA's hompage at *http://www.msha.gov*, Statutory and Regulatory Information, Comments and Hearing Transcripts.

We will accept additional written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments and data submitted to us will be included in the rulemaking record.

IV. Close of Rulemaking Record

To allow for the submission of post-hearing comments, the rulemaking record will remain open until June 4, 2003.

Dated: March 11, 2003.

John R. Caylor,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 03–6220 Filed 3–14–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR 206

RIN 1010–AC59

Geothermal Resources: Proposal To Convene Discussions To Develop Consensus on Royalty Valuation Approaches

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for comments, solicitation of interest.

SUMMARY: In conjunction with the President's National Energy Policy on renewable energy resources, MMS proposes to convene discussions with geothermal producers and other stakeholders to explore the possibility of developing a consensus on geothermal royalty valuation approaches. The discussions will be in the form of public workshops and written comments and will be open for both electrical generation and direct-use valuation. MMS wishes to gauge the extent to which geothermal producers and other stakeholders desire new or modified royalty valuation approaches. Accordingly, MMS at this time requests the following information: Comments on the need for new or modified valuation procedures; an expression of interest in holding workshops to discuss alternative valuation procedures, with the goal of developing a consensus on new or modified approaches; and suggestions for alternatives or modifications to the existing procedures, with the objective of maintaining royalty neutrality.

DATES: You must submit comments on or before April 16, 2003.

ADDRESSES: Address your comments and suggestions regarding this proposal to Paul Knueven, Manager, Records and Information Management Team.

By regular U.S. mail: Center for Excellence, Minerals Revenue Management, Minerals Management Service, P.O. Box 25165, MS 320B2, Denver, Colorado 80225–0165; or

By overnight mail or courier: Center for Excellence, Minerals Revenue Management, Minerals Management Service, Building 85, Room F421, Denver Federal Center, Denver, Colorado 80225–0165; or

By email: MRM.comments@mms.gov. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include ''Attn: Geothermal Proposal 2003'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt at telephone (303) 231–3211, fax (303) 231–3781, email *sharron.gebhardt@mms.gov,* or PO Box 25165, MS 320B2, Denver Federal Center, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION:

I. Background: The current geothermal valuation rules (30 CFR 206.350 *et seq.*) have been in effect since January 1, 1992. One of the primary reasons for promulgating the current rules was to establish procedures to value the increasing volume of geothermal production used by lessees in their own power plants or direct-use facilities; that is, production not subject to sales transactions, or the so-called ''no-sales'' resources. After considering all the comments, MMS adopted the netback procedure for valuing the no-sales electrical generation resources and the alternative fuel method for valuing the no-sales direct-use resources (56 FR 57256, November 8, 1991). These two procedures have now become the predominant methods of valuing geothermal production from Federal leases for royalty purposes.

In response to concerns raised by stakeholders over declining royalties in 1999, MMS reopened the geothermal valuation rules to public comment to consider alternatives to both the netback procedure and the alternative fuel method (Advance Notice of Proposed Rulemaking, 64 FR 45213, August 19, 1999). However, owing to successful resolution of the concerns that prompted this action, as well as no clear consensus from industry to alter the existing rules, MMS withdrew the proposed rulemaking (65 FR 49957, August 16, 2000).

On May 17, 2001, the President released his National Energy Policy (NEP) that emphasized the importance of renewable energy in contributing to the nation's electricity supply. In response to recommendations in the NEP, the Departments of the Interior and Energy co-sponsored a national conference in Washington, DC, on November 28, 2001, to hear testimony on opportunities to expand renewable energy production from public lands. A follow-up conference was held in Palm Springs, California, on February 27, 2002, for more in-depth discussions of the issues raised in November. Few industry representatives at either conference commented on the current Federal geothermal valuation methods. However, those representatives who did speak raised concerns about the effects of royalty valuation on project costs.

II. Proposal and Request: In response to the comments made at the conferences, and to further the NEP's goal of increasing production of renewable energy on public lands, MMS proposes to convene informal discussions among geothermal producers and other stakeholders to explore the possibility of developing a consensus on geothermal royalty valuation approaches for the no-sales resources. The discussions will be in the form of public workshops and written comments. Additionally, valuation of both electrical generation and direct-use resources will be open to discussion.

MMS wishes to gauge the extent to which geothermal producers and other stakeholders desire new or modified royalty valuation approaches. In this regard we request responses to the following questions:

1. Is there a need for new or modified geothermal royalty valuation approaches, especially for the no-sales resources? Why or why not.

2. Are you interested and would you participate in public workshops to discuss alternative valuation procedures, with the goal of developing a consensus on new or modified approaches?

3. What alternatives or modifications to the existing valuation procedures do you propose? (*See* further discussion under ''Goals of Valuation Alternatives'' below.)

Depending on the responses to questions 1 and 2, MMS will schedule public workshops in the spring or summer of 2003. MMS proposes two workshops, one in Denver, Colorado, and the other in either Sacramento, California, or Reno, Nevada. Please indicate your preference. We will consider other locations if there is enough interest.

III. Goals of Valuation Alternatives: The goals of any proposed alternatives to the current valuation procedures, particularly with respect to the no-sales resources, should be threefold. First, the proposed method should derive a value of the resource that reflects its market value. Second, the proposed method should be easy to apply and readily verifiable. Third, the proposed method should not cause a significant royalty reduction for both present and future

production; that is, it should be relatively revenue neutral.

If you propose an alternative valuation method, please describe it in sufficient detail to provide an understanding of its workings and effects. Please use examples where possible.

Dated: February 13, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–6254 Filed 3–14–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

[Docket No. SLSDC 2003–14687]

RIN 2135–AA17

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC will be revising its regulations to reflect the fees and charges charged by the SLSMC in Canada starting in the 2003 navigation season, which are effective only in Canada. The SLSDC also proposes an amendment to increase the minimum charge per lock transited for full or partial transit of the Seaway to be charged by the SLSDC for transit through the U.S. locks of vessels that are not pleasure craft or vessels subject in Canada to the tolls under items 1 and 2 of the Tariff. Since this latter proposed amendment would be of applicability in the United States, comments are invited on only on this. (*See* **SUPPLEMENTARY INFORMATION.**)

DATES: Any party wishing to present views on the proposed amendment may file comments with the Corporation on or before April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. (The Tariff is called the Schedule of Fees and Charges in Canada.) The proposed amendments are described in the following summary.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising § 402.8, ''Schedule of Tolls,'' to reflect the fees and charges charged by the SLSMC in Canada starting in the 2003 navigation season. With one exception, the changes affect the tolls for commercial vessels and are applicable only in Canada as the collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)). Accordingly, no notice and comment is necessary on these amendments. The SLSDC also proposes an amendment to increase the minimum charge per lock transited for full or partial transit of the Seaway to be charged by the SLSDC for transit through the U.S. locks of vessels that are not pleasure craft or vessels subject in Canada to the tolls under items 1 and 2 of the Tariff. Since only this latter proposed amendment would be of applicability in the United States, comments are invited on only on this.

The specific change proposed is to amend § 402.8, ''Schedule of Tolls'', to increase the per lock charge for transit through a U.S. lock from $16.24 to $16.44. This increase is due to higher operating costs at the locks. The footnote to § 402.8 would also be amended to clarify that this charge will be collected by the SLSDC for the U.S. locks in U.S. funds instead of at par.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major Federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that it does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR part 402, Tariff of Tolls, as follows:

PART 402—TARIFF OF TOLLS

1. The authority citation for part 402 would continue to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4), and 988, as amended; 49 CFR 1.52.

2. Section 402.8 would be revised to read as follows:

§ 402.8 Schedule of tolls.

Item—Description of charges	Rate ($)—Montreal to or from Lake Ontario (5 locks)	Rate ($)—Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
1. Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		
(1) A charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement in the United States or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time.	0.0894	0.1453
(2) A charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:		
(a) Bulk cargo	0.9275	0.6145
(b) General cargo	2.2348	0.9834
(c) Steel slab	2.0225	0.7040
(d) Containerized cargo	0.9275	0.6145
(e) Government aid cargo	N/a	N/a
(f) Grain	0.5698	0.6145
(g) Coal	0.5475	0.6145
(3) A charge per passenger per lock	1.3185	1.3185
(4) A charge per lock for transit of the Welland Canal in either direction by cargo ships:		
(a) Loaded	N/a	490.79
(b) In ballast	N/a	362.62
2. Subject to item 3, for partial transit of the Seaway.	20 per cent per lock of the applicable charge under items 1 (1) and (2) plus the applicable charge under items 1 (3) and (4).	13 percent per lock of the applicable charge under items 1 (1) and (2) plus the applicable charge under items 1 (3) and (4).
Minimum charge per ship per lock	16.44	16.44
3. Transited for full or partial transit of the Seaway		
4. A rebate applicable for the 2003 navigation season to the rates of item 1 to 3.	Rebate of 0%	Rebate of 0%.
5. A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable Federal taxes [1].	20.00	20.00

[1] The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $20 U.S. or $30 Canadian per lock. The applicable charge under item 3 at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The other amounts are in Canadian dollars and are for the Canadian share of tolls. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

Issued in Washington, DC on March 12, 2003.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 03–6347 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2002–0031; FRL–7465–7]

RIN 2060–AE76

National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On October 7, 1997, the EPA issued national emission standards for primary aluminum reduction plants under section 112 of the Clean Air Act (CAA). This proposal would amend the existing rule by revising the emission limits for polycyclic organic matter applicable to one potline subcategory. The proposed amendments would also revise the compliance provisions by clarifying the dates by which all plants must meet the rule requirements and adding provisions specifying the time allowed to demonstrate initial compliance for a new or reconstructed potline, anode bake furnace, or pitch storage tank as well as an existing potline or anode bake furnace that has been shutdown and subsequently restarted. We are proposing these amendments to reduce compliance uncertainties and improve understanding of the final rule requirements.

DATES: *Comments.* Submit comments on or before May 16, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by April 7, 2003, a public hearing will be held on April 14, 2003.

ADDRESSES: *Comments.* Comments must be submitted by mail (in duplicate, if possible) to: Primary Aluminum NESHAP Docket, EPA Docket Center (Air Docket), U.S. EPA West, Mailcode 6102T, Room B–108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0031. Comments may also be submitted electronically, by hand delivery, or courier. See **Supplementary Information** for further information on how to submit comments. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

Public Hearing. If a public hearing is requested, it will be held at the new EPA facility complex in Research Triangle Park, NC at 10 a.m. Persons interested in attending the hearing or wishing to present oral testimony should notify Dorothy Apple, Policy, Planning and Standards Group (MD–C439–04), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–4487 at least 2 days in advance of the hearing.

FOR FURTHER INFORMATION CONTACT: Steve Fruh, Policy, Planning, and Standards Group (MD–C439–04), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2837, electronic mail address, *fruh.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially affected by this action include:

Category	NAICS [1]	Examples of regulated entities
Industry	331312	Establishments primarily engaged in producing primary aluminum by electrolytically reducing alumina.
Federal government.	.....	Not affected.
State/local/tribal government.	.....	Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.840 of the national emission standards for primary aluminum reduction plants. If you have any questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0031. The official public docket is the collection of materials that is available for public viewing in the Primary Aluminum NESHAP Docket at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20004. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the reading room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility previously identified in this document.

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

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

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

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

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search'' and then key in Docket ID No. OAR–2002–0031. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *air-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2002–0031. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail

address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

By Mail. Send your comments (in duplicate, if possible) to: Primary Aluminum NESHAP Docket, EPA Docket Center (Air Docket), U.S. EPA West, Mailcode 6102T, Room B–108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0031.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2002–0031. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document.

By Facsimile. Fax your comments to: (202) 566–1741, Attention Primary Aluminum NESHAP Docket, Docket ID OAR–2002–0031.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer, Mailcode C404–02, U.S. EPA, Research Triangle Park, NC 27709, Attention Docket ID No. OAR–2002–0031. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Summary of Proposed Amendments
A. What is the proposed POM emission limitation for VSS2 potlines?
B. What are the proposed changes to the compliance provisions?
III. Rationale for the Proposed Amendments
A. Why are we proposing to revise the POM emission limitation for VSS2 potlines?
B. Why are we proposing to revise the compliance provisions?
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

I. Background

Section 112 of the CAA establishes a technology-based program to reduce stationary source emissions of hazardous air pollutants (HAP) from major sources. Major sources of HAP are those that have the potential to emit greater than 10 tons/year of any one HAP or 25 tons/year of any combination of HAP. The CAA requires the national emission standards to reflect the maximum degree of reduction in HAP emissions that is achievable. This level of control is commonly known as the maximum achievable control technology (MACT).

On October 7, 1997, the EPA published final standards (62 FR 52384) for the control of HAP from primary aluminum reduction plants (40 CFR part 63, subpart LL). The rule contains emission limitations and standards applicable to total fluorides (TF), which is a surrogate for hydrogen fluoride, and polycyclic organic matter (POM). These limits apply to each new or existing potline, paste production plant, and anode bake furnace; they also apply to each new pitch storage tank associated with primary aluminum production and located at a major source.

After promulgation, two significant compliance-related issues were identified by the industry. The concerns at issue are:

- Review of the POM emission limit for the vertical stud Soderberg–2 (VSS2) subcategory of existing potlines, based on the availability of additional data; and
- The date by which the owner or operator must conduct a performance test to demonstrate initial compliance for an existing potline or anode bake furnace that has been shut down and subsequently restarted.

We received a petition from the industry requesting a proposed rulemaking to revise the POM emission limits for VSS2 potlines. As part of the request, the petition included additional test data (collected from 1999 through 2000) for all VSS2 potlines. We agreed to analyze the additional data and evaluate the achievability of the existing MACT limit for POM.

II. Summary of Proposed Amendments

A. What Is the Proposed POM Emission Limitation for VSS2 Potlines?

The VSS2 subcategory includes all existing vertical stud Soderberg potlines. Paragraph (a)(2)(i) in § 63.843 of the existing rule limits POM emissions from each existing VSS2 potline to 1.8 kilograms (kg) per Megagram (Mg) or 3.6 pounds per ton (lb/ton) of aluminum produced for each potline. The proposed amendments would change the POM limit to 2.85 kg/Mg (5.7 lb/ton) of aluminum produced. Table 2 of subpart LL gives the POM emission limits for potlines at those plants that comply by emissions averaging. The proposed POM emission averaging limits for VSS2 potlines are:

QUARTERLY POM LIMIT (LB/TON)
[For a given number of potlines]

2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
5.0	4.7	4.5	4.4	4.3	4.2	4.1

A justification for the proposed revised limits is discussed further in section III.A of this document.

B. What Are the Proposed Changes to the Compliance Provisions?

Section 63.847(a) of the rule currently requires the owner or operator to demonstrate initial compliance by specified dates. The proposed amendments would clarify the introductory text of paragraph (a) by replacing the phrase ''demonstrate initial compliance'' with the word ''comply.'' This proposed change distinguishes the compliance date of the rule from the date by which a plant must actually conduct their initial performance test.

Section 63.847(c) of the rule currently requires the owner or operator to conduct an initial performance test during the first month following the applicable compliance date. For a new or reconstructed affected source, we are proposing that the owner or operator conduct the initial performance test by:

- The 180th day after startup for a potline (or potroom group). The 180-day period would start when the first pot in a potline (or potroom group) is energized.
- The 45th day after startup for an anode bake furnace. The 45-day period would start at the beginning of the first anode bake cycle.
- The 30th day after startup for a pitch storage tank (if the owner or operator elects to conduct an initial performance test rather than a design evaluation). Today's proposed amendments would not change the timing of the initial performance test for existing affected sources (*i.e.*, the initial performance test must still be conducted during the first month after the compliance date).

We are also proposing to add performance test dates following startup of an existing potline or anode bake furnace that was shut down at the time compliance would have otherwise been required and subsequently restarted. Again, we are proposing 180 days after startup for a potline (or potroom group) and 45 days for an anode bake furnace. In addition, we are proposing to amend the notification requirements in § 63.850(a) of the rule to require advance notice to the Administrator at least 30 days before restart of an affected source that has been shut down.

Appendix A to subpart LL shows the requirements in the General Provisions (40 CFR part 63, subpart A) that do not apply to primary aluminum reduction plants. We are also proposing to amend appendix A to reflect the changes in performance test dates and the new notification requirement. A detailed explanation for the proposed changes to the compliance provisions follows in section III.B of this document.

III. Rationale for the Proposed Amendments

A. Why Are We Proposing To Revise the POM Emission Limitation for VSS2 Potlines?

We received a petition to revise the POM limit for VSS2 potlines, which the petitioner said was not achievable. The petitioner believes that the limited data used to develop the original emission limit did not reflect the normal variability of VSS2 potlines. The petitioner submitted additional test data and requested that we reevaluate the achievability of the original emission limit. We agreed to consider the petition and to analyze the additional data.

When we promulgated the current rule, we based the POM limit for VSS2 potlines on data that consisted of seven performance tests from two potlines. We used data for only two of the potlines in this subcategory because that was the only data available for calculating the MACT floor and determining the MACT level of control. At that time, we assumed that these tests for two potlines represented the performance level achievable by the best performing VSS2 potlines. This assumption was based on the fact that VSS2 potlines are all of the same design, operate in the same manner, use the same feed materials, and employ the same equipment and work practices to control emissions. We had no reason to believe that the original POM limit associated with MACT could not be achieved by the affected sources in the subcategory.

We have subsequently obtained data for the five best-performing potlines in the subcategory from additional testing performed during 1999 and 2000. The database consists of information from 88 runs, which is equivalent to 29 performance tests, because one test is the average of three runs. The new data cover all months of the year, which means that seasonal variations that may affect emission control performance (such as changes in ventilation rates) are included. The original data covered a period of only 4 months, which does not include seasonal variations and does not capture the true variability over time. The expanded database is far superior to the original database and more representative of the VSS2 subcategory.

The expanded database indicates that the two potlines we used to develop the original emission limit are actually the two best-performing potlines in the subcategory. Moreover, the data indicate that the MACT limit in the current rule is not achievable even by these two potlines on a continuing basis. We have revised the MACT floor based on the expanded database which is now available. The revised MACT floor level of control is 5.7 lb/ton of aluminum instead of 3.6 lb/ton. We derived this new MACT floor level of control from the currently available data using the same statistical methodology which we employed in the original rulemaking.

Since the data we originally utilized to establish an emission standard for this subcategory indicate that lower emissions have been attained in some circumstances, we also evaluated the new data to determine whether a level of control beyond the revised MACT floor would be achievable by the sources in this subcategory. We examined the factors affecting the operation of the potlines and the techniques used to control emissions. The VSS2 potlines are all designed and operated in the same manner and use the same raw materials. The same emission controls and work practices are also applied to each of the potlines. We have not identified any obvious reasons for the variability in performance other than the normal variability associated with processes, testing procedures, and temporal variations. In fact, the performance of the various potlines from test to test overlaps, and although there are small differences in average performance, the overall distributions of performance for the VSS2 potlines are similar.

We have identified no changes in processes, work practices, or control strategies that could be implemented to improve the performance of an individual potline. Consequently, we believe it is not practicable for sources in the VSS2 subcategory to achieve levels of control beyond the MACT floor on a consistent basis. Therefore, we are proposing to revise the emission limit to 5.7 lb/ton, to represent the MACT level of control for VSS2 potlines.

The petitioner had requested that we revise the emission limit to 7.2 lb/ton; however, our analysis indicates that the revised emission limit should be 5.7 lb/ton. We discussed with the petitioner what test data should be used to assess emission control performance and what procedures should be used to analyze the data. Our goal was to be consistent with the approach used for the original limit and also for limits developed for other subcategories of potlines. Based on these discussions, we believe that the petitioner understands and accepts our rationale for the new emission limit we are proposing. Although this numerical emission limit differs from the limit

proposed by the petitioner, we construe the issuance of this proposal as a decision to grant the petition.

B. Why Are We Proposing To Amend the Compliance Provisions?

Section 63.847 of the existing rule establishes compliance provisions for affected sources. Section 63.847(a) gives compliance dates but requires the owner or operator to demonstrate initial compliance by the specified dates. Upon review, we believe the phrase ''demonstrate initial performance'' could cause misunderstanding of the rule requirements. For example, regulatory authorities could interpret this provision to require a new or reconstructed affected source to demonstrate initial compliance (*i.e.*, conduct the performance test) at startup. For this reason, we are proposing to revise the introductory text in paragraph (a) to clearly state that ''the owner or operator of a primary aluminum plant must comply with the requirements of this subpart by'' the specified dates in the rule. This clarification would not change any of the compliance dates in the existing rule.

Section 63.847(c) of the existing rule requires the owner or operator to demonstrate initial compliance by conducting a performance test for a potline or anode bake furnace ''during the first month following the compliance date.'' The rule does not address the questions of either when initial compliance must be demonstrated for a new or reconstructed affected source or for an existing affected source that is shut down and subsequently restarted.

Since promulgation of the rule, nearly all primary aluminum plants in northwestern States shut down their potlines as a result of the short supply and high cost of electric power in that region. Some plants may curtail operations through 2003. As the electrical power crisis has eased, primary aluminum plants have begun returning these potlines and anode bake furnaces to active service. In some cases, regulatory authorities have interpreted the rule to require that plants conduct the performance test for these potlines and anode bake furnaces within the first month after startup. While 30 days is sufficient time to conduct a performance test for an existing potline or anode bake furnace which is currently in operation, we believe that 30 days is not sufficient time for startup conditions. A 30-day period would require plants to demonstrate compliance before the startup of a potline could feasibly be completed and to conduct testing under conditions that are not representative of normal operation.

Aluminum potlines are unique emission sources in the sense that the affected source consists of numerous (100 to 150 or more) smelting cells. At the beginning of startup, a small number of cells are charged with raw materials. When they become functional, they provide a molten liquid bath that is used to start up additional cells. All of the cells cannot be started and stabilized simultaneously because the electrolytic chemical process requires a stable equilibrium between the molten bath and cell operating temperatures. Until equilibrium is achieved, the emission rates from the potline are not representative of normal operation. For these reasons, the startup, stabilization, and testing of an existing potline after a long-term shutdown may require as long as 6 months to complete.

Therefore, we are proposing additional time for initial startup of new or reconstructed potlines and startup of existing potlines that have been shut down for long periods. The additional time proposed (180 days) is reasonable and is consistent with § 63.7 of the General Provisions (40 CFR part 63, subpart A), which allows up to 180 days after startup for existing, new, or reconstructed affected sources to come online, complete performance tests, and establish parametric monitoring limits.

Anode bake furnaces do not have the startup complexities associated with the dozens of cells in a potline. Bake furnaces are restarted a few sections at a time and require several days rather than several weeks to stabilize. For this reason, we are proposing to allow 45 days after initial startup of a new or reconstructed anode bake furnace or startup of an existing anode bake furnace that was shut down for a long period and subsequently restarted.

We are proposing that the 180-day period for startup of a potline begin when the first pot is energized. For an anode bake furnace, the 45-day period would start at the beginning of the first anode bake furnace cycle. This approach is consistent with the definition of *startup* in the General Provisions, ''* * * the setting in operation of an affected source for any purpose.''

Existing paste production plants also may have been shut down along with potlines and anode bake furnaces. However, no performance test or other type of compliance demonstration is required for paste plants. Initial compliance with the equipment standard for this affected source is based on inspections and review of their records to ensure that the proper equipment has been installed. Under the rule, unless a compliance extension is granted, an existing paste production plant must comply with the rule by the required date. A new or reconstructed paste production plant must meet the rule requirements upon startup; this also applies if the plant has been shut down and subsequently restarted. However, the owner or operator is required to provide advance notice of the startup.

Section 63.847(g) of the rule allows the owner or operator to demonstrate initial compliance with the requirements for new pitch storage tanks either by conducting a performance test or by a design evaluation. The proposed amendments would require the owner or operator to demonstrate initial compliance within 30 days of the compliance date if the owner or operator elects to conduct a performance test. We are proposing a 30-day period because we believe this is adequate time to complete the emission test.

During startup, the plant must meet all of the EPA requirements for maintaining control equipment and minimizing emissions as much as possible during the startup period. We have not added specific requirements to the rule because this is already required by the operation and maintenance requirements in § 63.6(e) of the General Provisions. Section 63.6(e)(3) also requires the owner or operator to operate and maintain the affected source and control equipment according to the procedures in the startup, shutdown, and malfunction plan.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the proposed amendments are not a ''significant regulatory action'' under the terms of Executive Order 12866 and are therefore not subject to OMB review.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements in the 1997 NESHAP for primary aluminum reduction plants under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0360. A copy of information collection request (ICR) No. 1767.02 may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

Today's proposed rule amendments will have no impact on the information collection burden estimates made previously. The proposed requirement for advance notification of startup for an existing affected source that has been shut down has no impact because similar advance notification is already required for a new or reconstructed affected source. Consequently, the ICR has not been revised.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The U.S. Small Business Administration defines a small entity in this industry sector as: (1) A firm having no more than 1,000 employees; (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose any requirements on small entities. None of the plants in this industry is classified as a small entity.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed amendments contain no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments. The EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' These proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the proposed amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

These proposed amendments will not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No tribal governments own facilities subject to the NESHAP. Thus, Executive Order 13175 does not apply to these proposed amendments.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These proposed amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

These proposed amendments are not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C 272 note), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Primary aluminum reduction plants, Reporting and recordkeeping requirements.

Dated: March 6, 2003.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart LL—[AMENDED]

2. Section 63.843 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 63.843 Emission limits for existing sources.

(a) * * *

(2) * * *

(iii) 2.85 kg/Mg (5.7 lb/ton) of aluminum produced for each VSS2 potline.

* * * * *

3. Section 63.847 is amended by:

a. Revising the introductory text of paragraph (a); and

b. Revising paragraph (c).

The revisions read as follows:

§ 63.847 Compliance provisions.

(a) *Compliance dates.* The owner or operator of a primary aluminum plant must comply with the requirements of this subpart by:

* * * * *

(c) *Performance test dates.* Following approval of the site-specific test plan, the owner or operator must conduct a performance test to demonstrate initial compliance according to the procedures in paragraph (d) of this section. If a performance test has been conducted on the primary control system for potlines or for the anode bake furnace within the 12 months prior to the compliance date, the results of that performance test may be used to demonstrate initial compliance. The owner or operator must conduct the performance test:

(1) During the first month following the compliance date for an existing potline (or potroom group) or anode bake furnace;

(2) By the date determined according to the requirements in paragraph (c)(2)(i), (ii), or (iii) of this section for a new or reconstructed potline, anode bake furnace, or pitch storage tank (for which the owner or operator elects to conduct an initial performance test):

(i) By the 180th day following startup for a potline or potroom group. The 180-day period starts when the first pot in a potline or potroom group is energized.

(ii) By the 45th day following startup for an anode bake furnace. The 45-day period starts at the beginning of the first anode bake cycle.

(iii) By the 30th day following startup for a pitch storage tank. The 30-day period starts when the tank is first used to store pitch.

(3) By the date determined according to the requirements in paragraph (c)(3)(i) or (ii) of this section for an existing potline or anode bake furnace that was shut down at the time compliance would have otherwise been required and is subsequently restarted:

(i) By the 180th day following startup for a potline or potroom group. The 180-day period starts when the first pot in a potline or potroom group is energized.

(ii) By the 45th day following startup for an anode bake furnace. The 45-day period starts at the beginning of the first anode bake cycle.

* * * * *

4. Section 63.850 is amended by removing the word ''and'' at the end of paragraph (a)(7) and removing the period at the end of paragraph (a)(8) and replacing it with ''; and'' and by adding new paragraph (a)(9) to read as follows:

§ 63.850 Notification, reporting, and recordkeeping requirements.

(a) * * *

(9) One-time notification of startup of an existing potline or potroom group, anode bake furnace, or paste production plant that was shut down for a long period and subsequently restarted. The owner or operator must provide written notice to the Administrator at least 30 days before the startup.

* * * * *

5. Table 2 to subpart LL is amended by revising the entry for ''VSS2 potlines'' to read as follows:

TABLE 2 TO SUBPART LL.—POTLINE POM LIMITS FOR EMISSION AVERAGING

Type	Quarterly POM limit (lb/ton) [for given number of potlines]						
	2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
*	*	*	*	*	*	*	*
VSS2 ...	5.0	4.7	4.5	4.4	4.3	4.2	4.1

6. Appendix A to subpart LL is amended by:

a. Revising the title of Appendix A;

b. Adding a new entry for § 63.7(a)(2)(ii) and (iii) in numerical order; and

c. Adding a new entry for § 63.9(b)(1)–(b)(5) in numerical order.

The revisions and additions read as follows:

APPENDIX A TO SUBPART LL.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A)

General provisioins citation	Requirement	Applies to subpart LL	Comment
*	*	*	*
63.7(a)(2) (ii) and (iii)	Performance testing requirements.	No	Subpart LL specifies performance test dates.
*	*	*	*
63.9(b) (1)–(b)(5)	Initial notifications	Yes, except as noted in ''comment'' column.	§ 63.850(a)(9) includes requirement for startup of an existing affected source that has been shut down.
*	*	*	*

[FR Doc. 03–6303 Filed 3–14–03; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[DA 03–622; RM–10666]

National Translation Association's Petition for Rulemaking To Establish a Rural Translator Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; petition for rulemaking.

SUMMARY: The Media Bureau (''Bureau'') seeks comment on a proposal to establish a ''Rural Translator Service.'' The National Translator Association asserts that implementation of this service will help to ensure the delivery of broadcast services to rural areas. According to National Translator Association, the Commission's goals of transitioning broadcast television from analog to digital service, providing for availability and attendant benefits of high definition television, and providing for free over-the-air broadcast television, both commercial and non-commercial, can only be accomplished in rural areas by the use of translator stations.

DATES: Comments due on or before May 16, 2003. Reply comments due on or before June 16, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Brad Lerner (202) 418–7066, Video Division, Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice, RM–10666, released March 6, 2003. The full text of this Public Notice is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY B402, Washington, DC 20554.

Synopsis of Public Notice

The National Translator Association (''NTA'') seeks to establish a ''Rural Translator Service.'' Among other things, NTA proposes that in order for an applicant to apply in this ''Rural Translator Service,'' it must propose a translator that can provide a signal to an area in which its residents are unable to receive at least four ''free'' primary over-the-air television signals, based on a combination of predictive methods. For areas outside the predicted Grade B contour of a television station, the NTA would presume that no service is received. For areas within a predicted Grade B contour, applicants would be permitted to use the ''Longley Rice Terrain Dependant Population Count'' and the methods prescribed in the FCC Office of Engineering and Technology Bulletin 69 (''OET 69'') to show that actual service is not available. NTA also proposes to limit the effective radiated power of these stations to 1 kilowatt for UHF Translators and 100 watts for VHF Translators. The NTA proposes that applications for stations in the Rural Translator Service be processed on an expedited basis using a ''one-day rolling window or day-by-day cutoff procedures for mutually exclusive applications'' in lieu of the Commission's filing window procedures for the Low Power Television Service.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 16, 2003, and reply comments on or before June 16, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper

copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–6274 Filed 3–14–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AI39

Migratory Bird Permits; Regulations for Double-Crested Cormorant Management

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: Increasing populations of the double-crested cormorant (*Phalacrocorax auritus*) have caused biological and socioeconomic resource conflicts. In November 2001, the U.S. Fish and Wildlife Service (Service or we) completed a draft Environmental Impact Statement (DEIS) on double-crested cormorant management. The proposed action in the DEIS was Alternative D. This action entailed: revising the existing aquaculture depredation order to allow winter roost control; establishing a new depredation order to protect public resources from cormorant damages; and revising Director's Order 27 to allow lethal take of double-crested cormorants at public fish hatcheries.

DATES: Comments on this proposed rule will be accepted through May 16, 2003.

Comments on the information collection aspects of this proposed rule will be considered if received by May 16, 2003. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, your comments should be received by OMB by April 16, 2003.

ADDRESSES: Comments can be mailed to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, Virginia 22203; or e-mailed to *cormorants@fws.gov;* or faxed to 703/358–2272.

Comments specific to the information collection aspects of the proposed rule should be mailed to Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503, and Anissa Craghead, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 222, Arlington, VA 22203; *anissa_craghead@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

The Service is the Federal agency with primary responsibility for managing migratory birds. Our authority is based on the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and Russia. The double-crested cormorant (DCCO) is federally protected under the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States–Mexico, as amended, 50 Stat. 1311, T.S. No. 912. The take of DCCOs is strictly prohibited except as authorized by regulations implementing the MBTA.

The authority for the proposed regulations set forth in this rule is the MBTA, which authorizes the Secretary, subject to the provisions of, and in order to carry out the purposes of, the applicable conventions, to determine when, if at all, and by what means it is compatible with the terms of the conventions to allow the killing of migratory birds. DCCOs are covered under the terms of the Convention for the Protection of Migratory Birds and Game Mammals with Mexico. The DCCO is a non-game, non-insectivorous bird for which the applicable treaty does not impose specific prohibitions or requirements other than the overall purpose of protection so as not to be exterminated and to permit rational utilization for sport, food, commerce, and industry. In the DEIS for this proposed action, the Service has considered all of the statutory factors as well as compatibility with the provisions of the convention with Mexico. The Russian convention (Convention between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environment, concluded November 19, 1976) provides an authority to cover DCCOs even though not listed in the Appendix. To the extent we choose to apply the convention, it contains an exception from the prohibitions that may be made for the protection against injury to persons or property. We note, therefore, that there is no conflict between our responsibility for managing migratory birds and our proposed action.

Regulations governing the issuance of permits for migratory birds are contained in title 50, Code of Federal Regulations, parts 13 and 21. Regulations in subpart D of part 21 deal

specifically with the control of depredating birds. Section 21.41 outlines procedures for issuing depredation permits. Sections 21.43 through 21.47 deal with special depredation orders for specific species of migratory birds to address particular problems in specific geographical areas. While the Service has the primary responsibility for regulating DCCO management, on-the-ground management activities are largely carried out by entities such as State fish and wildlife agencies, wildlife damage control agencies such as the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS/WS) and, in some cases, by private citizens.

This proposed rule is directly related to the DEIS on DCCO management that was completed in November 2001 and made available for public comment via a **Federal Register** notice of December 3, 2001 (66 FR 60218). Copies of the DEIS may be obtained by writing us (see **ADDRESSES**) or by downloading it from our Web site at *http://migratorybirds.fws.gov/issues/cormorant/deis/deis.html.* The Wires *et al.* report ''Status of the double-crested cormorant in North America,'' mentioned in a **Federal Register** notice of November 8, 1999 (64 FR 60826), may also be downloaded at *http://migratorybirds.fws.gov/issues/cormorant/status.pdf.*

APHIS/WS was a cooperating agency in the development of the DEIS. Additionally, States and Canadian provinces were involved through the International Association of Fish and Wildlife Agencies. The DEIS examined six management alternatives for addressing conflicts with DCCOs: (A) No action, (B) Nonlethal control, (C) Increased local damage control, (D) Public resource depredation order, (E) Regional population reduction, and (F) Regulated hunting. The proposed action/preferred alternative in the DEIS was alternative D. This alternative is intended to enhance the ability of resource agencies to deal with immediate, local concerns by giving them more management flexibility. To address DCCO populations from a broader and more coordinated perspective, a population objectives approach will need to be considered over the longterm. In the future, if supported by biological evidence and appropriate monitoring resources, the Service may authorize management that focuses on setting and achieving regional population goals. At that time, a cormorant management plan will be developed. Until then, our strategy will continue to focus on alleviating localized damages.

In addition to establishing a public resource depredation order, alternative D would make two other changes to the current management program. It would also revise 50 CFR 21.47, the depredation order for double-crested cormorants at aquaculture facilities, and revise Director's Order 27. The establishment of the public resource depredation order and the revision of the aquaculture depredation order require us to amend the regulations in 50 CFR, part 21, governing the issuance of migratory bird permits. This proposed rule outlines those amendments, clarifying the proposed action presented in the DEIS.

The Service received many comments as a result of the public review of the DEIS. In consideration of these comments, we are proposing to make some modifications to the proposed action. A description of these changes follows. In this proposed rule, the public resource depredation order will: (1) Apply to 24 States (those States where Interior and Southern DCCO populations present the greatest risk to public resources); (2) apply specifically to State fish and wildlife agencies, federally recognized Tribes, and APHIS/WS, rather than to ''State, Tribal, and Federal land management agencies'' as stated in the DEIS, in order to streamline cormorant control activities and give more responsibility to APHIS/WS, the primary Federal agency responsible for alleviating wildlife damage conflicts; (3) apply only to land and freshwater (not saltwater), since all of the documented fisheries impacts occur in freshwater; and (4) allow egg oiling, egg and nest destruction, cervical dislocation, shooting, and CO_2 asphyxiation instead of ''shooting, egg oiling or destruction, and nest destruction.'' Although we do not believe these modifications will result in significant changes to our analysis in the DEIS, we will address any changes to our impact analysis, as appropriate, in the Final EIS.

Population Status of the Double-Crested Cormorant

The information in this section is derived from the DEIS (to obtain a copy, see **ADDRESSES**). The DCCO is the most abundant and widespread of six native species of cormorants that occur in the United States. Population increase and range expansion in recent years have followed significant declines in DCCO numbers that occurred in the 1960s and early 1970s, largely due to negative reproductive effects (*e.g.*, eggshell thinning) associated with organochlorine contaminants such as DDT (Postupalsky 1978, Weseloh *et al.* 1983, Weseloh *et al.* 1995). Factors contributing to the resurgence of DCCO populations include reduced levels of environmental contaminants, increased food availability in breeding and wintering areas, and reduced human persecution associated with MBTA protection (Ludwig 1984, Vermeer and Rankin 1984, Price and Weseloh 1986, Fox and Weseloh 1987, Hobson *et al.* 1989, Weseloh *et al.* 1995, Wires *et al.* 2001). Tyson *et al.* (1999) conservatively estimated the total population of DCCOs in the United States and Canada at greater than 1 million birds, including breeding and nonbreeding individuals, but probably closer to 2 million. We estimate that the current continental population of DCCOs is approximately 2 million birds. Although historical information about DCCO populations is limited (Hatch 1995), we can conclude, based on available estimates of past breeding numbers, that population levels are greater now than in the past. The long term sustainability of DCCO populations is unlikely to be affected by the management actions authorized in this proposed rule. This will be ensured by regular resource monitoring activities as described in the EIS.

According to Breeding Bird Survey (BBS) data, DCCOs in the United States increased at a statistically significant average rate of 7.9 percent per year between 1975 and 2000 (Sauer *et al.* 2001). Within this period, growth rates of regional populations varied substantially. Five different breeding populations are generally recognized: Atlantic, Interior, Southern, and Pacific Coast and Alaska. Recent population expansion has blurred the boundaries for the Interior, Atlantic, and Southern populations (Hatch and Weseloh 1999, Wires *et al.* 2001).

Atlantic. Approximately 23 percent of the DCCO breeding population is found in the Atlantic region (Tyson *et al.* 1999), which extends along the Atlantic coast from southern Newfoundland to New York City and Long Island (Wires *et al.* 2001). Atlantic DCCOs are migratory and occur with smaller numbers of great cormorants (*Phalacrocorax carbo*). From the early 1970s to the early 1990s, the Atlantic population increased from about 25,000 pairs to 96,000 pairs (Hatch 1995). While this population declined by 6.5 percent overall in the early to mid-1990s, some colonies were still increasing during this period. The most recent estimate of the Atlantic population is ≥85,510 breeding pairs (Tyson *et al.* 1999).

Interior. Nearly 70 percent of the DCCO breeding population is found in the Interior region (Tyson *et al.* 1999), which reaches across the prairie provinces of Canada, includes the Canadian and U.S. Great Lakes, and extends west of Minnesota to southwestern Idaho (Wires *et al.* 2001). Interior DCCOs are strongly migratory and, in the breeding months, are concentrated in the northern prairies, with the Canadian province of Manitoba hosting the largest number of breeding DCCOs in North America (Wires *et al.* 2001). Additionally, large numbers of Interior DCCOs nest on or around the Great Lakes (Hatch 1995, Wires *et al.* 2001). Since 1970, when 89 nests were counted during a severe pesticide induced population decline (Weseloh *et al.* 1995), DCCO numbers have increased rapidly in the Great Lakes, with breeding surveys in 2000 estimating 115,000 nests there (Weseloh *et al.* 2002). From 1990 to 1997, the overall growth rate in the Interior region was estimated at 6 percent with the most dramatic increases occurring in Ontario, Michigan, and Wisconsin. The Interior population (including Canada) numbers ≥256,212 breeding pairs (Tyson *et al.* 1999).

Southern. The Southern region includes Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas (Wires *et al.* 2001). Most DCCOs in this region are winter migrants from the Interior and Atlantic regions; the number of these wintering birds has increased dramatically in recent years (Dolbeer 1991, Glahn and Stickley 1995, Jackson and Jackson 1995, Glahn *et al.* 2000). Surveys conducted by APHIS/WS biologists suggest that winter numbers in the delta region of Mississippi have increased by nearly 225 percent since the early 1990s (over 73,000 DCCOs were counted in the 2001–2002 winter surveys; G. Ellis, unpubl. data). Breeding DCCOs in this region are also on the rise, with some nesting occurrences representing first records and others recolonizations (Wires *et al.* 2001). Today, approximately 4 percent of the DCCO breeding population occurs in this region, numbering >13,604 breeding pairs with an estimated annual growth rate of 2.6 percent (Tyson *et al.* 1999).

Pacific Coast and Alaska. Approximately 5 percent of the DCCO breeding population is found along the Pacific coast (Tyson *et al.* 1999), which extends from Alaska down the coastline to Mexico and includes some inland colonies (Wires *et al.* 2001). Numbers were most recently estimated at ≥17,084 breeding pairs with approximately 12 percent in Alaska (Tyson *et al.* 1999). Along the coast from British Columbia to Mexico, past estimates numbered nearly 22,000 nesting pairs (Hatch 1995). However, significant changes occurred in the 1990s, with large increases documented at the Columbia River estuary (Oregon) and inland at the Salton Sea (California) and sharp declines observed in coastal British Columbia and Washington (Wires *et al.* 2001). Tyson *et al.* (1999) estimated the annual rate of change of the Pacific Coast DCCO population (including Alaska) at −7.9 percent.

Impacts of Double-Crested Cormorants on Public Resources

Fish. Effects of DCCO predation on a given fish population are dependent on variables including the number of birds present, the time of year at which predation is occurring, prey species composition, and physical characteristics such as depth or proximity to shore (which affect prey accessibility). Environmental and human-induced factors that affect fish populations can be classified as biological (*e.g.,* overexploitation, exotic species, etc.), chemical (*e.g.,* water quality, nutrient and contaminant loading, etc.), or physical (*e.g.,* dredging, dam construction, hydropower operation, siltation, etc.). Such activities may lead to changes in species density, diversity, or composition due to direct effects on year-class strength, recruitment, spawning success, spawning or nursery habitat, or competition (USFWS 1995). Based on a review of the DCCO diet literature, commercially and recreationally valuable fish do not generally make up a large proportion of DCCO diet but there are localized exceptions (Trapp *et al.* 1999, Wires *et al.* 2001). While increasing DCCO populations do not appear to be causing widespread negative impacts to fish populations, there is evidence that DCCO predation has had a detrimental effect in some areas. For example, research efforts in New York's Oneida Lake and eastern Lake Ontario have examined data on DCCO diets and fish populations and concluded that cormorant predation is likely a significant source of fish mortality negatively impacting recreational catch (Adams 1999, Rudstam 2000, Lantry *et al.* 1999).

Literature on DCCO feeding habits and fisheries impacts has shown that: (1) DCCOs are a generalist fish predator with prey selection varying opportunistically throughout the seasons and among locations; (2) present composition of cormorant diet has been strongly influenced by human-induced changes in the natural balance of fish stocks; (3) an impact can occur at different scales, such that ecological effects on fish populations are not necessarily the same as effects on recreational or commercial catches, or vice versa; (4) cormorant impact is generally most significant in artificial, highly managed situations; (5) cormorant diet typically consists of low percentages of sport fish, but conclusions about fisheries impacts cannot be based on diet studies alone; and (6) conflicts with cormorants will vary locally since ecological conditions vary locally.

Other Birds. Weseloh *et al.* (2002) observed that nesting DCCOs could impact other colonial waterbirds in at least three ways: by DCCO presence limiting nest site availability, by DCCOs directly taking over nest sites, or by falling guano and nesting material from DCCO nests leading to the abandonment of nests below. Habitat destruction is another concern reported by biologists (USFWS 2001). The significance of DCCO-related effects on other birds varies with scale. While large-scale impacts on regional or continental bird populations have not been documented (Cuthbert *et al.* 2002), there is evidence that species such as black-crowned night herons, common terns, and great egrets can be negatively impacted by DCCOs at a site-specific level (Jarvie *et al.* 1999, Shieldcastle and Martin 1999, USFWS 2001, Weseloh *et al.* 2002). Biologists from several States and provinces have reported or expressed concern about impacts to other bird species associated with increased cormorant abundance (Wires *et al.* 2001, USFWS 2001).

Vegetation and Habitat. Cormorants destroy their nest trees by both chemical and physical means. Cormorant guano, or excrement, is highly acidic and kills ground vegetation and eventually the nest trees. In addition, cormorants damage vegetation by stripping leaves for nesting material and by breaking branches due to the combined weight of the birds and their nests. Vegetation and habitat destruction problems tend to be localized in nature. For example, resource professionals from the Great Lakes region are concerned about loss of plant diversity associated with increasing cormorant numbers at some breeding sites (Weseloh and Ewins 1994, Moore *et al.* 1995, Lemmon *et al.* 1994, Bédard *et al.* 1995, Shieldcastle and Martin 1999).

Aquaculture. Cormorant depredation at commercial aquaculture facilities, particularly those in the southern catfish-producing region, remains

economically significant. DCCOs move extensively within the lower Mississippi valley during the winter months (Dolbeer 1990). In the delta region of Mississippi, cormorants have been found to forage relatively close to their night roosting locations with most birds traveling an average distance of less than 20 km from their night roosting locations to their day roosts (King *et al.* 1995). Cormorants that use day roosts within the catfish-producing regions of the delta typically forage at aquaculture facilities; USDA researchers concluded that as much as 75 percent of the diet of DCCOs in these areas consists of catfish (Glahn *et al.* 1999). Losses from cormorant predation on fingerling catfish in the delta region of Mississippi have been estimated at approximately 49 million fingerlings each winter, valued at $5 million. Researchers estimate the value of catfish at harvest to be about 5 times more than the replacement cost of fingerlings, placing the total value of catfish consumed by DCCOs at approximately $25 million (Glahn *et al.* 2000). Total sales of catfish growers in Mississippi amounted to $261 million in 2001 (USDA–NASS 2002).

Revisions to the aquaculture depredation order in this proposed rule would authorize APHIS/WS personnel to conduct winter roost control in the area of aquaculture facilities. In recent years, APHIS/WS has been involved extensively with nonlethal roost harassment efforts to reduce DCCO depredation on aquaculture facilities in the southern U.S. The Service trusts APHIS/WS personnel to decide which damage management techniques are most appropriate in a given situation and is therefore not requiring that nonlethal strategies be used first.

Hatcheries. DCCO impacts to hatcheries are related to predation, stress, disease, and financial losses to both hatcheries and recipients of hatchery stock. Hatchery fish may be stressed by the presence of DCCOs, wounds caused by unsuccessful attacks, and noisemakers used to scare away DCCOs. This stress can lead to a decrease in growth factors as feeding intensity decreases. Additionally, disease and parasites can be spread more easily by the presence of fish-eating birds. State and Federal hatchery managers, particularly in the upper midwest (*e.g.*, Wisconsin, Michigan) and the south (*e.g.*, Arizona, Louisiana, Oklahoma, Texas), have reported significant depredation problems at hatcheries (USFWS 2001). Currently, Director's Order No. 27, ''Issuance of Permits to Kill Depredating Migratory Birds at Fish Cultural Facilities,'' dictates that ''kill permits (for fish-eating birds) will be issued for use at public facilities only when it has been demonstrated that an emergency or near emergency exists and an (APHIS/WS) official certifies that all other deterrence devices and management practices have failed.'' The two depredation orders that we are proposing would supercede this Director's Order (for DCCOs only) by giving managers at State and Federal fish hatcheries more authority to control DCCOs to protect fish stock.

Environmental Consequences of Proposed Action

We analyzed our proposed action in the DEIS. We predict the proposed action will not have significant negative impacts on DCCO populations, will benefit fisheries in some situations, will not adversely affect federally protected species (*i.e.*, those protected under the MBTA or the Endangered Species Act), will contribute to protection of vegetation and habitat in some situations, and will help reduce depredation at private aquacultural facilities and State and Federal hatcheries.

References

A complete list of citation references is available upon request from the Division of Migratory Bird Management (*see* **ADDRESSES**).

Public Comment Solicitation

If you wish to comment on this proposed rule, you may submit your comments by any one of several methods. We may accept comments on the degree to which the rule's data sources comply with Service information quality guidelines (these guidelines can be found at *http://irm.fws.gov/infoguidelines/).*You may mail comments to the location listed in **ADDRESSES.** You may also comment via the Internet to: *cormorants@fws.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AI39'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us by phone at 703/358–1714. You may also fax your comments to 703/358–2272. Finally, you may hand deliver comments to the location listed in **ADDRESSES.** Our practice is to make comments, including names and addresses of respondents, available for public review, by appointment, during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondents's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organization or businesses available for public inspection in their entirety.

Cormorant Regulations Under the Proposed Action

This proposed rule would implement the DEIS proposed action in the following ways: it would (1) revise the 1998 aquaculture depredation order that allows APHIS/WS to protect public and private aquacultural stock in the 13 States listed in 50 CFR 21.47 by also allowing the take of DCCOs at winter roost sites; and (2) establish a new depredation order authorizing State fish and wildlife agencies, federally recognized Tribes, and APHIS/WS to take DCCOs without a Federal permit to protect public resources on public and private lands and freshwaters in 24 States (the 13 States listed in 50 CFR 21.47 and 11 additional States with significant resource threats). Both of the actions would amend subpart D of 50 CFR part 21.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR parts 1500–1508), we prepared a DEIS in November 2001, followed by a 100-day public comment period. This DEIS is available to the public (see **ADDRESSES**).

Endangered Species Act Considerations

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that ''Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out...is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *.'' We have initiated Section 7 consultation under the ESA for this proposed rule. The result of this consultation will be included in the final Environmental Impact Statement.

Executive Order 12866

In accordance with the criteria in Executive Order 12866, this proposed action is not a significant regulatory action subject to Office of Management and Budget review. OMB has made this determination of significance under the Executive Order. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required. The purpose of this rule is to help reduce adverse effects caused by cormorants, thereby providing economic relief. The total estimated economic impact of DCCOs is less than $50 million per year. Assuming that landowners (*e.g.*, aquaculture producers) and other stakeholders utilize, informally or formally, some degree of cost-benefit analysis, the financial expenses to control cormorant problems should not exceed the damages incurred. Thus we can assume that the total annual economic effect of this rule will be less than $50 million.

This proposed action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. The action proposed is consistent with the policies and guidelines of other Department of the Interior bureaus. This proposed action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed action will not raise novel legal or policy issues because we have previously managed DCCOs under the Migratory Bird Treaty Act.

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section helpful in understanding the proposed rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for actions that will have a significant economic effect on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. Because of the structure of wildlife damage management, the economic impacts of our proposed action will fall primarily on State governments and APHIS/WS. These do not qualify as ''small governmental jurisdictions'' under the Act's definition. Effects on other small entities, such as aquacultural producers, will be positive but are not predicted to be significant. Thus, we have determined that a Regulatory Flexibility Act analysis is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of $100 million or more, nor will it cause 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 the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act and Information Collection

Simultaneous with the publication of this proposed rule, we have submitted an application for information collection approval from the Office of Management and Budget (OMB). Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), information collections must be approved by OMB. 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. This proposed rule would institute new information collection burden hours, as described below. We will notify the public of OMB's response to our application in the final rule for this regulation.

We intend to collect information from State, Tribal, and Federal agencies and private aquaculture producers who conduct DCCO management under the authority of the depredation orders. The specific monitoring and reporting requirements associated with this rule are listed below in the proposed language for 50 CFR 21.47 and 21.48. The information collected will help us to determine how many DCCOs are being taken and for what purposes.

Information collections associated with this proposed rule are §§ 21.47(d)(7) and (d)(8) and 21.48(d)(7), (d)(8), (d)(9), and (d)(11) listed below in the proposed amendments to 50 CFR part 21. The breakdown of the information collection burden is as follows: We estimate that 21.47(d)(7) will have 50 annual respondents with 25 total annual burden hours valued at $750; we estimate that 21.47(d)(8) will have 900 annual respondents with 1,800 total annual burden hours valued at $54,000; we estimate that 21.48(d)(7) will have 10 annual respondents with 5 total annual burden hours valued at $150; we estimate that 21.48(d)(8) will have 60 annual respondents with 60 total annual burden hours valued at $1,800; we estimate that 21.48(d)(9) will have 60 annual respondents with 1,200 total annual burden hours valued at $36,000; and we estimate that 21.48(d)(11) will have 10 annual respondents with 800 total annual burden hours valued at $24,000. Overall, we estimate that a total of 960 respondents will annually submit a total of 1,090 responses to the recordkeeping and reporting requirements associated with these depredation orders. Each response will require an average of 3.6 hours to complete, for a total of 3,890 hours per year for all of the information collection and recordkeeping requirements in this proposed rule. We estimate that the average wage of the individuals collecting the information is $30.00 per hour and, thus, the dollar value of the total annual hour burden is $116,700. OMB regulations at 5 CFR part 1320 require that interested members of the public and affected agencies have an opportunity to comment on information collection and record keeping activities. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden of the information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents. Send comments on this information collection within 30 days of the date of publication of this proposed rule to the addresses listed in the **ADDRESSES** section.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the proposed action would not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this action is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed action does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this proposed action will help alleviate private and public property damage and allow the exercise of otherwise unavailable privileges.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the Migratory Bird Treaty Act. While legally this responsibility rests solely with the Federal Government, in the best interest of the migratory bird resource, we work cooperatively with States and other relevant agencies to develop and implement the various migratory bird management plans and strategies. For example, in the establishment of migratory game bird hunting regulations, we annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations.

This proposed action does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. It will allow, but will not require, States to develop and implement their own DCCO management program. Therefore, in accordance with Executive Order 13132, this proposed action does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this policy does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and Executive Order 13175, we have determined that this action has no significant effects on federally recognized Indian Tribes. In order to promote consultation with Tribes, a copy of the DEIS was mailed to all federally recognized Tribes in the continental United States.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this proposed action is not expected to significantly affect energy supplies, distribution, or use, this proposed action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we hereby propose to amend part 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—[AMENDED]

1. The authority citation for part 21 is revised to read as follows:

Authority: Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108; sec. 3 of the Migratory Bird Treaty Act (16 U.S.C. 704), 40 Stat. 755; and sec. 3 of the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712), 92 Stat. 3112.

2. In subpart D, revise § 21.47 to read as follows:

§ 21.47 Depredation order for double-crested cormorants at aquaculture facilities.

(a) *What is the purpose of this depredation order?*

The purpose of this depredation order is to help reduce depredation of aquacultural stock by double-crested cormorants at private fish farms and State and Federal fish hatcheries.

(b) *In what areas can this depredation order be implemented?*

This depredation order applies to commercial freshwater aquaculture facilities and to State and Federal fish hatcheries in the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Minnesota, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

(c) *What does this depredation order allow and who can participate?*

(1) This depredation order authorizes landowners, operators, and tenants (or their employees or agents) actually engaged in the commercial, Federal, or State production of freshwater aquaculture stocks to take, without a Federal permit, double-crested cormorants when they are found committing or about to commit depredations to aquaculture stocks. This authority is applicable only during daylight hours and only within the boundaries of freshwater commercial aquaculture facilities or State and Federal hatcheries.

(2) This depredation order authorizes employees of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service to take double-crested cormorants, with appropriate landowner permission, at roost sites in the vicinity of aquaculture facilities, at any time, day or night, during the months of October, November, December, January, February, and March.

(3) Authorized employees of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service may designate agents to carry out control, provided these individuals act under the conditions of the order.

(d) *What are the terms and conditions of this order?*

(1) Persons operating under paragraph (c)(1) of this section may only do so in conjunction with an established nonlethal harassment program as certified by officials of the Wildlife

Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service.

(2) Double-crested cormorants may be taken only by shooting with firearms, including rifles. Persons using shotguns are required to use nontoxic shot as listed in 50 CFR 20.21(j).

(3) Persons operating under this depredation order may use decoys, taped calls, or other devices to lure within gun range birds committing or about to commit depredations.

(4) Persons operating under this depredation order must obtain appropriate landowner permission before implementing activities authorized by the order.

(5) Double-crested cormorants may not be killed contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the person possesses the appropriate State or other permits, if required.

(6) Persons operating under this depredation order must properly dispose of double-crested cormorants killed in control efforts:

(i) Individuals may donate birds killed under authority of this order to museums or other such scientific and educational institutions for the purposes of scientific or educational exhibition. Recipients of such donations must have a scientific collecting permit as outlined in 50 CFR 21.23;

(ii) Individuals may also bury or incinerate birds taken; and

(iii) Individuals may not allow birds taken under this order, or their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

(7) Nothing in this depredation order authorizes the take of any migratory bird species other than double-crested cormorants. Two look-alike species co-occur with double-crested cormorants in the southeastern States, the anhinga, which occurs across the southeastern United States, and the neotropic cormorant, which is found in varying numbers in Texas, Louisiana, and Oklahoma. Both species can be mistaken for double-crested cormorants, but take of these two species is not authorized under this depredation order. Persons operating under this order must immediately report the take of a migratory bird species other than DCCOs to the appropriate Service Regional Migratory Bird Permit Office. Additionally, this depredation order does not authorize the take of any species protected by the Endangered Species Act, unless as permitted. Persons operating under this order must immediately report the take of species protected under the Endangered Species Act to the Service.

(8) Persons operating under this depredation order must:

(i) Keep a log recording the date and number of all birds killed each month under this authorization;

(ii) Maintain this log for a period of 3 years (and maintain records for 3 previous years of takings at all times thereafter); and

(iii) Annually provide the most recent log to the appropriate Service Regional Migratory Bird Permit Office. Regional Office addresses are found in § 2.2 of subchapter A of this chapter.

(9) The authority to take double-crested cormorants under this order can be revoked by the Regional Director for violations of or failure to comply with the terms and conditions of the order. Persons whose authority is revoked may apply for a depredation permit under 50 CFR 21.41.

(e) *Does this rule contain information collection requirements?*

Yes. This information collection is authorized by OMB control number 1018–XXXX.

(f) *When does this depredation order expire?*

This depredation order will automatically expire on April 30, 2005, unless revoked or extended prior to that date.

3. In Subpart D, add § 21.48 to read as follows:

§ 21.48 Depredation order for double-crested cormorants to protect public resources.

(a) *What is the purpose of this depredation order?*

The purpose of this depredation order is to reduce the occurrence and/or minimize the risk of adverse impacts to public resources (fish, wildlife, plants, and their habitats) caused by double-crested cormorants.

(b) *In what areas can this depredation order be implemented?*

This depredation order applies to all lands and freshwaters in the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, West Virginia, and Wisconsin.

(c) *What does this depredation order allow and who can participate?*

(1) This depredation order authorizes State fish and wildlife agencies, federally recognized Tribes, and State Directors of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (collectively termed ''Agencies'') to take without a permit double-crested cormorants found committing or about to commit, and to prevent, depredations on the public resources of fish (including hatchery stock at Federal, State, and Tribal facilities), wildlife, plants, and their habitats.

(2) Agencies may designate agents to carry out control, provided those individuals act under the conditions of the order.

(3) Federally recognized Tribes and their agents may carry out control only on reservation lands or ceded lands within their jurisdiction.

(d) *What are the terms and conditions of this order?*

(1) Persons operating under this order must first utilize nonlethal control methods such as harassment and exclusion devices when these are considered effective and practicable by the responsible Agency.

(2) Double-crested cormorants may be taken only by means of egg oiling, egg and nest destruction, cervical dislocation, shooting, and CO_2 asphyxiation. Persons using shotguns must use nontoxic shot, as listed in 50 CFR 20.21(j). Persons using egg oiling must use 100 percent corn oil, a substance exempted from regulation by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act.

(3) Persons operating under this depredation order may use decoys, taped calls, or other devices to lure within gun range birds committing or about to commit depredation of public resources.

(4) Persons operating under this depredation order must obtain appropriate landowner permission before implementing activities authorized by the order.

(5) Persons operating under this depredation order may not take double-crested cormorants contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the person possesses the appropriate State or other permits, if required.

(6) Persons operating under this depredation order must properly dispose of double-crested cormorants killed in control efforts:

(i) Individuals may donate birds killed under authority of this order to museums or other such scientific and educational institutions for the purposes of scientific or educational exhibition. Recipients of such donations must have a scientific collecting permit as outlined in 50 CFR 21.23;

(ii) Individuals may also bury or incinerate birds taken; and

(iii) Individuals may not allow birds taken under this order, or their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

(7) Nothing in this depredation order authorizes the take of any migratory bird species other than double-crested cormorants. Two look-alike species co-occur with double-crested cormorants in the southeastern States, the anhinga, which occurs across the southeastern United States, and the neotropic cormorant, which is found in varying numbers in Texas, Louisiana, and Oklahoma. Both species can be mistaken for double-crested cormorants, but take of these two species is not authorized under this depredation order. Persons operating under this order must immediately report the take of a migratory bird species other than DCCOs to the appropriate Service Regional Migratory Bird Permit Office. Additionally, this depredation order does not authorize the take of any species protected by the Endangered Species Act, unless as permitted. Persons operating under this order must immediately report the take of species protected under the Endangered Species Act to the Service.

(8) Responsible Agencies must, before they initiate control, provide a one-time notice, in writing, to the appropriate Service Regional Migratory Bird Permit Office of their intention to carry out control activities under this order. Regional Office addresses are found in § 2.2 of subchapter A of this chapter.

(9) Persons operating under this order must keep records of all activities, including those of designated agents, carried out under this order. The Service will review Agencies' reports and will periodically assess the overall impact of this program to ensure compatibility with the long-term conservation of double-crested cormorants and other public resources. On an annual basis, Agencies must provide the Service Regional Migratory Bird Permit Office with a report detailing activities conducted under the authority of this order, including:

(i) By date and location, a summary of the number of double-crested cormorants killed and/or number of nests in which eggs were oiled;

(ii) A statement of efforts being made to minimize incidental take of nontarget species and a report of the number and species of migratory birds involved in such take, if any;

(iii) A description of the impacts or anticipated impacts to public resources by double-crested cormorants and a statement of the management objectives for the area in question;

(iv) A description of the evidence supporting the hypothesis that double-crested cormorants are causing or will cause these impacts;

(v) A discussion of other limiting factors affecting the resource (*e.g.*, biological, environmental, and socioeconomic); and

(vi) A discussion of how control efforts are expected to alleviate resource impacts.

(10) Agencies must provide annual reports, as described above, by December 31 for the reporting period September 1 of the previous year to August 31 of the same year. For example, reports for the period September 1, 2003, to August 31, 2004, would be due on or before December 31, 2004.

(11) For actions that are conducted with the intent of reducing or eliminating local double-crested cormorant populations, Agencies must:

(i) Monitor effects of their management activities on cormorants and other migratory birds at sites of control;

(ii) Monitor effects of their management activities on the public resources being protected at control sites; and

(iii) Evaluate effects of the management activities listed in paragraphs (d)(11)(i) and (ii) of this section and adjust management actions accordingly. Upon request, Agencies must provide the Service with documentation of their monitoring and evaluation efforts.

(12) The authority to take double-crested cormorants under this order can be revoked by the Regional Director for violations of or failure to comply with the terms and conditions of the order. Persons whose authority is revoked may apply for a depredation permit under 50 CFR 21.41.

(e) *Does this rule contain information collection requirements?*

Yes. This information collection is authorized by OMB control number 1018–XXXX.

Dated: January 13, 2003.

Craig Manson,

Assistant Secretary for Fish, Wildlife and Parks.

[FR Doc. 03–6174 Filed 3–14–03; 8:45 am]

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Notices

Federal Register
Vol. 68, No. 51
Monday, March 17, 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

Manti-La Sal National Forest, Fortuna Company Gas Exploration Wells, Emery and Sanpete Counties, UT, Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Forest Service (FS) will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental and human effects of authorizing a gas exploration well and associated road access on the Manti-La Sal National Forest. The proposed wells, designated the Joe's Valley Federal 20–1, and Lowery Water Federal 32–12, were proposed by Fortuna US (proponent). The BLM (Bureau of Land Management) will participate as a cooperating agency.

Agency Decisions

The BLM is responsible for administration of oil and gas leases under the Mineral Leasing Act of 1920, as amended, and Federal Regulations in 43 CFR part 3100. The BLM Moab Field Office Manager must decide whether or not to approve the Application for Permit to Drill (APD). The Forest Supervisor, Manti-La Sal National Forest must decide whether or not to approve the Surface-Use Plan of Operations and what conditions to require for the protection of non-mineral resources. Forest Service authority is provided under the Mineral Leasing Act of 1920, as amended, Federal Onshore Oil and Gas Leasing Reform Act of 1987, and Federal Regulations in 36 CFR part 228, Subpart E.

DATES: Written comments concerning issues and alternatives to be considered and the scope of the analysis described in this notice should be received within 30 days from the date of publication of this notice in the **Federal Register**.

ADDRESSES: Send written comments to Forest Supervisor, Ferron/Price Ranger District, Manti-La Sal National Forest, 115 West Canyon Road, PO Box 310, Ferron, Utah 84523, ATTN: Tom Lloyd.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be addressed to Tom Lloyd or Carter Reed, Manti-La Sal National Forest, phone (435) 384–2372 or (435) 637–2817.

SUPPLEMENTARY INFORMATION: Fortuna US has proposed to conduct gas exploration activities in 2003/2004 and reclamation activities in 2004/2005 on Federal Oil and Gas Lease(s) UTU–78146 and UTU–14623. Exploration activities would consist of reconstruction of about 3 miles of Forest Service Roads (FSR) 50038 and 50059, construction of temporary project access roads (about 0.31 miles), construction of drill pads (4.5 acres total estimated disturbance) and drilling two (2) wells. Analysis of possible production lines to nearby gas pipelines would also be considered.

The proposed Joe's Valley Federal 20–1 is located in NW¼ Sec 21 T.15S, R6E. SLBM, Sanpete County, Utah. The Lowery Water Federal 32–12 is located in SW¼ Sec 32 T. 16 S, R. 6 E., SLBM, Emery County, Utah. The general area of the proposed site would be the Scad Valley, Middle Mountain, Lowery Water area, about 5 miles north of Joe's Valley Reservoir and about 2.6 miles south of Miller Flat Reservoir and approximately 16 miles north-northwest of the town of Huntington, Utah. Portions of the proposed road improvements traverse the eastern boundary of the Boulger-Black Canyon Inventoried Roadless Area.

Purpose and Need

The proponent's purpose for this exploration project is to assess the economic recoverability of its lease holdings. The proposed drilling program would provide geologic data necessary to assess oil and gas potential within Federal Oil and Gas Lease(s) UTU–78416 and UTU–14623. If economic quantities of oil and gas were located, further development would likely be proposed for recovery. Oil and gas are needed to meet future energy demands of the state and nation.

The Forest Service's purpose and need is to evaluate the environmental effects of the Surface Use Plan contained within the APD in accordance with the Manti-La Sal Land and Resource Management (Plan Forest) Plan management direction (page III–12). The decision must be consistent with the rights granted by the oil and gas leases, applicable laws, and Forest Plan direction.

Proposed Action

The proponent's proposed action is to drill the wells and if possible, produce and market natural gas at a profit consistent with the right granted by Federal Oil and Gas Leases UTU–78416 and UTU–14623.

The proposed action is for the Manti-La Sal Nation Forest to authorize Fortuna US to construct/reconstruct the roads and occupancy National Forest System land in order to drill two exploration holes within Federal Leases UTU–78416 and UTU–14623, consistent with their lease rights, applicable laws and regulation, and Forest Plan direction for management of the National Forest System lands. Authorization would be granted by approval of the Surface Use Plan of Operation. A Forest Service Road-Use Permit would also be needed to authorize commercial use of the Forest Service Roads. Additional mitigation and monitoring may be deemed necessary by the Forest Service to minimize environmental effects.

Public Participation

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations that may be interested in, or affected by, the proposed action. The agency invites written comments regarding potential issues and alternatives related to the proposed action and the area being analyzed. Information received will be used to prepare the Draft and Final EIS and considered in making agency decisions.

The EIS and Record of Decision (ROD) will tier to the Final EIS and ROD for the Manti-La Sal Nation Forest Land and Resource Management Plan (Forest Plan), 1986, as amended, by the 1994 Record of Decision for Oil and Gas Leasing on Lands Administered by the Manti-La Sal Nation Forest.

Draft preliminary issues include effects to wildlife, visual quality, roadless character, and dispersed recreation use of Upper Joe's Valley, Middle Mountain, Lower Water areas.

Agency representatives and other interested people are invited to visit with Forest Service and BLM officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process, the next 30 days following publication of this Notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in June 2003. At that time the EPA will publish an availability in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date that EPA's notice of availability appears in the **Federal Register**. The Final EIS is expected to be released in August 2003.

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

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

Authority: (Mineral Leasing Act of February 25, 1920 (Pub. L. 66–146, 41 Stat. 437, as amended; 30 U.S.C. 181–287)).

Dated: March 11, 2003.

Aaron L. Howe,

Acting Forest Supervisor, Manti-La Sal Nation Forest.

[FR Doc. 03–6267 Filed 3–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Baked Apple Fire Salvage Project, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

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

SUMMARY: The USDA Forest Service, will prepare an environmental impact statement (EIS) for a fire salvage timber sale and connected actions within the Panther Creek watershed planning area of the North Umpqua Ranger District. These actions include timber salvage sales, the construction of temporary roads, site preparation, tree planting, hazardous fuels (slash) reduction, road decommissioning, road repair, restoration of non-commercial stands, and soil restoration through felling of snags to create down wood. The planning area is located approximately 43 miles east of Roseburg, Oregon. The project is expected to be implemented starting in 2004 through 2006. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing, by April 18, 2003.

ADDRESSES: Send written comments and suggestions concerning this proposal to Carol Cushing, District Ranger, North Umpqua Ranger District, 18782 North Umpqua Highway, Glide, Oregon, 97443.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action or EIS to Debbie Anderson, ID Team Leader, North Umpqua Ranger District, 18782 North Umpqua Highway, Glide, Oregon 97443, or (541) 496–3532.

SUPPLEMENTARY INFORMATION: The area being analyzed in the Baked Apple Fire Salvage Project EIS encompasses approximately 13,925 acres of National Forest System land on the North Umpqua Ranger District. The planning area is bounded to the North by the North Umpqua River, to the South by the North Umpqua River/Little River Divide, to the East by Calf Ridge, and to the West by Panther Ridge. The planning area includes all or portions of sections 9, 10, and 14 through 36, T26S, R1E; sections 19 and 30, T26S, R2E; and sections 2 through 5, and 9 through 11, T27S, R1E, Willamette Meridian, Douglas County, Oregon.

The proposed action is based on the need to recover portions of the Panther Creek subwatershed burned by the 2002 Apple Fire. The Apple Fire, which started on August 16, 2002, burned almost 18,000 acres of early, mid, and late seral forests on the North Umpqua Ranger District. Within the perimeter of the Apple Fire, the Panther Creek subwatershed burned with the highest intensity, completely consuming large swaths of forest over a 4,000-acre area, particularly within Limpy Creek. All treatments occur on lands allocated as Matrix and are consistent with the 1990 Umpqua National Forest Land and Resource Management Plan (Forest Plan), as amended. All salvage treatments specifically avoid roadless areas, the wild and scenic river corridor and visually sensitive area, owl cores, cultural sites, and areas identified as unsuitable, unstable, or riparian reserves. The timber salvage proposal is based on the need to recover the economic value of the burned wood in the scorched and severely burned portion of the watershed before it decays, which will contribute wood products to the local economy and jobs to the County and State. Slash treatment is based on the need to reduce activity-generated fuels in order to keep fuel loads within parameters prescribed by the Forest. Reforestation is based on the need to return the burned areas within subwatershed to the productive forest that is was prior to the fire. Haul related roadwork is needed in order to ensure that the road system is safe for haul. Construction and reconstruction of temporary spur roads, reconstruction and/or expansion of landings, construction new landings, and use of existing rock pits is needed to facilitate removal and hauling of wood. Snag felling for large wood is needed to

maintain a source of large wood that will decay, helping contribute to soil productivity. Treatment of pre-commercial stands to remove fuels and re-establish seedlings is needed to return those stands to the productive forests that they were prior to the fire.

The proposed action timber sale related activities include: Salvage harvest on approximately 1,226 acres (retaining between 6 and 12 trees per acre for shade and large wood recruitment); reforestation and seedling protection (with species native to the site) on about 1,095 acres; slash treatment on about 1,171 acres (including grapple piling, underburning, hand pile burning, and yarding of tops attached); road work (culvert replacement and road stabilization of two sites) along Forest Service Road 4714 and construction and reconstruction (about 1.1 miles) of temporary spur roads; construct and reconstruct up to 39 landings; and use 2 existing rock pits and establish 6 stockpile sites along existing roads to store rock and excavated material. Connected actions that would be accomplished include: Felling of snags on salvage units; site preparation and reforestation; and road reconstruction and decommissioning work.

The acreage proposed for harvest is estimated to yield up to 50 million board feet of timber, which may result in 5 to 6 separate timber sales. This volume and acreage estimates are likely to decrease as a result of finalizing riparian reserves and unsuitable or unstable soils boundaries, and as the smaller diameter wood begins to decay. The areas prescribed for harvest will require a combination of helicopter, skyline and ground-based harvesting equipment. Alternatives may reflect different harvest equipment combinations. Alternatives to be considered include the No Action Alternative, the proposed action, and alternatives to the proposed action.

Preliminary issues, as identified by the Forest and by scoping that has been conducted to date, include the following related to the proposed action: The economic efficiency and viability; the potential affect on the late successional habitat and species within the Panther Creek Watershed; and the potential affect on water quality and aquatic conditions for aquatic and riparian dependent species.

The scoping effort is intended to identify issues, which may lead to the development of alternatives to the proposed action. One of the purposes of this notice of intent is to solicit input from the public as part of the overall scoping effort. In addition to this notice, the public will be notified of the EIS through the Umpqua National Forest's April 2003 quarterly publication ''Schedule of Proposed Actions''.

Comments received in response to this notice and through scoping, 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 will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. 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.

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by July 2003. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available October 2003.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *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 substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS 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 of 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official is Carol Cushing, District Ranger of the North Umpqua Ranger District, Umpqua National Forest. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The decision will be subject to review under Forest Service Appeal Regulations (36 CFR part 215).

Dated: March 7, 2003.

James A. Caplan,

Forest Supervisor.

[FR Doc. 03–6269 Filed 3–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on April 1, 2003, at the Lloyd Center Double Tree Hotel, located at 1000 NE., Multnomah Street in Portland, Oregon, subject to the advance approval of the committee's Federal Advisory Committee Act charter by the Department of Agriculture. The meeting is scheduled to begin at 10 a.m. and

adjourn at approximately 5 p.m. In general, the purpose of the meeting is for the committee to continue with discussions related to Northwest Forest Plan (NWFP) implementation. Particular meeting agenda items include, but are not limited to, a panel discussion on NWFP-related socio-economic issues, progress reports on several initiatives underway to improve the performance of the NWFP in satisfying the full range of its objectives, and a proposal for the interagency and intergovernmental organizational structure under the next Memorandum of Understanding. The meeting is open to the public and will be fully accessible for people with disabilities. Interpreters are available upon request at least 10 days prior to the meeting. Written comments may be submitted for the meeting record. The agenda also features a 15-minute time slot reserved for any public commemts to be offered at the meeting. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Kath Collier, Management Analyst, Regional Ecosystem Office, 333 SW., First Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–808–2165).

Dated: March 11, 2003.

Stephen J. Odell,

Designated Federal Official.

[FR Doc. 03–6263 Filed 3–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Flathead County Resource Advisory Committee will meet in Kalispell, Montana April 7th and April 14th. The purpose of the meetings is to discuss potential Title II projects for fiscal year 2004 funded by the Secure Rural Schools and Community Self Determination Act.

DATES: The meetings will be held April 7th from 4 p.m. to 6:30 p.m. and April 14th from 4 p.m. to 6:30 p.m.

ADDRESSES: The meeting will be held at the Flathead National Forest Supervisors Office, Conference Rooms A & B, 1935 Third Ave East, Kalispell, Montana, 59901.

FOR FURTHER INFORMATION CONTACT: Kaaren Arnoux, Flathead National Forest, Administrative Assistant, (406) 758–5251.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Time will be available for public input on potential projects the committee may be discussing.

Allen Rowley,

Public Affairs Specialist.

[FR Doc. 03–6270 Filed 3–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Tri-State Generation and Transmission Association, Inc.; Notice of Availability of a Record of Decision

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has issued its Record of Decision (ROD) for the Nucla-Telluride 115 kV Transmission Line Project. The decision of RUS is that the National Environmental Policy Act review process has been satisfied with respect to a potential request for financing assistance from Tri-State Generation and Transmission Association, Inc. (Tri-State), of Westminster, Colorado.

FOR FUTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571 or e-mail: *drankin@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: Tri-State has proposed a 115 kV transmission line in order to improve the reliability of power to Telluride and other surrounding communities, as well as increase the capacity of the regional transmission grid to transfer bulk power through southwestern Colorado. The 115 kV transmission line would replace and potentially relocate an existing 69 kV line that is owned and operated by San Miguel Power Association. The U. S. Forest Service (FS) served as the lead Federal agency in the environmental review process. RUS and the Bureau of Land Management (BLM) are cooperating agencies in the process.

The RUS preferred alternative is the construction of an overhead 115 kV transmission line using the Nucla—Norwood Central Alternative and the Norwood—Sunshine Alternative corridors. Subalternative corridors C and D may also be used in the final line route. Associated facilities include the expansion of the Norwood Substation at its current location; the modification of the Nucla, Species Mesa, Wilson Mesa and Sunshine Substations; and the dismantling of the Oakhill Substation. Modifications to sections of San Miguel Power Association's distribution system would also be required. The FS and BLM have previously issued their Records-of-Decision regarding the project.

Federal, State, and local agencies and the public who had previously requested copies of the Record-of-Decision will receive a copy of the ROD by direct mail. RUS' ROD is also available online at *http://www.usda.gov/rus/water/ees/eis.htm.*

Dated: March 12, 2003.

Alfred Rodgers,

Acting Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 03–6346 Filed 3–14–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–880]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Barium Carbonate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Preliminary determination of sales at less than fair value and postponement of final determination.

EFFECTIVE DATE: March 17, 2003.

SUMMARY: We preliminarily determine that barium carbonate from the People's Republic of China (the PRC) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown below in the ''Suspension of Liquidation'' section of this notice.

FOR FURTHER INFORMATION CONTACT: David Layton or Tisha Loeper-Viti at (202) 482–0371 or (202) 482–7425, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Case History

The petitioner in this investigation is Chemical Products Corporation. This investigation was initiated on October 21, 2002. *See Initiation of Antidumping Duty Investigation: Barium Carbonate from the People's Republic of China*, 67 FR 65534 (October 25, 2002) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

On November 14, 2002, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of barium carbonate imports from the PRC. *See Barium Carbonate from China*, 67 FR 70092 (November 20, 2002).

On November 18, 2002, the Department issued its antidumping questionnaire [1] to the PRC Bureau of Fair Trade for Imports and Exports (BOFT). The Department requested that BOFT send the questionnaire to all companies that manufacture and export barium carbonate to the United States, as well as manufacturers that produce barium carbonate for companies that were engaged in exporting subject merchandise to the United States during the period of investigation (POI). In addition, we sent the questionnaire to all of the manufacturers and exporters listed in the petition. *See* complete list of 10 manufacturers and 12 exporters in the petition (September 30, 2002) at Exhibit 4. Only Qingdao Red Star Chemical Import & Export Co., Ltd. (Qingdao Red Star) and its suppliers responded to the Department's questionnaire. The Department issued supplemental questionnaires on January 10 and February 3, 2003. We received deficiency comments from the petitioner on January 15 and 30, and March 4, 2003. Due to the statutory deadline, we were unable to take into consideration for purposes of the preliminary determination the petitioner's most recently filed comments. The Department does intend to carefully review the issues raised in that submission, including that of affiliation, and will verify the information provided by the respondent, as appropriate, prior to the final determination.

On January 31, 2003, we invited interested parties to provide comments on the surrogate country selection and publicly available information for valuing the factors of production. We received comments from Qingdao Red Star on February 10 and 13, 2003. We received comments from the petitioner on February 10, 13 and 19, 2003.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2) (2002), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On February 13, 2003, Qingdao Red Star requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not more than 135 days after the publication of the preliminary determination. The respondent included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. In accordance with section 351.210(e) of the Department's regulations, because we have made an affirmative preliminary determination, the requesting party accounts for a significant proportion of exports of the subject merchandise, and no compelling reasons exist to deny the request, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination, and are extending the provisional measures accordingly.

Period of Investigation

The POI is January 1, 2002, through June 30, 2002. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2002). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation is barium carbonate, regardless of form or grade. The product under investigation is currently classifiable under subheading 2836.60.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy (NME) country in all its past antidumping investigations. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China*, 68 FR 7765 (February 18, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value Ferrovanadium from the People's Republic of China*, 67 FR 71137 (November 29, 2002). 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. No party in this investigation has sought revocation of the NME status of the PRC. Therefore, pursuant to section 771(18)(C) of the Act, the Department will continue to treat the PRC as an NME country.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV) on the NME producer's factors of production, valued in a market economy at a comparable level of development that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section, below.

Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). Qingdao Red Star has provided the requested company-specific separate rate information and has indicated that there is no element of government ownership or control over its operations. We have

[1] Section of A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under this investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of U.S. sales. Section D requests information on the factors of production of the merchandise under investigation. Section E requests information on further manufacturing.

considered whether Qingdao Red Star is eligible for a separate rate as discussed below.

The Department's separate-rates test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61757 (November 19, 1997); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. *See Silicon Carbide* and the *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Qingdao Red Star has placed on the record a number of documents to demonstrate the absence of *de jure* control, including its business license, and the ''Company Law of the People's Republic of China'' of December 29, 1993. Other than limiting Qingdao Red Star's operations to the activities referenced in the license, we noted no restrictive stipulations associated with the license. In addition, in previous cases, the Department has analyzed the ''Company Law of the People's Republic of China'' and found that it establishes an absence of *de jure* control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472, 54474 (October 24, 1995). We have no information in this proceeding which would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control.

B. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

With regard to the issue of *de facto* control, Qingdao Red Star has reported the following: (1) There is no government participation in setting export prices; (2) its managers have the authority to bind sales contracts; (3) the government does not participate in the selection of Qingdao Red Star's management, and (4) there are no restrictions on the use of its export revenues or the disposition of its profits, and it is responsible for financing its own losses. Additionally, Qingdao Red Star's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of Qingdao Red Star's questionnaire responses reveals no other information indicating governmental control of export activities. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over Qingdao Red Star's export functions, and that Qingdao Red Star has met the criteria for the application of separate rates.

The PRC-Wide Rate

Although the Department provided BOFT and all PRC exporters of the subject merchandise, including Qingdao Red Star, with the opportunity to respond to its questionnaire, only Qingdao Red Star submitted responses thereto. Our review of U.S. import statistics reveals that there are other PRC companies, in addition to Qingdao Red Star, that exported barium carbonate to the United States during the POI. Because these exporters did not submit a response to the Department's questionnaire, and thus did not demonstrate their entitlement to a separate rate, we have implemented the Department's rebuttable presumption that these exporters constitute a single enterprise under common control by the PRC government, and we are applying adverse facts available to determine the single antidumping duty rate, the PRC-wide rate, applicable to all other PRC exporters comprising this single enterprise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706, 25707 (May 3, 2000).

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. As explained above, with the exception of the exporter, Qingdao Red Star, and its manufacturer, Guizhou Red Star Development Co., Ltd. (Guizhou Red Star), no other Chinese manufacturer or exporter of the subject merchandise responded to the Department's request for information. Therefore, the curative provisions of section 782 of the Act are not applicable because there is no information on the record of this investigation on which the Department can determine separate rates for these manufacturers and exporters. Accordingly, the Department is applying the PRC-wide rate to all PRC exporters of the subject merchandise except for Qingdao Red Star. The Department cannot determine a separate rate for these companies because this information is within the sole possession of the parties at issue and cannot be obtained otherwise. No other Chinese manufacturer or exporter of the subject merchandise responded to the Department's request for information. For this reason, we are unable to

calculate a PRC-wide rate. Therefore, the Department must resort to the use of the facts available to ensure that these exporters do not obtain a more favorable result than they would by responding to the Department's request for information. The failure of the parties at issue to respond significantly impedes this proceeding because the Department cannot accurately determine a margin for these parties. Thus, pursuant to section 776(a)(2)(A) and (C) of the Act, in reaching our preliminary determination, we have based the PRC-wide rate on the facts available.

In applying facts otherwise available, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action (SAA) accompanying the URAA,* H.R. Doc. No. 103–316, at 870 (1994). Furthermore, ''affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *See Antidumping Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997). In this case, the complete failure of these parties to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability. Since the information is within the sole possession of the parties at issue, the Department is precluded from determining an accurate margin for the other producers and exporters and must therefore resort to the use of adverse facts available.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. However, section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Independent sources may include published price lists, official import statistics and Customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870 and 19 CFR 351.308(d). ''Corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996).

For our preliminary determination, as adverse facts available, we have used as the PRC-wide rate, the highest recalculated dumping margin from the petition with certain adjustments made to the values (see below). In the petition, the petitioner based export price (EP) on actual price quotes for barium carbonate produced in the PRC and offered for sale by several different Chinese trading companies.[2] For the NV calculation, the petitioner based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, energy, and representative capital costs) on the quantities of inputs used by the petitioner.

With regard to the EP calculation in the petition, the petitioner also provided AUVs by port of entry which the petitioner obtained from the ITC's Interactive Tariff and Trade DataWeb (DataWeb). *See* October 16, 2002 Response to Supplemental Request at Exhibit 1 and Web site: *http://dataweb.usitc.gov/scripts/user_set.asp.* As discussed in the memorandum to Gary Taverman, Director, Office 5, from David Layton, Tisha Loeper-Viti and Kristina Boughton, Case Analysts regarding Corroboration of Secondary Information (Corroboration Memo), dated March 10, 2003, we were unable to corroborate the petitioner's price quotations with data submitted by Qingdao Red Star in its questionnaire responses because the petitioner's price quotations did not correspond to any of the export prices reported by the respondent in this proceeding. The Department was also unable to corroborate these prices with average unit values (AUVs) for the POI that were based on quarterly quantities and values of total barium carbonate imports from the PRC reported on DataWeb. In addition, the terms of sale related to the petitioner's price quotes appear to differ from the terms underlying the respondent's prices as explained in the Corroboration Memorandum.[3] Since the Department was unable to corroborate the petitioner's price quotations for purposes of using them in the Department's calculation of the PRC-wide rate, we have substituted an EP based on the weighted average of all of the port-specific AUVs provided by the petitioner except for one port-specific AUV that appeared to be aberrationally high. *See* Corroboration Memo at Attachment 1. These AUVs are based on actual POI customs values for imports from the PRC falling under the only tariff classification subheading covering subject merchandise. The publicly available AUVs reflect barium carbonate prices net of international freight for all Chinese exporters including those who did not respond. Therefore, we consider the AUVs to have probative value for purposes of calculating the PRC-wide rate.

We compared the petitioner's factor consumption rates to the respondent's factor consumption rates, which is the only other factor consumption data on the record of this investigation. As discussed in the Corroboration Memo, we were unable to corroborate the petitioner's factor consumption data with the data provided by the respondent. Nevertheless, we consider the petitioner's factor consumption rates for materials, labor and energy to have probative value on the basis that these consumption factors are derived from the petitioner's own experience in producing the subject merchandise. *See* Corroboration Memo at 7.

The surrogate values for the factors of production in the petition were based on publicly available information for comparable inputs in India, and in the case of barite ore, on a price quote from an Australian producer. With the exception of the values for packing material, which differed only slightly, and water, which was the same, we updated Indian surrogate values used in the petition with values based on more current values from publicly available sources and revised the NV calculation accordingly. *See* FOP Memo. We replaced the price quote value for barite ore with a value based on Indonesian imports from a publicly available source. *See* discussion in the *Factors of Production* section below and in the FOP Memo. We consider the Indian values, and the Indonesian value, both

[2] In calculating export price, the petitioner adjusted for foreign inland freight using a surrogate value for rail freight in accordance with our NME calculation methodology.

[3] The explanation of the difference in terms of sale involves some proprietary information.

from publicly available sources, to have probative value. Therefore, we find that the surrogate values used to calculate the PRC-wide rate are sufficiently corroborated.

Because all elements of NV have been corroborated, we consider this revised NV to be reasonable and of probative value. As a result of this recalculation, the PRC-wide rate is, for the preliminary determination, 75.10 percent. *See* Corroboration Memo; *see also* the October 16, 2002 supplement to the petition. For the purpose of determining the most appropriate final PRC-wide margin, the Department will consider all information on the record at the time of the final determination.

Fair Value Comparisons

To determine whether Qingdao Red Star's sales of barium carbonate to customers in the United States were made at LTFV, we compared EP to NV, calculated using our NME methodology, as described below in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(a) of the Act, we used EP for Qingdao Red Star because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise indicated.

We calculated EP for Qingdao Red Star based on packed F.O.B. and C.I.F. prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included domestic inland freight, international freight, and marine insurance, where applicable. Because transportation for all sales was provided by an NME company, we based movement expenses associated with these sales on surrogate values. *See* the memorandum to Gary Taverman, Director, Office 5, from David Layton, Tisha Loeper-Viti and Kristina Boughton, Case Analysts regarding, Factors of Production Valuation for Preliminary Determination, dated March 10, 2003 (FOP Memo), on file in the Central Records Unit (CRU) located in B–099 of the main Department of Commerce building.

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires that the Department value the NME producer's factors of production, to the extent possible, on the prices or costs of factors of production in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The Department's Office of Policy initially identified five countries that are at a level of economic development comparable to the PRC in terms of per capita GNP and the national distribution of labor. Those countries are India, Pakistan, Indonesia, Sri Lanka and the Philippines (*see* the memorandum from Jeffrey May, Director, Office of Policy to Gary Taverman, Director, Office 5, regarding Request for a List of Surrogate Countries, dated December 11, 2002, on file in the CRU). Based on available information of export data provided in *United Nations Trade Statistics* under HTSUS subheading 2836.60, we have found that India is a producer of barium carbonate. The petitioner also provided evidence that India is a significant producer of subject merchandise, including Indian producers' advertisements and an article from the *Asia Pulse* citing aggregate Indian production figures for barium carbonate from 1995–1999. In addition, for most factors of production, India has quantifiable, contemporaneous, and publicly available data. India had the best available financial data of the five countries on specific barium carbonate producers. Therefore, for purposes of the preliminary determination, we have selected India as the primary surrogate country. However, for one material input, barite ore, we were unable to obtain a reliable Indian value. For this reason, we used data from a secondary surrogate country, Indonesia, to value this input. We have evidence to suggest that Indonesia is also a significant producer of comparable merchandise and we were able to obtain publicly available data for barite ore. For further discussion, *see* the FOP Memo.

Factors of Production

In its questionnaire response, Qingdao Red Star reported factors of production for the manufacture of the subject merchandise during the POI. The factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. *See* section 773(c)(3) of the Act. To calculate NV, we multiplied the reported quantities by publicly available surrogate per-unit values from India and, when appropriate, from Indonesia.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using the applicable price indices published in the International Monetary Fund's *International Financial Statistics* (January 2003, July 2002 and September 2000). We inflated the values denominated in Indian rupees using Indian wholesale price indices and inflated values denominated in U.S. dollars using U.S. producer price indices. As appropriate, we included freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic input supplier to the factory processing subject merchandise or the distance from the nearest seaport to the relevant factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

We valued certain material inputs, packing materials, and byproducts (including coal, limestone, plastic bags, and sulfur) using publicly available 2002 Indian import statistics from the appropriate Indian Trade Classification categories, based on the Harmonized Commodity Description and Coding System (HS), published by the *Monthly Statistics of the Foreign Trade of India. Volume II: Imports* (March 2002) *(Indian Import Statistics).* Because Indian imports of barite ore for this period were insignificant, we valued barite ore using 2001 Indonesian import data from the *World Trade Atlas.* We valued water based on an average of several rates for metropolitan areas in India, published by the Asian Development Bank in the *Second Water Utilities Data Book: Asian and Pacific Region* in 1997.

For energy, we valued coal using *Indian Import Statistics* for 2002. We valued electricity using Indian retail prices found in the International Energy Agency's *Key World Energy Statistics 2002* covering the fourth quarter of 2001. We valued kerosene using rates quoted in a press release from the Government of India dated February 28, 2002.

We valued labor using the latest regression-based wage rate for China found on Import Administration's Web page *(http://ia.ita.doc.gov/wages/)* as described in 19 CFR 351.408(c)(3).

To value foreign inland truck freight costs, we relied upon per-kilometer price quotes used by the Department in the *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 67 FR 10892 (March 11, 2002). To value foreign inland rail freight costs, we used an average per-metric-ton rate published in the *Reserve Bank of India Bulletin,* July 2001. This rate was used by the Department in the *Notice of Preliminary Results in the Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China,* 68 FR 7768 (February 18, 2003). We valued ocean freight based on publicly available rates from a large liner shipping company, Maersk Sealand. We valued marine insurance based on an Indian rate which was reported in the public version of the questionnaire response placed on the record in *Certain Stainless Steel Wire Rod From India: Final Results of Administrative and New Shipper Review,* 64 FR 856 (January 6, 1999).

To value factory overhead, selling, general and administrative expenses (SG&A) and profit, we used the audited financial statements for the year ended March 31, 2000, from an Indian producer of barium carbonate, Victory Chemicals Pvt., Ltd. (Victory).

For a complete analysis of surrogate values used in the preliminary determination, *see* the FOP Memo.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

We are directing the U.S. Customs Service (Customs) to suspend liquidation of all entries of barium carbonate from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date on which this notice is published in the **Federal Register**. In addition, we are instructing Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We determine that the following percentage weighted-average margins exist for the POI:

Manufacturer/exporter	Weighted-average margin (percent)
Qingdao Red Star Chemical Import & Export Co., Ltd	7.66
PRC-Wide Rate	75.10

The PRC-wide rate applies to all entries of the subject merchandise except for entries from Qingdao Red Star.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties within five days of the date of publication of this notice the calculations performed in the preliminary determination.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of barium carbonate from the PRC are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than one week after issuance of the verification reports. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: March 10, 2003.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6339 Filed 3–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride From the People's Republic of China: Final Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and rescission in part of antidumping duty administrative review of barium chloride from the People's Republic of China.

SUMMARY: On November 8, 2002, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results and partial rescission of its administrative review of the antidumping duty order on barium chloride from the People's Republic of China (PRC) covering the period of review (POR) October 1, 2000, to September 30, 2001. *See Barium Chloride From the People's Republic of*

China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 67 FR 68094 (*Preliminary Results*). We initiated this review on 11 Chinese manufacturers/exporters of barium chloride [1] but are rescinding the review with respect to Zhangjiaba Salt Chemical Co., Ltd., Barium Salts Branch because the record indicates that this company did not sell subject merchandise to the United States during the POR. Because the remaining companies did not respond to the Department's questionnaire, we consider them to be part of the PRC-wide entity, and applied adverse facts available. In the preliminary results of this review, we recalculated the PRC-wide rate using information placed on the record by the petitioner as appropriately adjusted by the Department. We have continued to take this approach in the final results.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: John Conniff or Drew Jackson, 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) 482–1009 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2002, the Department published in the **Federal Register** (67 FR 68094) the preliminary results and rescission, in part, of its administrative review of the antidumping duty order on barium chloride from the PRC. In response to the Department's invitation to submit comments on the preliminary results, one respondent, Zhangjiaba Salt Chemical Co. Ltd., Barium Salts Branch (Zhangjiaba), submitted a case brief on November 27, 2002, and the petitioner, Chemical Products Corporation (CPC) submitted a rebuttal brief on December 4, 2002. A public hearing was held on February 11, 2003.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

The imports covered by this review are shipments of barium chloride, a chemical compound having the formulas $BaCl_2$ or $BaCl_2–2H_2O$, currently classifiable under item number 2827.39.45.00 of the Harmonized Tariff Schedule of the United States (HTSUS).[2] Although the HTSUS item number is provided for convenience and for U.S. Customs (Customs) purposes, the written description remains dispositive.

Period of Review

The POR is October 1, 2000, through September 30, 2001.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties to this administrative review are addressed in the ''Issues Decision Memorandum'' (*Decision Memorandum*) from Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, Group II, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Record Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the International Trade Administration's Web site at *http: www.ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Partial Rescission of Review

We are rescinding this review with respect to Zhangjiaba because it reported that it made no shipments of subject merchandise to the United States during the POR and our review of Customs data supports Zhangjiaba's claim. *See* Zhangjiaba's December 21, 2001, submission to the Department.

Changes Since the Preliminary Results

Consistent with the approach taken in petroleum wax candles from the PRC, we have inflated the surrogate value for electricity using an industry-specific wholesale price index. *See Petroleum Wax Candles from the PRC: Notice of Final Results of New Shipper Review,* 67 FR 41395 (June 18, 2002), and accompanying *Issues and Decisions Memorandum* at Comment 4.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period October 1, 2000, through September 30, 2001:

Exporter/Manufacturer	Margin (percent)
PRC-Wide Rate	155.50

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of barium chloride from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for all Chinese exporters will be the rate shown above; and (2) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to their PRC suppliers.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Assessment

Customs shall assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs within 15 days of publication of these final results of review. We will direct Customs to assess the resulting assessment rate against the entered customs values for all entries of subject merchandise during the review period.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in

[1] Those manufacturers/exporters are: Zhangjiaba Salt Chemical Co., Ltd., Barium Salts Branch, Hebei Xinji Chemical Plant, Tianjin Chemical Industry Corporation, Qingdao Red Star Chemical Group Co., Tianjin Bohai Chemical United Import/Export Company, Sichuan Emeishan Salt Chemical Industry Group Company, Ltd., Hengnan, Kunghan, Linshu, Tangshan, and China National Chemicals Import and Export Corporation (Sinochem).

[2] The scope reflects the HTSUS item number currently in effect.

accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 10, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comments

Comment 1: Whether the Department Should Redetermine the PRC-Wide Rate

Comment 2: Whether the Department Should Grant Zhangjiaba a Separate Rate

Comment 3: Whether the Department Inappropriately Resorted to Adverse Facts Available With Respect to Zhangjiaba

[FR Doc. 03–6338 Filed 3–14–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon From Chile: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Carol Henninger or Constance Handley at (202) 482–3003 or (202) 482–0631, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 27, 2002, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on fresh Atlantic salmon from Chile, covering the period July 1, 2001, through June 30, 2002 (67 FR 55000). The preliminary results are currently due no later than April 2, 2003.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman, Director, Office V, to Holly Kuga, Acting Deputy Assistant Secretary, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than May 1, 2003. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 11, 2003.

Holly A. Kuga

Acting Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 03–6342 Filed 3–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty new shipper review.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Davina Hashmi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–0984, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Xiamen Zhongjia Imp. and Exp. Co., Ltd. (''Zhongjia'') and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. (''Minhui'') in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC''), which has a February annual anniversary month and an August semiannual anniversary month. On September 30, 2002, the Department found that the requests for review met all of the regulatory requirements set forth in 19 CFR 351.214(b) and initiated this antidumping duty new shipper review covering the period February 1, 2002, through July 31, 2002 (*see Certain Preserved Mushrooms from the People's Republic of China: Initiation of Fifth New Shipper Antidumping Duty Review*, 67 FR 62438 (October 7, 2002)). The preliminary results are currently due no later than March 29, 2003.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B) of the Act, the Department may extend the deadline for completion of the preliminary results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated, and

the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. Specifically, each respondent used multiple inputs to produce the subject merchandise and there are multiple stages of production associated with producing the subject merchandise. For purposes of reporting its consumption of each material input, each respondent used a material allocation methodology. Therefore, in order to ensure that each respondent has accurately reported its factors of production, we need more time to obtain additional information on their factors of production and to accommodate verification in this case. In addition, given the complexity (*i.e.*, multiple production stages) involved with producing the subject merchandise and the material allocation issues inherent in this case, the Department finds that this case is extraordinarily complicated, and cannot be completed within the statutory time limit.

Accordingly, the Department is extending the time limit for completion of the preliminary results by 120 days, to July 27, 2003,[1] in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). The final results will in turn be due 90 days after the date of issuance of the preliminary results, unless extended.

Dated: March 11, 2003.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–6341 Filed 3–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 10, 2002, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review of seamless pipe from Romania. This review covers one manufacturer/exporter of the subject merchandise. The period of review is February 4, 2000 through July 31, 2001. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Martin Claessens, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4162 and (202) 482–5451, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2002, the Department received a letter from the Government of Romania (GOR) requesting a review of the status of Romania as a non-market economy (NME) country, either in a free-standing investigation or in the context of this administrative review. On September 10, 2002, in response to the GOR's request, the Department initiated an inquiry into Romania's NME status in the context of the instant administrative review.

At the same time, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review of seamless pipe from Romania. *See Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania: Preliminary Results of Antidumping Duty Administrative Review and Postponement of Final Results,* 67 FR 57388 (September 10, 2002) (*Preliminary Results*). The review covers one manufacturer/exporter, S.C. Silcotub S.A. (Silcotub).

We invited parties to comment on our preliminary results of review. On October 10, 2002, Silcotub and United States Steel Corporation (U.S. Steel), a domestic producer of subject merchandise and interested party in this review, filed case briefs. Both parties filed rebuttal briefs on October 22, 2002.

Scope of the Order

The products covered by the order are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of the order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. The seamless pipes subject to the order is currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipes meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard. Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipes may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

[1] Since July 27, 2003, is a Sunday, the preliminary results will actually be due on July 28, 2003.

Seamless water well pipes (ASTM A–589) and seamless galvanized pipes for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications.

These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipes or ''hollow profiles'' of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications. The scope of the order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of the order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of the order. Specifically excluded from the scope of the order is boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished Oil Country Tubular Goods (OCTG) are excluded from the scope of the order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, the Department will not instruct Customs to require end-use certification until such time as U.S. Steel or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by U.S. Steel, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Nonmarket-Economy Country Status

The Department has treated Romania as an NME country in all past antidumping duty investigations and administrative reviews. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania*, 65 FR 39125 (June 23, 2000); and *Notice of Final Determination of Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Romania*, 66 FR 49625 (September 28, 2001). A determination that a country is an NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act).

As indicated above, on September 10, 2002, in response to the GOR's request, the Department initiated an inquiry into Romania's NME status in the context of the instant administrative review. As part of the inquiry, the Department invited the public to comment on the GOR's request. The Department received and granted requests from the public for time extensions to submit comments. All comments were received by November 8, 2002, followed by rebuttal comments by December 30, 2002.

In determining whether a country will be accorded market-economy status for purposes of antidumping and countervailing duty proceedings, the Department considers, consistent with the factors described in section 771(18)(B) of the Act, the extent to which resources are allocated by market or government, taking into account currency and labor markets, pricing, and production and investment decisions. After a thorough examination of all relevant information available to the Department, we have reclassified Romania as a market economy for purposes of antidumping and countervailing duty proceedings, pursuant to section 771(18)(A) of the Act, effective January 1, 2003. *See* Memorandum from Lawrence Norton, Import Policy Analyst, to Joseph Spetrini, Acting Assistant Secretary for Import Administration: Antidumping Duty Administrative Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania—Non-Market Economy Status Review (March 10, 2003). However, because the POR for the 2000/2001 review predates the effective date of the NME status determination (*i.e.*, January 1, 2003), the Department has continued to utilize the NME methodology in reaching the final results for this review.

Separate Rates

Silcotub has requested a separate, company-specific antidumping duty rate in this review. In the preliminary results, we found that Silcotub had met the criteria for the application of separate antidumping duty rates. *See Preliminary Results,* 67 FR at 57390. We have not received any other information since the preliminary results which would warrant reconsideration of our separate rates determination with respect to this company. We therefore determine that Silcotub should be assigned an individual dumping margin in this administrative review.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to Joseph Spetrini, Acting Assistant Secretary for Import Administration, dated March 10, 2003, which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded in the Decision Memorandum is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes From the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also revised certain financial ratios, and the factor value for natural gas used in the calculation of the normal value. These changes are discussed in the relevant section of the Decision Memorandum.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margin exists for the period February 4, 2000 through July 31, 2001:

Manufacturer/exporter	Margin (percent)
S.C. Silcotub S.A	0.04

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer-specific assessment rate is above *de minimis* we will instruct the Customs Service to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For Silcotub, because the margin is *de minimis*, no cash deposit will be required, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the prior segment of the proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 13.06 percent, the Romania-wide rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

March 10, 2003.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

Comments and Responses

Comment 1: Use of Market-Economy Price to Value Lacquer.

Comment 2: Basis for the Financial Ratios for Depreciation, Selling, General and Administrative (SG&A) Expenses, Interest Expenses, and Profit.

Comment 3: Valuation of Natural Gas.

Comment 4: Valuation of Electricity.

[FR Doc. 03–6340 Filed 3–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration.

[I.D. 031003D]

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Recreational Landings Reports.

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 16, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW,

Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dianne Stephan, phone 978/281–9397; Highly Migratory Species Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of BFT catch reporting is to provide real-time catch information for monitoring the recreational BFT fishery. Under the Atlantic Tunas Convention Act of 1975 (ATCA, 16 U.S.C. 971), the United States is required to abide by recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), including a specified BFT quota. This program supports BFT management and scientific research authorized under ATCA and the Magnuson Stevens Fishery Conservation and Management Act (MSFMCA,16 U.S.C. 1801 *et seq.*). Recreational anglers are required to report specific information regarding their catch after they land a BFT. The reported information is tallied and used to monitor recreational landings and incorporated into scientific analysis of BFT stock status. For any State that participates in tagging programs to monitor recreational landings, it is expected that weekly and one annual report would be submitted to summarize landings and results to date.

Atlantic swordfish and billfish are also managed internationally by ICCAT and nationally under the ATCA and the MSFMCA. This collection will provide information needed to monitor the recreational limit established by ICCAT for Atlantic blue and white marlin, and the recreational catch of swordfish, which is applied to the ICCAT established U.S. quota. This collection will also provide information on recreational landings of West Atlantic sailfish which is unavailable from established monitoring programs. Collection of sailfish information is authorized under MSFCMA for purposes of stock management.

II. Method of Collection

Once a recreational fisherman lands a bluefin tuna, he is required to report his catch via one of three methods. If the fish is landed in the states of North Carolina (NC) or Maryland (MD), the fisherman must obtain a harvest tag from the state fisheries agency by submitting a landing card at a state BFT reporting station. Under this tag method participating States (MD and NC) also submit weekly written reports and one annual report summarizing results and data for the prior time period.

In all other Atlantic and Gulf coast states, fishermen report via either a toll-free telephone call or an Internet Web site. A follow-up call to the angler is made by NOAA Fisheries personnel when the landed fish is a trophy BFT (greater than or equal to 73'' curved fork length).

When a fisherman lands an Atlantic marlin, West Atlantic sailfish and/or North Atlantic swordfish, they must report their catch by calling a toll-free telephone number. Agency personnel then place a follow-up call to the angler to verify the initially-reported information.

III. Data

OMB Number: 0648–0328.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households; and State, Local, or Tribal government.

Estimated Number of Respondents: 12,131.

Estimated Time Per Response: 5 minutes for an initial call-in or Internet report; 5 minutes for a confirmation call; 10 minutes for a landing card; 1 hour for a weekly state report; and 4 hours for an annual state report.

Estimated Total Annual Burden Hours: 2,096.

Estimated Total Annual Cost to Public: None.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 7, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–6198 Filed 3–14–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Proposed Findings Document, Environmental Assessment, and Finding of No Significant Impact

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the U.S. Environmental Protection Agency.

ACTION: Notice of availability of Proposed Findings Document, Environmental Assessment, and Finding of No Significant Impact on conditional approval of coastal nonpoint pollution control program for Minnesota.

SUMMARY: Notice is hereby given of the availability of the Proposed Findings Document, Environmental Assessment (EA), and Finding of No Significant Impact for Minnesota. Coastal States and Territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval. The Findings Document was prepared by NOAA and EPA to provide the rationale for the agencies' decision to approve each State and Territory coastal nonpoint pollution control program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint pollution control programs. The EA was prepared by NOAA, pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* to assess the environmental impacts associated with the approval of the coastal nonpoint pollution control program submitted to NOAA and EPA by Minnesota.

NOAA and EPA have proposed to approve, with conditions, the coastal nonpoint pollution control program submitted by Minnesota. The

requirements of 40 CFR parts 1500–1508 Council on Environmental Quality (CEQ) regulations to implement NEPA apply to the preparation of the Environmental Assessment. Specifically, 40 CFR 1506.6 requires agencies to provide public notice of the availability of environmental documents. This notice is part of NOAA's action to comply with this requirement.

Copies of the Proposed Findings Document, EA, and Finding of No Significant Impact may be found on the NOAA Web site at *http://www.ocrm.nos.noaa.gov/czm/6217/* or may be obtained upon request from: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov.*

DATES: Individuals or organizations wishing to submit comments on the proposed Findings Document or EA should do so by April 16, 2003.

ADDRESSES: Comments should be made to: John King, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x188, e-mail *john.king@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov.*

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 5, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

G. Tracy Mehan III,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 03–6249 Filed 3–14–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[I.D.022003D]

Notice of Intent to Prepare a Draft Environmental Impact Statement for Federal Actions Under the Endangered Species Act Related to the State of Washington Forest Practices Rules

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.U.S. Fish and Wildlife Service (FWS), Department of the Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Notice is hereby given pursuant to the National Environmental Policy Act, as amended (NEPA), that NOAA Fisheries and FWS (known hereafter as the Services) intend to gather information necessary to prepare a Draft Environmental Impact Statement (DEIS) related to anticipated applications from the State of Washington (State) for take authorization or a take limit under the Endangered Species Act of 1973, as amended (ESA). Washington State has entered into discussions with the Services in anticipation of submitting an application for take authorization pursuant to the ESA (see Background Section for specific sections) for the Washington State Forest Practices Rules, regulating forest management activities on non-Federal forest lands in the state of Washington.. Both Services have listed threatened and endangered species in the State that are likely to be affected by this action. The species are identified below in **SUPPLEMENTARY INFORMATION** and in the ''Covered Resources'' section of Appendix A and Schedule H–1 of the Forests and Fish Report, April 1999, available at http://www.wa.gov/ dnr/ htdocs/ forestpractices/ rules/ forestsandfish or by calling one of the contacts listed below in **ADDRESSES.**

The Services are providing this notice: (1) to advise other agencies and the public of their intent to prepare a DEIS on the State application(s); and (2) to obtain suggestions and information on the scope of issues to include in the DEIS.

DATES: Written scoping comments for the DEIS from all interested parties must be received no later than 5 p.m. Pacific time on April 16, 2003. Interested parties may contact the Services for more information at the addresses and phone numbers listed below. Four public scoping workshops will be held in 2003. Each meeting will begin with a one-hour open house to accommodate informal discussion and questions; the presentation portion of the meeting will begin at 6 p.m.

The meeting dates and times are:

1. March 18, 2003, 5 - 8 p.m., Tacoma, WA.
2. March 20, 2003, 5 - 8 p.m., Port Angeles, WA.
3. March 25, 2003, 5 - 8 p.m., Spokane, WA.
4. March 26, 2003, 5 - 8 p.m., Ellensburg, WA.

ADDRESSES: Written comments and requests for information should be sent to Craig Hansen, U.S. Fish and Wildlife Service, 510 Desmond Drive, S.E., Suite 102, Lacey, WA 98503–1273, telephone (360)753–6046, facsimile (360)753–9518; or Steve Keller, NOAA Fisheries, 510 Desmond Drive, S.E., Suite 103, Lacey, WA 98503–1273, telephone (360)534–9309, facsimile (360)753 9517. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above addresses.

The meeting locations are:

1. Tacoma, Tacoma Sheraton Hotel, 1328 Broadway Plaza, Tacoma, WA.
2. Port Angeles, Red Lion Hotel, 221 North Lincoln, Port Angeles, WA.
3. Spokane, Red Lion Hotel at the Park, 303 W. North River Drive, Spokane, WA.
4. Ellensburg, Grupe Center at Central Washington University, 400 East 8th Avenue, Ellensburg, WA.

FOR FURTHER INFORMATION CONTACT: Steve Keller, (360) 534-9309.

SUPPLEMENTARY INFORMATION:

Species Listed in this Notice

NMFS listed species potentially addressed in this action include Ozette Lake sockeye salmon (*Oncorhynchus nerka*), Snake River sockeye salmon (*O. nerka*), Puget Sound chinook salmon (*O. tshawytscha*), Lower Columbia River chinook salmon (*O. tshawytscha*), Upper Columbia River spring-run chinook salmon (*O. tshawytscha*), Snake River spring/summer chinook salmon (*O. tshawytscha*), Snake River fall chinook salmon (*O. tshawytscha*) Lower Columbia River steelhead (*O. mykiss*), Middle Columbia River steelhead (*O. mykiss*), Upper Columbia River

steelhead (*O. mykiss*); Snake River steelhead (*O. mykiss*), Columbia River chum salmon (*O. keta*), and Hood Canal summer-run chum salmon (*O. keta*).

Refer to the following website for NMFS listing status and protective regulations: http://www.nwr.noaa.gov/1salmon/salmesa/index/htm

FWS listed species potentially addressed in this action include bull trout (Salvelinus confluentus) and any or all unlisted Washington native fish and six stream breeding amphibians.

Background

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The Services expect to take action on ESA section 10(a)(1)(B) and/or 4(d)Limit submittals expected from the State. Therefore the Services are seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Section 9 of the ESA and implementing regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). Harm is defined by the FWS to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50CFR17.3). NOAA Fisheries' definition of harm includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727, November 8, 1999).

The Services may promulgate rules under section 4(d) of the ESA establishing specific take prohibitions for threatened species that the Services determine to be consistent with the conservation needs of threatened species. Section 10(a)(1)(B) of the ESA provides a mechanism by which both Services may permit take through the issuance of an Incidental Take Permit (ITP). An ITP may be issued for take that could occur incidental to otherwise lawful activities, provided all permit issuance criteria are met, including the requirement that permit issuance would not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The applicant for an ITP must prepare and submit to the Services for approval, a Habitat Conservation Plan (HCP) containing strategies for minimizing and mitigating the impacts of take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure adequate funding will be provided for the HCP. An HCP and associated ITP could cover the threatened bull trout and salmon, plus any endangered and unlisted species that might be affected by the Washington State Forest Practices Rules. In addition, the ''No Surprises'' rule assures that the Services will not require the commitment of any additional land, water or financial compensation for HCPs that are being properly implemented throughout the term of the HCP and ITP. It is important to note that section 10 is the only ESA mechanism by which take authorization can be granted to non-Federal landowners for take of endangered species. On July 10, 2000, NOAA Fisheries promulgated and published an ESA section 4(d) rule for threatened salmon and steelhead(65 FR 42422). In addition to establishing take prohibitions, the rule provides that certain specified activities or conservation plans may qualify for a limit from the rule's take prohibitions provided that such activities or programs qualify for one of 13 categories known as ''limits''. Limit 13 of this rule applies to forest management in Washington and specifically relates to non-Federal forest management activities that are at least as protective as the elements of the Forests and Fish Report. The Forests and Fish Report is a document that makes recommendations for improving forest management and timber harvest for the benefit of salmon and aquatic and riparian species. The report was prepared collaboratively by a group of stakeholders from private industry, public interest groups, State and Federal Government agencies, and Tribes. NOAA Fisheries has not yet determined whether the State's Forest Practices Rules as revised by the Forests and Fish report comply with this rule.

FWS has not issued a comparable 4(d) rule, but is considering whether to exempt the take of bull trout that may occur through implementation of the Washington State Forest Practices Rules by adopting a 4(d) rule. A FWS 4(d) rule could be structured to exempt take that might occur as a result of implementing the State regulatory program, provided that the program is consistent with the conservation needs of the species. However, a 4(d) rule can only address take of species listed as threatened. The Forests and Fish Report addresses some endangered and unlisted species, as well as threatened species.

Because both threatened and endangered species are likely to be affected and because there are alternative methods for meeting the requirements of the ESA, the State is working with both Services to develop one or more proposals.

State of Washington's Programs and Proposals

The Washington State Forest Practices Board was established in 1975 by the Washington State Legislature under the State Forest Practices Act. By law, the board is charged with establishing rules governing forest management activities on non-Federal forest land in the State in order to protect public resources while maintaining a viable timber industry. Those rules, as embodied in the Washington Administrative Code (Title 222 WAC), specifically consider the effects of various forest practices on fish, wildlife and water quality. The Forest Practices Act also requires the Washington Department of Natural Resources to administer and enforce all board-adopted rules on non-Federal forest land. The board adopts Forest Practices rules pertaining to water quality protection after reaching agreement with the director of the Department of Ecology (Ecology) or the director's designee on the board.

Beginning in late 1996, stakeholders determined additional protections should be developed because of the imminent listing of several salmon species in Washington under the Act, and because new information from watershed analyses and other sources indicated riparian protections in place at that time were not adequate for public resource protection. In response, the participants in a stakeholder negotiation process known as Timber, Fish, and Wildlife (TFW) began working on riparian issues and agreed to negotiate collaboratively in an effort to submit a proposal to the Forest Practices Board. Over the course of the negotiations, representatives from Federal agencies and Washington counties joined the effort, and representatives of environmental interests and some Tribes withdrew from the process. The remaining caucuses continued negotiating and went on to write the Forests and Fish Report (April 1999), which ultimately became the basis for new Forest Practices Rules with increased attention to the needs of salmon and other aquatic and riparian species on forest lands. The groups contributing to the development of the report included Federal agencies (FWS,

NOAA Fisheries and Environmental Protection Agency), state agencies (Washington Departments of Natural Resources, Governor's Office, Fish and Wildlife, and Ecology), the Tribes, the Washington State Association of Counties, the Washington Forest Protection Association, and the Washington Farm Forestry Association.

Following publication of the Forests and Fish Report, the Washington State Legislature directed the Forest Practices Board to adopt rules consistent with the Forest and Fish Report. The board conducted an evaluation of the proposal, and alternatives to the proposal, for modifying the Forest Practices Rules. This evaluation included a State Environmental Impact Statement (SEIS), under the Washington State Environmental Policy Act. The State's Final SEIS, entitled ''Alternatives for Forest Practices Rules for Aquatic and Riparian Resources'' was published in April 2001.

In consideration of this evaluation, the Forest Practices Board adopted new rules in May 2001, which were based on the Forests and Fish Report. Effective July 2001, these new rules cover a wide variety of forest practices and include a new, more functional classification of rivers and streams on non-Federal forest land; improved plans for properly designing, maintaining, and upgrading existing and new forest roads; additional protections for unstable slopes; greater protections for riparian areas intended to maintain properly functioning conditions; a process for adaptive management; and other features.

Washington State has now entered into discussions with the Service's in anticipation of submitting an application for ESA take authorization pursuant to Section 10(a)(1)(B) of the Act, a 4(d) Limit or both for the Washington State Forest Practices Rules, regulating forest management activities on non-Federal forest lands in the state of Washington.

Review Under National Environmental Policy Act

The Services will conduct an environmental review of the application package(s) to be submitted by the State and prepare a Federal DEIS. The DEIS will analyze the proposal, as well as a full range of reasonable alternatives and the associated impacts of each. The Services are in the process of developing alternatives for analysis. Alternatives currently under consideration include: a No Action alternative; an alternative resulting in the issuance of a Section 10 Permit based on an HCP, which includes the full complement of practices endorsed by the Forests and Fish Report; an alternative resulting in NOAA Fisheries determining that the State Forest Practices Rules and non-regulatory elements of the State's program are at least as protective of threatened fish as the Forests and Fish Report, thus qualifying the program under Limit 13 of the July, 2000 4(d) rule; an alternative that includes the adoption of a similar 4(d) rule by the FWS; and alternatives involving an ESA incidental take permit or 4(d) rules associated with measures that are either more or less protective than the complete Forests and Fish Report package. Additional alternatives may be developed based on input received from this and future public comment opportunities during the development of the DEIS.

Comments and suggestions are invited from all interested parties to ensure the full range of alternatives related to this proposed action and all significant issues are identified. The Services request that comments be as specific as possible. Comments should include information, issues, and concerns regarding: the direct, indirect, and cumulative effects that implementation of the proposal could have on endangered and threatened species or their habitats; other possible alternatives; potential adaptive management and/or monitoring provisions; funding issues; baseline environmental conditions; other plans or projects that might be relevant to this project; and minimization and mitigation measures. In addition to considering impacts to threatened and endangered species and their habitats, the DEIS will analyze the effects the alternatives would cause to other components of the human environment. As a result comments specific to the following are also requested: air quality; water quality and quantity; geology and soils; cultural resources; social resources; economic resources; and environmental justice.

This notice is provided pursuant to NEPA regulations (40 CFR 1506.6). Comments or questions should be directed to the Services at the addresses or telephone numbers provided above. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public.

This environmental review by the Services will be conducted in accordance with the requirements of the NEPA, NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations.

Dated: February 28, 2003.

Anne Badgley,

Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

Dated: March 11, 2003.

Barbara Schroeder,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–6325 Filed 3–14–03; 8:45 am]

BILLING CODE 3510–22–S; 4310–55–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[981203295–3055–08]

RIN 0660–ZA06

Technology Opportunities Program

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issues this Notice describing the conditions under which applications will be received under the Technology Opportunities Program (TOP) and how NTIA will select applications for funding.

As an agency of the U.S. Department of Commerce, NTIA is the Executive Branch's principal voice on domestic and international telecommunications and information technology issues. NTIA works to spur innovation, encourage competition, help create jobs and provide consumers with more choices and better quality telecommunications products and services at lower prices.

TOP supports this mission through funding demonstrations of new telecommunications and information applications for the provision of educational, cultural, health care, public information, public safety, or other social services.

DATES: Complete applications for the Fiscal Year 2003 TOP grant program must be either postmarked no later than April 23, 2003, or hand-delivered no later than 5 P.M. Eastern Daylight Time on April 23, 2003, to the respective addresses listed in the **ADDRESSES** section of this notice. Applications submitted through guaranteed carrier services will be considered postmarked on the date they are submitted to the carrier.

Applications must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service postmark;

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; or

3. A dated shipping label, invoice, or receipt from a commercial carrier.

If an application is sent through the U.S. Postal Service, neither of the following will be accepted as proof of mailing:

1. A private metered postmark; or

2. A mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office.

Due to screening procedures at the Department of Commerce, packages arriving via the United States Postal Service's Priority Mail, First Class, and Parcel Post services are irradiated, which can damage the contents, or delay delivery to the TOP Program Office. Thus, applicants are encouraged to consider the impact of these procedures in selecting their chosen method for application delivery.

Applications will not be accepted via facsimile machine transmission or electronic mail.

Applications with postmarked dates after April 23, 2003, will not be considered in the current grant round and will be returned to the applicant.

ADDRESSES: Completed applications must be mailed, shipped, or sent overnight express to:

Technology Opportunities Program, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., HCHB, Room 4096, Washington, DC 20230; or hand-delivered to:

Technology Opportunities Program, National Telecommunications and Information Administration, U.S. Department of Commerce, HCHB, Room 1874, 1401 Constitution Avenue, NW., Washington, DC 20230.

Room 1874 is located at entrance #10 on 15th Street NW., between Pennsylvania and Constitution Avenues.

FOR FURTHER INFORMATION CONTACT: Lammot du Pont by telephone: (202) 482–2048; fax: (202) 501–8009; or e-mail: *top@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority

NTIA issues this notice pursuant to Public Law 108–7, the Consolidated Appropriations Resolution, FY 2003.

Catalog of Federal Domestic Assistance (CFDA)

CFDA Number 11.552; Technology Opportunities Program (TOP)

Eligibility Criteria

Non-profit entities, public sector organizations as well as state, local and tribal governments are eligible to apply. Eligible applicants include, but are not limited to, faith-based organizations, national organizations and associations, non-profit community-based organizations, non-profit health care providers, schools, libraries, museums, colleges, universities, public safety providers or other providers of social services.

Individual persons are not eligible to apply.

For-profit organizations are not eligible to apply. They are encouraged, however, to participate as project partners as described in the ''Matching Funds Requirements'' and ''Review Criteria'' sections of this Notice.

Applications submitted by those who are or designate themselves as ''individuals'' or ''for-profit organizations'' on the Standard Form 424 (SF–424), Application for Federal Assistance, will not be considered in the current grant round and will be returned to the applicant.

Funding Availability

Approximately $12.4 million is available for Federal assistance under a grant. Based on past experience, NTIA expects this year's grant round to be very competitive. In Fiscal Year 2002, NTIA received 741 applications collectively requesting more than $330 million in federal funds. From these applications, the Department of Commerce announced 25 awards totaling $12.4 million in federal funds.

Award Amount

An applicant may request up to a total of $700,000 in funds from NTIA. TOP expects the federal amounts awarded to range from $350,000 to $700,000, with an average of approximately $500,000. The amount awarded covers the duration of the project.

Matching Funds Requirements

Grant recipients under this program will be required to provide matching funds toward the total project cost. Applicants must document their capacity to provide matching funds. Matching funds may be in the form of cash or in-kind contributions.

NTIA will provide up to 50 percent of the total project cost, unless the applicant can document extraordinary circumstances warranting a grant of up to 75 percent. Grant funds under this program are usually released in direct proportion to local matching funds utilized and documented as having been expended.

Generally, federal funds may not be used as matching funds, except as provided by federal statute. If you plan to use funds from a federal agency as matching funds, you should contact the federal agency that administers the funds in question and obtain documentation from that agency's Office of General Counsel to support the use of federal funds for matching purposes.

Completeness of Application

TOP will initially review all applications to determine whether all required elements are present and clearly identifiable. In order to be accepted for review, each application must contain, at a minimum, the following required elements: (1) A Standard Form 424 (SF–424), Application for Federal Assistance, with an original signature, (2) a project narrative, and (3) a budget narrative.

Applications that are missing any of the three required elements with the appropriate signatures will not be considered in the current grant round and will be returned to the applicants.

Standard forms and materials needed to complete an application can be obtained electronically via TOP's Web site at *http://www.ntia.doc.gov/top* or by contacting the TOP office at (202) 482–2048.

More details regarding the required elements and suggestions for preparing a competitive application are described in the Guidelines for Preparing Applications—Fiscal Year 2003. Applicants can obtain a copy of the Guidelines for Preparing Applications—Fiscal Year 2003, via TOP's Web site at *http://www.ntia.doc.gov/top* or by contacting the TOP office at (202) 482–2048.

Program Description

As a national program, TOP emphasizes innovation, learning, and diffusion of new ideas and practical knowledge. Through TOP, NTIA provides organizations with opportunities to explore the possibilities that new telecommunications and information technology offer to improve the provision of educational, cultural, health care, public information, public safety, or other social services.

TOP projects demonstrate innovative applications of new telecommunications and information technology to address pressing needs in the public and non-profit sectors. Therefore, TOP expects applicants to present a clear vision and

a workable plan to apply technologies to address specific challenges in their communities. Rather than simply requesting funds to build capacity or upgrade existing equipment, each application should describe a project that pinpoints specific problems, proposes creative solutions, and postulates measurable outcomes.

All funded projects must be interactive in that they foster the exchange and sharing of information among individuals and/or groups, as opposed to one-way or broadcast systems. Because these grants will serve as national models for other communities, NTIA expects each project to include provisions for a thorough, independent evaluation that will provide valid and reliable data as well as valuable lessons learned to be shared with others interested in the project.

In previous fiscal years, NTIA supported planning projects. The emphasis for Fiscal Year 2003 is on projects that deploy, use, and evaluate applications of new telecommunications technology. NTIA will, however, support projects that incorporate some planning activities as part of the proposed project.

Limitations on Project Scope

Each TOP project is expected to include a range of activities that support project development, implementation, and evaluation. However, TOP will not support projects whose primary purpose falls into the categories discussed below.

1. *Single-Organization Projects.* TOP will not support projects whose primary emphasis is on the internal communications needs of a single organization, even if the organization has a considerable number of offices or users in different cities or regions of the country.

2. *Infrastructure Development Projects.* Every TOP applicant is expected to create a project that describes and provides funding for specific applications of technologies to address important community challenges. Therefore, TOP will not support projects whose primary purpose is to create telecommunications or network infrastructure without significant dedication of resources to specific applications of that infrastructure.

3. *Hardware or Software Development Projects.* Some projects may require limited software development or the customization or modification of existing software or hardware in order to meet particular end-user requirements or to enable the exchange of information across networks. However, the creation of a software or hardware product cannot be a project's primary purpose.

4. *Training Projects.* While TOP considers training to be an essential aspect of most projects, TOP will not support projects whose primary purpose is to provide training in the use of software applications, Internet use, or other network technologies.

5. *Voice-based Systems.* Two-way, interactive voice networks are an important element of existing network systems. Voice as a means for conveying information and voice input tools play critical roles in ensuring people with disabilities have access to network technology. However, TOP will not support projects whose primary purpose is to either build or install voice-based communication networks such as call centers, two-way radio networks, enhanced-911 and 311 systems, or 800 MHZ radio systems.

6. *Curriculum Development Projects.* As indicated in the ''Eligibility Criteria'' section of this Notice, K–12 schools and non-profit entities that provide lifelong learning opportunities are eligible to apply for grants. However, TOP will not support projects whose primary purpose is the development of curricula for K–12 students.

In addition, NTIA places a priority on avoiding duplication of other federal initiatives. As indicated in the ''Selection Procedures'' section of this notice, the selection official will recommend awards based, in part, on avoidance of redundancy with initiatives of other federal agencies. Therefore, applicants should carefully review other federal initiatives, and, if necessary, describe how their project would not be eligible for support by other federal initiatives. For assistance in researching other federal initiatives, please see the discussion of Electronic Information in the ''Other Information'' section of this Notice.

Review Criteria

Reviewers will analyze and rate each application using the following criteria. The relative weights of each criterion are identified in parentheses.

1. Project Purpose (20%)

Each application must describe a clearly defined project that uses telecommunications and information technology for the provision of educational, cultural, health care, public information, public safety, or other social services.

In assessing the project purpose, reviewers will examine the degree to which the applicant clearly describes and convincingly links three major elements: (1) The problem(s) to be addressed, (2) the proposed solution, and (3) the anticipated outcomes of the project.

Reviewers will assess the evidence and severity of the identified problem(s) and need(s). With respect to the proposed solution, reviewers will assess the degree to which the project will address the identified problem(s). With respect to anticipated project outcomes, reviewers will assess the degree to which the proposed results and outcomes of the project are both realistic and measurable. Reviewers will also assess the degree to which an applicant convincingly links the three major elements-problem(s), solution(s), and outcome(s).

2. Innovation (20%)

Reviewers will assess innovation by examining both the technology to be used and the application of the technology in a particular setting, to serve a particular population, or to solve a particular problem. TOP defines innovation broadly. For example, projects that involve imaginative partnerships, the introduction of new business processes designed to offer more effective services, untested strategies for overcoming access barriers, or new techniques that transform inter-organizational relationships can all be considered innovative. TOP encourages applicants to experiment with leading edge technologies. It is, however, the creativity behind the application of the technology to meet community needs that ultimately determines the level of innovation.

Using experience gained in their respective fields, reviewers will examine each project in a national context and evaluate how an application compares with, complements, and improves on what is known about using telecommunications and information technology for the provision of educational, cultural, health care, public information, public safety, or other social services.

3. Community Involvement (20%)

Each application will be rated on the level of community involvement in the development and implementation of the proposed project. Reviewers will:

(1) Analyze the applicant's partnerships to ensure that they include linkages among unaffiliated organizations (from the public, non-profit, or private sectors) as an ongoing and integral part of project planning and implementation. TOP considers partners to be organizations that supply cash, in-kind resources (including personnel,

equipment, facilities, etc.), and/or are actively involved in the planning and implementation of the project;

(2) consider the degree of attention paid to the needs, skills, working conditions, and living environments of the targeted end users.[1] Reviewers will consider the extent to which applicants involve representatives from a broad range of potential users in both the design and implementation of the project and consider the varying degrees of abilities of all end users, including individuals with disabilities. Reviewers will also assess the degree to which the project addresses barriers which limit a community's or a group's access to network technologies. Finally, reviewers will assess the applicant's plans for training end users and upgrading their skills; and

(3) examine the steps the applicant has taken to include and sustain the involvement of a variety of community stakeholders. Reviewers will look for documented evidence of demand—from the community, end users, and potential beneficiaries—for the services proposed by the project.

4. Evaluation and Dissemination (15%)

Each application will be rated on its proposed plans for evaluating the project and sharing the knowledge learned. Reviewers will assess the extent to which the applicant's research or evaluation design: (1) Provides for continuous feedback for project planning, implementation, review, and revision; (2) addresses the problems, solutions, and anticipated outcomes described in the project purpose; (3) proposes a research design that yields valid and reliable findings; (4) captures lessons learned and sufficient descriptive data so that others may easily adapt and replicate the project; and (5) meets TOP's requirements for an independent evaluation as described in the ''Reporting Requirements'' section of this Notice.

In assessing evaluation, reviewers will examine:

(1) The research design and methodology;

(2) evaluation questions, data collection, and data analysis plans;

(3) the qualifications of any staff or external evaluators working on the evaluation; and

(4) the allocation of resources for implementing the evaluation and reporting project findings.

With respect to dissemination of the lessons learned, reviewers will assess:

(1) the extent to which the project would be easy to replicate or adapt, based on considerations such as cost and complexity;

(2) the applicant's plans and budget resources dedicated to disseminate actively the best practices and lessons learned from the project's successes and failures; and

(3) the capability and experience of an applicant or their partner organizations to reach communities across the country and disseminate their findings.

5. Project Feasibility (15%)

In assessing the feasibility of each application, reviewers will focus on five issues: The technical approach, the qualifications of the project staff, the implementation schedule, plans for protecting privacy, and the applicant's plan for sustaining the project beyond the grant period.

(1) In assessing the technical approach, reviewers will examine the degree to which the proposed system offers advantages over established approaches to addressing the specified problems and would work and operate with other systems. In addition, reviewers will assess the technological alternatives that have been considered; designs for system maintenance and periodic upgrades; and plans for project expansion. Applicants are expected to make use of existing infrastructure and commercially available telecommunications services, unless extraordinary circumstances require the construction of new network facilities.

(2) In assessing the qualifications of the project team, reviewers will assess the applicant and its partners to determine if they have the resources, expertise, and experience necessary to undertake, evaluate, and complete the project and disseminate results within the proposed period.

(3) Reviewers will assess the degree to which the proposed project, from implementation through evaluation, will be completed in the proposed time frame.

(4) Reviewers will evaluate the applicant's plans to safeguard the privacy of the project's end users and others affected by the project.

(5) Finally, reviewers will examine the applicant's strategies to sustain the project after the completion of the grant.

6. Project Budget (10%)

Reviewers will analyze the budget in terms of clarity and cost-effectiveness. Reviewers will also assess the reasonableness of the proposed budget and whether the allocation of funds is sufficient to complete the tasks outlined in the project narrative.

Eligible Costs

Eligible Costs. Allowable costs incurred under approved projects shall be determined in accordance with applicable federal cost principles, *i.e.*, OMB Circulars A–21, A–87, A–122, or Appendix E of 45 CFR part 74. If included in the approved project budget, TOP will allow costs for personnel; fringe benefits; computer hardware, software, and other end-user equipment; telecommunication services and related equipment; consultants, evaluators, and other contractual items; travel; rental of office equipment, furniture, and space; and supplies.

All costs must be reasonable and directly related to the project.

Ineligible Costs

Costs associated with the construction or major renovation of buildings are not eligible. While costs for the construction of new network facilities are eligible, applicants are expected to make use of existing infrastructure and commercially available telecommunications services. Only under extraordinary circumstances will the construction of new network facilities be approved.

Costs for professional services are also ineligible. TOP defines professional services as activities delivered over a network that would otherwise be provided in a face-to-face setting such as teaching students, counseling clients, providing direct patient care, or interpreting services, etc. For example, if the project proposes to create a telemedicine network, the costs of setting up, maintaining, and evaluating the use of the network are eligible, but payment for the time or services of physicians or other health professionals providing care over the network is not an eligible cost.

Note that costs ineligible for TOP support may not be included as part of the applicant's matching fund contribution.

In addition, Pub. L. 108–7, the Consolidated Appropriations Resolution, FY 2003, places restrictions on eligible project costs for applicants that are recipients of Universal Service Fund discounts and applicants receiving assistance from the Department of Justice's Regional Information Sharing Systems Program as part of the project costs. The statute provided:

> That, notwithstanding any other provision of law, no entity that receives telecommunications services at preferential rates under section 254(h) of the Act (47 U.S.C. 254(h)) or receives assistance under the regional information sharing systems grant program of the Department of Justice

[1] An ''end user'' is an individual who directly uses the network technology.

under part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796h) may use funds under a grant under this heading to cover any costs of the entity that would otherwise be covered by such preferential rates or such assistance, as the case may be.

Accordingly, recipients of the above-described preferential rates or assistance are prohibited from including any costs that would be covered by such preferential rates or assistance in their proposed TOP grant budget. More details on this restriction can be found in the Guidelines for Preparing Applications—Fiscal Year 2003.

Award Period

Applicants may propose projects that last a minimum of 18 months and will be completed by 36 months. While the completion time will vary depending on the complexity of the project, NTIA has found that most grant recipients require at least two years to complete and evaluate fully their projects.

Selection Procedures

NTIA anticipates the processing and selection of applications for funding will require six months. The selection process involves four stages outlined below:

1. During the first stage, each eligible application will be reviewed by a panel of outside peer reviewers, who have demonstrated expertise in both the programmatic and technological aspects of the application. The peer review panel members will evaluate applications according to the review criteria provided in this Notice and provide ratings to the program staff. As discussed below, these ratings constitute one of the selection factors to be used by the TOP Director when preparing the slate of recommended grant awards.

2. Upon completion of the external peer review process, program staff will analyze applications considered for award to assess: (1) Whether a proposed project meets the program's funding scope as described in the section entitled ''Limitations on Project Scope''; (2) the eligibility of costs and matching funds included in an application's budget; and (3) the extent to which an application complements or duplicates projects previously funded or under consideration by NTIA or other federal programs.[2]

The TOP Director then prepares and presents a slate of recommended grant awards to the Office of Telecommunications and Information Applications' (OTIA) Associate Administrator for review and approval.[3] The Director's recommendations and the Associate Administrator's review and approval will take into account the following selection factors:

(1) The evaluations of the outside peer reviewers;

(2) the analysis of program staff;

(3) the degree to which the proposed grants meet the program's purpose as described in the section entitled ''Program Description'';

(4) the geographic distribution of the proposed grant awards;

(5) the variety of technologies and diversity of uses of the technologies employed by the proposed grant awards;

(6) the provision of access to and use of telecommunications and information technologies by rural communities and other underserved groups;

(7) avoidance of redundancy and conflicts with the initiatives of other Federal agencies; and,

(8) the availability of funds.

3. Upon approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selecting Official, the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the selection factors described above and the program's stated purposes as set forth in the section entitled ''Program Description.''

4. After applications have been selected in this manner, negotiations will take place between TOP staff and the applicant. These negotiations are intended to resolve any differences that exist between the applicant's original request and what TOP proposes to fund, and if necessary, to clarify items in the application. Not all applicants who are contacted for negotiation will necessarily receive a TOP award. Final selections made by the Administrator will be based upon the recommendations by the Director and the OTIA Associate Administrator and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes as set forth in the section entitled ''Program Description,'' upon the conclusion of negotiations.

Use of Program Income

Applicants are advised that any program income generated by a proposed project is subject to special conditions. Anticipated program income must be documented appropriately in the project budget. In addition, should an application be funded, unanticipated program income must be reported to TOP, and the budget for the project must be renegotiated to reflect receipt of this program income. Program income means gross income earned by the recipient that is either directly generated by a supported activity, or earned as a result of the award. In addition, federal policy prohibits any recipient or subrecipient receiving federal funds from the use of equipment acquired with these funds to provide services to non-federal outside organizations for a fee that is less than private companies charge for equivalent services. This prohibition does not apply to services provided to outside organizations at no cost.

Policy on Sectarian Activities

Applicants are advised that on December 22, 1995, NTIA issued a notice in the **Federal Register** on its policy with regard to sectarian activities. Under NTIA's policy, while religious activities cannot be the essential thrust of a grant, an application will not be ineligible where sectarian activities are only incidental or attenuated to the overall project purpose for which funding is requested. Applicants for whom this policy may be relevant should read the policy that was published in the **Federal Register** at 60 FR 66491, Dec. 22, 1995.

Reporting Requirements

To ensure compliance with federal regulations and collect systemic evaluation data on each project, successful TOP applicants have a number of basic reporting requirements once they are awarded a grant. At project outset, TOP grantees provide detailed baseline information on the project objectives, goals, partners, and populations served. Grantees then provide periodic financial reports and updates on project activities. At project completion, TOP grantees must also provide a closeout report.

Finally, because evaluation results play such a critical role in helping other organizations learn about what works well and what does not, each TOP-supported project will provide NTIA a final evaluation report.

To ensure the validity of the findings, the final evaluation report must be completed by an independent evaluator

[2] *See* discussion of ''Eligible Costs'' and ''Matching Funds Requirements'' in this Notice. Information on previously funded grants is available from the TOP. In the section ''Other Information'' of this notice, details are available on how to access this information.

[3] The Office of Telecommunication and Information Applications is the division of the National Telecommunications and Information Administration that supervises NTIA's grant awards programs.

or team of evaluators who are not in a direct reporting relationship with the applicant.[4] TOP will make copies of the final evaluation report available to the public.

Waiver Authority

It is the general intent of NTIA not to waive any of the provisions set forth in this Notice. However, under extraordinary circumstances and when it is in the best interest of the federal government, NTIA, upon its own initiative or when requested, may waive the provisions in this Notice. Waivers may only be granted for requirements that are discretionary and not mandated by statute. Any request for a waiver must set forth the extraordinary circumstances for the request and be included in the application or sent to the address provided in the **ADDRESSES** section above.

As noted in the **DATES** section above, complete applications for the Fiscal Year 2003 TOP grant program must be either postmarked no later than April 23, 2003, or hand-delivered no later than 5 p.m. Eastern Daylight Time on April 23, 2003, to the respective addresses listed above. NTIA will not waive this requirement.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' All applicants are required to submit a copy of their application to their state Single Point of Contact (SPOC) offices, if they have one. For information on contacting state SPOC offices, refer to the Guidelines for Preparing Applications—Fiscal Year 2003.

Other Information

Electronic Information. Information about NTIA, TOP, and other resources to help prepare an application, including this document and the Guidelines for Preparing Applications—Fiscal Year 2003, can be retrieved electronically via the Internet using the World Wide Web at *http://www.ntia.doc.gov/top.* This document can be provided in alternate formats, including braille. If you need assistance please contact TOP at (202) 482–2048 or *top@ntia.doc.gov.*

Through TOP's online tools available at *http://www.ntia.doc.gov/top,* applicants can prepare and print a number of the required forms. Please note that applicants must submit all application materials (even those forms prepared online) in hard copy with appropriate signatures.

As indicated above, each application must contain, at a minimum, the following required elements: (1) A Standard Form 424 (SF–424), Application for Federal Assistance, with an original signature, (2) a project narrative, and (3) a budget narrative. Applications that are missing any of these three required elements with the appropriate signatures will not be accepted for review and will be returned to the applicants.

In addition, applicants can use TOP's online tools to provide an electronic version of their executive summary that will be available to the public. TOP's online tools are optional and not required to prepare an application.

Submission Requirements. TOP requests one original and five copies of the application. Applicants for whom the submission of five copies presents financial hardship may submit one original and two copies of the application.

Disposition of Unsuccessful Applications. Applications accepted for review for the Fiscal Year 2003 grant round will be stored at the Department of Commerce until the start of the next grant competition or one year, whichever period is longer. At the end of that period, the applications will be destroyed.

Sensitive Information. Because of the high level of public interest in projects supported by TOP, the program anticipates receiving requests for copies of successful applications. Applicants are hereby notified that the applications they submit are subject to the Freedom of Information Act. To assist NTIA in making disclosure determinations, applicants may identify sensitive information and label it ''confidential.''

Human Subjects Research Protection. The Department of Commerce, through part 27 of Title 15 of the Code of Federal Regulations, requires that all applications awarded under the TOP ensure protections for any human subjects involved in research.

If an application is considered for funding, the grant applicant will be asked to submit appropriate documentation of IRB approval or exemption status to the Federal Program Officer for approval by Department officials. More details on human subjects research protection are available through the TOP's Web site at *http://www.ntia.doc.gov/top* and the Guidelines for Preparing Applications—Fiscal Year 2003.

Grant Requirements. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

Limited English Proficiency. Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency,'' requires all Departments and agencies to eliminate, to the maximum extent possible, limited English proficiency as an artificial barrier to the full and meaningful participation by beneficiaries in federally assisted and federally conducted programs and activities. The Department of Commerce is in the process of implementing this Executive Order, and all FY 2003 TOP grantees will be required to comply with the Department's final guidelines.

Other Requirements. It has been determined that this Notice is not significant for purposes of E.O. 12866.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this Notice, 5 U.S.C. 601 *et seq.*

It has been determined that this Notice does not contain policies with Federalism implications as that term is defined in E.O. 13132.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF-LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 03–6233 Filed 3–14–03; 8:45 am]

BILLING CODE 3510–60–P

[4] In large institutions, such as universities, colleges, and foundations, an independent evaluator can include a representative from departments not associated with the applicant. In addition, TOP's requirement for a grantee have an independent evaluator develop the final evaluation report does not preclude an applicant from conducting the evaluation in conjunction with an independent evaluator.

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, April 4, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–6449 Filed 3–13–03; 8:45 am]

BILLING CODE 6351–01–P–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, April 11, 2003.

PLACE: 1155 21st St., NW., Washington, DC., 9th floor conference.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–6450 Filed 3–13–03; 3:07 pm]

BILLING CODE 6351–01–P–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, April 18, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th floor of conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–6451 Filed 3–13–03; 3:07 pm]

BILLING CODE 6351–01–P–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, April 25, 2003.

PLACE: 1155 21st St., NW., Washington, DC 9th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED. Surveillance matters.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–6452 Filed 3–13–03; 3:07 pm]

BILLING CODE 6351–01–P–M

COMMODITY FUTURES TRADING COMMISSION

Review by the National Futures Association of Disclosure Documents Required To Be Filed by Commodity Pool Operators for Publicly-Offered Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'') is authorizing the National Futures Association (''NFA'') to conduct reviews of Disclosure Documents required to be filed with the Commission by commodity pool operators (''CPOs'') for publicly-offered commodity pools.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Kevin P. Walek, Assistant Director, Audit and Financial Review Section, or Michael A. Piracci, Attorney Advisor, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission previously has authorized NFA to perform many functions that, until that time, were performed by Commission staff. These functions include: The processing of applications for registration of intermediaries and floor traders under the Commodity Exchange Act (the ''Act'');[1] the processing of notices of eligibility for certain exemptions from registration as a CPO and commodity trading advisor (''CTA''); the review of certain Disclosure Documents required to be filed by CPOs and CTAs pursuant to Commission rules,[2] and the review of annual financial reports required to be filed by CPOs.[3]

In 1997, the Commission authorized NFA to receive and review Disclosure Documents required to be filed with the Commission by CPOs, pursuant to Commission rule 4.26(d), with regard to ''privately offered'' commodity pools.[4] In December 2002, the Commission noted that, with regard to this area of authorization, as well as others, NFA has exercised its authority with particular proficiency. Additionally, the Commission noted that, as a result of authorizing NFA to perform such functions, Commission staff have been able to devote resources to other aspects of the Commission's regulatory mission.[5]

In December 2002, concurrently with authorizing NFA to review annual financial reports filed by CPOs, the Commission made certain amendments to part 4 of its rules[6] so as to, among other things, make clear that Disclosure Documents with regard to privately offered commodity pools need only be filed with NFA and need not also be filed with the Commission.[7] Additionally, the commission amended rule 4.26(d) by adding paragraph (d)(3) to make clear that Disclosure Documents, and any amendments to such Disclosure Documents, required to be filed by CPOs with regard to publicly-offered commodity pools must be filed with the Commission.[8]

As the Commission noted in December 2002, the futures industry is continually expanding and transforming itself and as the industry changes and evolves, the Commission must also change and evolve, reassessing the manner in which it allocates its resources.[9] Accordingly, the Commission has now determined that NFA should be authorized to receive and review Disclosure Documents of publicly-offered commodity pools. Specifically, by this order, the

[1] 7 U.S.C. 1 *et seq.* (2000). *See, e.g.*, 48 FR 35158 (Aug. 3, 1983) (introducing brokers and associated persons thereof); 49 FR 39593 (Oct. 9, 1984) (futures commission merchants, commodity pool operators, commodity trading advisors, and associated persons thereof); 51 FR 34490 (Sep. 29, 1986) (floor brokers); 58 FR 19657 (Apr. 15, 1993) (floor traders).

[2] *See* 62 FR 52088 (Oct. 6, 1997).

[3] *See* 67 FR 77470 (Dec. 18, 2002).

[4] *See* note 2 *supra.* Pursuant to Commission rule 4.24(d)(3)(i), ''privately offered'' commodity pools are those offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*). As discussed herein, ''publicly-offered'' commodity pools are pools not offered pursuant to section 4(2) of the Securities Act of 1933 or pursuant to Regulation D.

[5] 67 FR at 77470.

[6] Commission rules referred to herein may be found at 17 CFR ch. I (2002).

[7] 67 FR 77409 (Dec. 18, 2002).

[8] *Id.*

[9] 67 FR at 77470.

Commission is authorizing NFA to review Disclosure Documents that CPOs are required to submit pursuant to rule 4.26(d)(3). In final rules being published elsewhere in the **Federal Register**, the Commission is amending rule 4.26(d) so as to make clear that CPOs need only file such Disclosure Documents with NFA and need not also file them with the Commission.

II. Authority

Section 4n(3)(A) of the Act provides, among other things, that each CPO shall ''file such reports in such form and manner as may be prescribed by the Commission.'' The Commission also notes that, in amending the Act through passage of the Commodity Futures Modernization Act of 2000 (the ''CFMA''),[10] Congress intended, as evidenced in section 2 of the CFMA, to transform the role of the Commission from that of a frontline regulator to that of an oversight regulator of the futures industry. Moreover, section 125 of the CFMA required the Commission to conduct a study of the Act and the Commission's rules and orders governing the conduct of registrants under the Act, identifying, among other things, regulatory functions the Commission performs that can be delegated to a registered futures association.[11] Additionally, the Commission notes that NFA, as a registered futures association, is obligated to establish a program for the protection of customers and customer funds and to prevent fraudulent acts and practices.[12]

III. Maintenance of and Access to Disclosure Document Filings

The Commission has also determined to authorize NFA to maintain and serve as official custodian of record for the Disclosure Documents filed by CPOs with regard to publicly-offered pools, as required under rule 4.26(d). This determination is based upon NFA's representations regarding procedures for maintaining and safeguarding all such records, in connection with NFA's assumption of the responsibilities for the activities referenced above. In maintaining the Commission's records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it by the Commission in existing or future orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are acceptable to the Commission and as are necessary: (1) To ensure the security and integrity of the records in NFA's custody; (2) to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission orders or rules; (3) to facilitate disclosure of public or nonpublic information in those records when permitted by Commission orders or rules and to keep logs as required by the Commission concerning disclosure of nonpublic information; and (4) to otherwise safeguard the confidentiality of the records.

IV. Conclusion and Order

For the reasons discussed above, and pursuant to its authority under the Act, the Commission has determined to authorize NFA to receive and review Disclosure Documents filed by CPOs pursuant to rule 4.26(d) with regard to publicly-offered commodity pools. In addition, the Commission has determined to authorize NFA to maintain and to serve as the official custodian of such records.

These determinations are based upon: (1) The Congressional intent that the Commission be permitted to determine the best manner in which to oversee CPOs; (2) the Congressional intent that a registered futures association, where appropriate, assume responsibility under the Act for regulatory functions the Commission has deemed unnecessary to retain; and (3) NFA's representation and demonstration of its willingness and ability to administer the required regulatory functions in accordance with the standards established by the Act, the Commission's regulations and orders promulgated thereunder, any supplemental direction established by the Commission or Commission staff, and relevant case law, and to provide the Commission with whatever information, reports, summaries, or records the Commission may determine are necessary for effective oversight of NFA's administration of the functions delegated herein, or for the Commission to fulfill its role of regulatory oversight of the futures markets.

This order does not authorize NFA to accept or act upon requests for exemption from the requirements of rule 4.26(d). Moreover, NFA is not authorized to issue any interpretations, ''no-action'' positions, or exemptions with respect to the requirements of rule 4.26(d).

NFA is authorized to perform all functions specified in this order until the Commission orders otherwise. Nothing in this order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matter regarding the functions delegated to it by this order. Nothing in this order affects the applicability of any previous orders issued by the Commission.

Issued in Washington, DC, on March 10, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–6178 Filed 3–14–03; 8:45 am]

BILLING CODE 6351–01–P

[10] Pub. L. No. 106–554, 114 Stat. 2763 (codified as amended in scattered sections of 7 U.S.C.).

[11] A copy of the study may be viewed on the Commission's Web site at: *www.cftc.gov/files/opa/opaintermediarystudy.pdf.*

[12] *See* Commission rule 170.5; *see also* section 17(b)(7) of the Act.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0150]

Federal Acquisition Regulation; Information Collection; Small Disadvantaged Business Procurement Credits

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0150).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Small Business Procurement Credit Programs. This OMB clearance expires on June 30, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate

technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 16, 2003.

ADDRESSES: Submit comments including suggestions for reducing this burden, to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Acquisition Policy Division, GSA, 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement concerning small disadvantaged procurement credit programs implements the Department of Justice proposal to reform affirmative action in Federal procurement, which was designed to ensure compliance with the constitutional standards established by the Supreme Court. The credits include price evaluation factor targets and certifications.

B. Annual Reporting Burden

Number of Respondents: 20,340.
Responses Per Respondent: 8.97.
Total Responses: 183,257.
Average Burden Hours Per Response: 2.09.
Total Burden Hours: 383,007.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0150, Small Disadvantaged Business Procurement Credit Programs, in all correspondence.

Dated: March 11, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03–6252 Filed 3–14–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0149]

Federal Acquisition Regulation; Information Collection; Subcontract Consent

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0149).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Subcontract Consent. This OMB Clearance expires on July 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 16, 2003.

ADDRESSES: Submit comments including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Acquisition Policy Division, GSA (202) 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective to consent to subcontract, as discussed in FAR part 44, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds, and complies with Government policy when subcontracting. The consent package provides the administrative contracting officer a basis for granting, or withholding consent to subcontract.

B. Annual Reporting Burden

Number of Respondents: 4,252.
Responses Per Respondent: 3.61.
Total Responses: 15,349.
Average Burden Hours Per Response: .87.
Total Burden Hours: 13,353.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0149, Subcontract Consent, in all correspondence.

Dated: March 10, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03–6253 Filed 3–14–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 17, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and

proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 11, 2003.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New Collection.

Title: Applications for Grants under the Community Technology Centers Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1000.

Burden Hours: 66000.

Abstract: The Grant Application Package includes information for grants applicants, including priorities, selection criteria and requirements, along with relevant ED forms and non-regulatory guidance for the CTC.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to CAREY at (202) 708–6287. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–6234 Filed 3–14–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 17, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 11, 2003.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension of a currently approved collection.

Title: Discretionary Grant Application—Individuals with Disabilities Education Act.

Frequency: Annually.

Affected Public: Businesses or other for-profit, Not-for-profit institutions, State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1200.

Burden Hours: 30000.

Abstract: Under the Individuals with Disabilities Education Act discretionary grants are authorized to support research and technology, personnel preparation, parent training, and information and technical assistance activities. This grant application provides the forms and information necessary for applicants to submit and application for funding, and information for use by technical reviewers to determine the quality of application.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number . When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivan.reese@ed.gov. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to CAREY at (202) 708–6287. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–6235 Filed 3–14–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–03ER03–22: AmeriFlux Research in Support of North American Carbon Program (NACP)

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for enhancement of the AmeriFlux Research Program.

DATES: The deadline for receipt of formal applications is 4:30 p.m., e.d.t., May 5, 2003, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003.

ADDRESSES: Formal applications referencing Program Notice DE–FG01–03ER03–22 must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov* (*see also http://www.sc.doe.gov/production/grants/grants.html*). IIPS provides for the posting of solicitations and receipt of applications in a paperless environmental environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS utilizing no more than four files. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HELPDesk@pr.doe.gov,* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit the application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212, in order to gain assistance for submission through IIPS or to receive special approval and instruction on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Roger C. Dahlman, Program Manager, SC–74, OBER/Germantown Bldg, U.S. Dept of Energy, 1000 Independence Ave, SW., Washington, DC 20585–1290 (301) 903–4951, E-mail: *roger.dahlman@science.doe.gov,* fax: (301) 903–8519. The full text of Program Notice DE–FG01–03ER03–22 is available via the Internet using the following Web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

Applicants are strongly encouraged to match their research applications to the terms of scope for this announcement, and therefore preapplications are not required. Brief questions for clarification can be addressed to Dr. Dahlman, by e-mail, *roger.dahlman@science.doe.gov.*

SUPPLEMENTARY INFORMATION: The North American Carbon Program (NACP) is a framework for providing scientific information on sources and sinks of CO_2, CH_4 and CO for North America. It is a planned field program of experiments, flux measurements, data analysis, and modeling that will be implemented by various Federal Agencies. The NACP is discussed briefly as an element of Carbon Cycle Chapter of the Climate Change Research Program Strategic Plan posted on the Web site, *http://www.climatescience.gov/Library/straplan2003/ccspstratplan2003–11nov2002.pdf* (pp 100–111), and reviewed by the December 2002 Workshop in Washington DC. A discussion of NACP is available from the U.S. Global Change research Office (*see* reference below). The initial phase of NACP will start in the 2003–2006 time frame, and will include measurement and modeling of carbon sources and sinks of North America. The NACP is an important component of U.S. Federal Agencies' research on carbon cycle science.

Carbon dioxide flux measurement is one key approach for estimating net carbon gain or loss by terrestrial ecosystems of North America. Such measurements are currently carried out at a network of AmeriFlux sites that are partially representative of different ecosystems of North America. As described in the NACP Report (2002), AmeriFlux measurements are expected to contribute significantly to the goals of NACP, and a ''high priority enabling development'' calls for the ''transformation of the AmeriFlux network into an integrated, near-real time network'' that will support goals of the NACP. With upgraded instrumentation and advanced measurement technology, it is anticipated that atmospheric CO_2 concentration can also be determined at an accuracy and precision that can augment real-time and flask sampling networks. Augmented measurement capability offers the potential of substantially increasing knowledge of terrestrial carbon budgets and atmospheric CO_2 concentration for important regions of North America.

The intent of this solicitation therefore is to augment the AmeriFlux network and enhance CO_2 and carbon measurement capabilities in support of the NACP. This solicitation requests applications that will address the following technical requirements.

(1) *Creation of selected new AmeriFlux sites for obtaining micrometerological data on the exchanges of CO_2 and energy using the eddy covariance technique, where it is determined that new sites would provide essential and critical support for initial field program(s) of NACP.* New AmeriFlux sites must be compatible with observation and intensive field programs of NACP, which are designed to measure and understand sources and sinks of CO_2 and CH_4 in North America. Expanded AmeriFlux research will also support development and testing of intensive field program methodologies, and will participate in different approaches for estimating CO_2 and fluxes and carbon sinks. An initial phase of NACP intensive research is planned for the upper Midwest region of the USA, which is approximately bounded by Minnesota/Wisconsin on the north, Missouri/Oklahoma on the south, Indiana on the east and Nebraska on the west. It is possible that NACP field programs may be restricted to only a portion of this region. This solicitation is requesting applications for new AmeriFlux research in the Midwest region.

The NACP envisions a number of intensive field studies possibly at other geographical locations in the south east, north east, and western United States, and ultimately decisions on location and phasing of future intensives will guide the selection of new AmeriFlux sites. Strong consideration in the selection of new sites will be based on potential contributions to NACP priorities, particularly those that fill geographical or biogeographical gaps within the region of the first intensive field program, and with critical biomes and/or climatic zones that currently lack coverage. Pending availability of funds, applications for creating new sites at other geographical locations of the U.S. may be supported in Fiscal Year 2004 or later.

New-site applications must, of course, be based on representative vegetation, and demonstrate that sites possess appropriate physical attributes amendable to producing high-quality net ecosystem exchange (NEE) or CO_2 data. Diversity of regional ecosystem types, and the inclusion of types that theoretically represent terrestrial carbon sinks are important considerations for new site selection. New-site selections that involve agricultural ecosystems will be coordinated with the U.S. Department of Agriculture (USDA) because a companion Agriflux intramural program has been proposed by USDA as another component of NACP. Applicants are strongly encouraged to review the current extant and properties of AmeriFlux sites, and proposed new sites responsive to these criteria. Information about current research strategy of the AmeriFlux

network can be obtained from the Web site, *http://public.ornl.gov/ameriflux/Participants/Sites/Map/index.cfm.*

(2) *Upgrading micrometeorological and biological measurements at existing AmeriFlux sites within the upper Midwest region that are currently co-located with planned field program(s) of NACP, as noted in item (1) above.* Upgrades that will be considered include: Instrumentation for better quantifying CO_2 fluxes; precise measurements of atmospheric CO_2; enhanced measurement capacity to deliver the full suite of core measurements recommended in the AmeriFlux science plan, *http://public.ornl.gov/ameriflux/About/scif.cfm*; improved availability, calibration, quality control and documentation of site data; redundancy of equipment to minimize data gaps; and systemic corresponding biological measurements for independent estimation of net ecosystem productivity (NEP). Priority will be given to requests that improve cohesion of network measurements. With improved precision and accuracy of atmospheric CO_2 concentration measurements, emphasis will be placed on sites that will augment initial phases of NACP intensive field programs and observing networks. In addition, since the overall value of the AmeriFlux network and its contribution to NACP depend on data sharing and data inter-comparison, only those existing AmeriFlux sites that have made NEE, biological and NEP data available to the science community through the AmeriFlux network data system (Carbon Dioxide Information Analysis Center) will be eligible for upgrade awards.

For both items (1) and (2) applicants are strongly encouraged to review NACP goals and major elements (NACP, 2002), and explain and justify how proposed research will likely contribute to the overall NACP research strategy, and specifically how the research will improve measurements of carbon flux measurements and estimates of carbon budgets and sinks. Importantly, the proposed research must demonstrate a capability to produce high-quality measurements and provide seasonal and annual estimates of net ecosystem exchange of CO_2. Additionally, best efforts of the proposed research are expected to produce core AmeriFlux measurements (*e.g.,* NEE, carbon budgets and fluxes of ecosystem components, including uncertainty estimates) in quantities and format that would be compatible with related NACP land-based carbon inventories and with atmospheric CO_2 concentration and profiling data. For item (1) upgraded capacity might include investments in instrumentation, references gases, more systematic measurement protocols, for example.

(3) *Support of selected Science Team AmeriFlux activities that would contribute most effectively to science goals in NACP.* This could include, for example, participation in priority field programs that require synthesis and integration using measurements and modeling of AmeriFlux results as part of intensive campaigns and NACP biological inventories. For reference, applicants may wish to review current AmeriFLux activities (*http://public.ornl.gov/ameriflux/Participants/Sites/Map/index.cfm*). Applications addressing this technical requirement must identify how proposed augmentation of current research and analysis would contribute to the NACP.

NACP Reference: The North American Carbon Program (NACP), A Report of the NACP Committee of the U.S. Carbon Cycle Science Steering Group, Steven C. Wofsy and Robert C. Harriss, Co-chairs, 2002. Available from the USGCRP Office, 1717 Pennsylvania Avenue, NW., Suite 250, Washington, DC 2006.

Program Funding

It is anticipated that approximately $2.0 million will be available for grant awards in Fiscal Year 2003, contingent upon availability of appropriated funds. Previous awards for the creation and operation of a new site have ranged from $100,000 up to $300,000 per year, with most not exceeding $200,000. Each site application must provide a ''facility'' budget and an ''operational'' budget. Applications to create a new AmeriFlux site may be eligible for a multi-year award, where the first-year budget would include costs of site development and instrumentation, and successive-year budgets would include nominal operational costs. Applications to upgrade measurement capacity at an existing AmeriFlux site would be limited to a one-year award because most of the investment is expected to be for equipment. Sustaining operational budgets would be reflected in existing grants or renewal applications. Multi-year applications may not exceed 3 years in duration. Most awards are expected to meet these criteria; however, applications with exceptional budgeting circumstances should discuss them with the Program Manager for this solicitation. Funding of multiple year grant awards is contingent upon availability of appropriated funds.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or technical merit of the project.

2. Appropriateness of the proposed method or approach,

3. Competency of applicant's personnel and adequacy of proposed resources,

4. Reasonableness and appropriateness of the proposed budget.

The evaluation process will include program policy factors such as the relevance of the proposed research to the terms of the announcement and agency's programmatic needs. Note that external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-Federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The research project description must be 15 pages or less, exclusive of attachments and must contain an abstract or summary of the proposed research. On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and e-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages).

The applicants are asked to submit an electronic copy of the abstract in ASCII format to *karen.carlson@science.doe.gov.* The abstract should include the following information: PI and co-PI's, their institutions, brief summary of research, including identification of principal subcontractor/collaborators even if no funds are requested for their support.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on March 7, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–6281 Filed 3–14–03; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES: Tuesday, April 1, 2003, 8:30 a.m.–12:30 p.m.

ADDRESSES: Hyatt Sainte Claire Hotel, Ballroom, 302 S. Market Street, San Jose, California 95113.

FOR FURTHER INFORMATION CONTACT: Dr. Craig R. Reed, Executive Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board (The Board) is to provide the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's management reforms, research, development and technology activities, energy and national security responsibilities, environmental cleanup activities, and other issues relating to the Department's missions.

Tentative Agenda: The April 1st meeting will include a series of briefings and discussions on issues and challenges facing the Department of Energy. The Board will review and discuss the following two reports submitted for their approval by the Laboratory Operations Board, a subcommittee of the SEAB:

• Recommendations Regarding Industry Partnering/Technology Transfer Within the Department of Energy: A Report of the External Members The Laboratory Operations Board Industry Partnering/Technology Transfer Working Group, dated December 31, 2002.

• Recommendations Regarding the Application of ''Other Transactions Authority'' Within the Department of Energy: A Report of the External Members of the Laboratory Operations Board, dated September 24, 2002.

Copies of the two draft reports submitted by the Laboratory Operations Board may be obtained from the Board's internet address *http://www.seab.energy.gov/* under the heading ''What's New'' or by contacting the Office of the Secretary of Energy Advisory Board at (202) 586–7092. Members of the public are invited to comment on the two reports during the scheduled public comment period or by submitting written comments to the Secretary of Energy Advisory Board by March 27, 2003. The Board will also receive status reports from the SEAB Subcommittee on Energy Technologies and the American Economy and from the SEAB Subcommittee on the Future of Science Programs at the Department of Energy. In addition, the Board will be briefed on activities for the coming year, including plans for the formation of a ''Blue Ribbon Commission'' on the use of competitive procedures for DOE laboratory management and operations contracts.

Members of the public wishing to comment on issues before the Secretary of Energy Advisory Board will have an opportunity to address the Board during the public comment period. The final agenda will be posted on the Board's web site when available, and will be provided at the meeting.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Secretary of Energy Advisory Board and submit written comments or comment during the scheduled public comment period. The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in San Jose, California, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Dr. Craig R. Reed, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Minutes: A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's Web site, located at *http://www.seab.energy.gov/.*

Issued at Washington, DC on March 12, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–6279 Filed 3–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES: April 10, 2003—8:30 a.m.

ADDRESSES: Hilton Crystal City Hotel at National Airport, Farragut Room, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: John Ferrell, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

Tentative Agenda: Agenda will include discussions on the following:

• Development of recommendations to the Biomass R&D Board on the future direction for federal biomass research

and development activities, and methods for facilitating consultations and partnerships among Federal and State agencies, agricultural producers, industry, consumers, the research community, and other interested groups.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact John Ferrell at (202) 586–7766 or *Bioenergy@ee.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 12, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–6280 Filed 3–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–56–000]

American Municipal Power-Ohio, Inc., Complainant, v. The Dayton Power & Light Co. and PJM Interconnection, L.L.C., Respondents; Notice of Complaint

March 11, 2003.

Take notice that on March 10, 2003, American Municipal Power-Ohio, Inc. (AMP-Ohio), on behalf of itself and thirteen of its municipal electric system members, tendered for filing a complaint pursuant to sections 206 and 306 of the Federal Power Act against The Dayton Power & Light Company (DP&L) and PJM Interconnection, L.L.C. (PJM) concerning the need to revise grandfathered contracts in order to eliminate the possible pancaking of transmission charges within PJM and any PJM/Midwest ISO ''super region'' that might be created.

AMP-Ohio states that copies of the filing were served upon DP&L and PJM.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. 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 for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6013 Filed 3–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filing

March 10, 2003.

Pennsylvania-New Jersey-Maryland Interconnection

[Docket Nos. OA97–261–005 and ER97–1082–007]

Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company

[Docket No. ER97–3189–033]

Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company

[Docket No. EC97–38–004]

Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, and Pennsylvania-New Jersey-Maryland Interconnection Restructuring

[Docket No. ER97–3273–004]

Pennsylvania-New Jersey-Maryland Interconnection Restructuring

[Docket No. EL97–44–004]

PJM Interconnection, L.L.C.

[Docket No. OA97–678–004]

Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company

[Docket Nos. ER96–2516–006, EC96–28–006 and EL96–69–006]

PECO Energy Company

[Docket Nos. ER96–2668–006 and EC96–29–006]

Take notice that on February 4, 2003, the PJM Transmission Owners Group consisting of Baltimore Gas and Electric Company, Jersey Central Power & Light

Company, Metropolitan Electric Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Rockland Electric Company, Allegheny Power Service Company and Public Service Electric and Gas Company, tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the Commission's Order on Remand issued on December 19, 2002 in the above-captioned proceedings.

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 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6007 Filed 3–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–58–000]

Northwest Pipeline Corporation; Notice of Application

March 11, 2003.

On March 4, 2003, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah, 84158–0900 filed in Docket No. CP03–58–000, 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 its Stanfield Compressor Station in Umatilla County, Oregon, 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 call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Gary K. Kotter, Manager, Certificates and Tariffs, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah, 84158–0900, at (801) 584–7117 or *garold.k.kotter@williams.com*.

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 an 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: April 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6012 Filed 3–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1936–001, et al.]

WPS New England Generation, Inc., et al.; Electric Rate and Corporate Filings

March 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. WPS New England Generation, Inc.

[Docket No. ER99–1936–001]

Take notice that on March 5, 2003, WPS New England Generation, Inc., (WPS New England), submitted a notice of change in status under its market-based rate authority to reflect its future long-term lease agreement for 5.5 MW of generation from the Loring Diesel Station in Northern Maine. In addition, WPS New England submitted a three-year update of the justification for their

authorization to sell power at market-based rates.

Comment Date: March 26, 2003.

2. Green Mountain Energy Company

[Docket No. ER02–1600–001]

Take notice that on July 1, 2002, Green Mountain Energy Company tendered for filing revised tariff sheets in accordance with the Commission Order dated May 9, 2002.

Comment Date: March 20, 2003.

3. Termoelectrica U.S., LLC

[Docket No. ER03–175–004]

Take notice that on March 5, 2003, Termoelectrica U.S., LLC (Termoelectrica US) tendered for filing a Substitute First Revised Rate Schedule FERC No. 1 to clarify language prohibiting sales between Termoelectrica U.S. and its affiliate, San Diego Gas & Electric Company and requesting a shortened notice period for such filing.

Comment Date: March 20, 2003.

4. Detroit Edison Company

[Docket No. ER03–576–001]

Take notice that on March 4, 2003, the Detroit Edison Company (Detroit Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission), a compliance filing pursuant to the Commission's order issued on February 20, 2003, in Docket Nos. EC03–40–000 and ER03–343–000, ITC Holding Corp., *et al.*, 102 FERC 61,182 (2003). The compliance filing is Detroit Edison's First Revised FERC Electric Rate Schedules 40 and 41, and consists of certain revised and executed service level agreements between Detroit Edison and International Transmission Company. The filing revises and supplements the filing made by Detroit Edison in the above-referenced docket on February 28, 2003.

Comment Date: March 25, 2003.

5. Duke Energy Trenton, LLC

[Docket No. ER03–591–000]

Take notice that, on March 5, 2003, Duke Energy Trenton, LLC tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, in order to reflect the cancellation of its market-based rate tariff, designated as FERC Electric Tariff, Original Volume No. 1, originally accepted for filing in Docket Nos. ER00–1782–000 and ER00–1782–001.

Comment Date: March 26, 2003.

6. Florida Power Corporation

[Docket No. ER03–592–000]

Take notice that on March 5, 2003, Florida Power Corporation, doing business as Progress Energy Florida, Inc. (Progress Energy Florida or the Company), tendered for filing a modification to its Agreement for Partial Requirements Resale Service, Transmission/Distribution Service and Demand and Energy Loss Service with Florida Municipal Power Agency, FERC Rate Schedule 107, to add an additional delivery point and delete a delivery point.

Progress Energy Florida states that copies of the filing were served upon the public utility's jurisdictional customers, and the Florida Public Service Commission.

Comment Date: March 26, 2003.

7. Aquila, Inc.

[Docket No. ER03–593–000]

Take notice that on March 5, 2003, Aquila, Inc. (Aquila), filed with the Commission, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d, and part 35 of the Commission regulations, 18 CFR part 35, an Interconnection Agreement between Aquila, Inc. d/b/a WestPlains Energy-Kansas and the Glen Elder City Government dated as of February 7, 2003. The Interconnection Agreement is filed as Service Agreement No. 105 to Aquila's FERC Electric Tariff, Third Revised Volume No. 26.

Comment Date: March 26, 2003.

8. CinCap VII, LLC

[Docket No. ER03–594–000]

Take notice that on March 5, 2003, CinCap VII, LLC tendered for filing a Notice of Cancellation, pursuant to 18 CFR 35.15, giving notice of cancellation of its market-based electric tariff filed with the Federal Energy Regulatory Commission.

Comment Date: March 26, 2003.

9. CinCap Madison, LLC

[Docket No. ER03–595–000]

Take notice that on March 5, 2003, CinCap Madison, LLC tendered for filing a Notice of Cancellation, pursuant to 18 CFR 35.15, giving notice of cancellation of its market-based electric tariff filed with the Federal Energy Regulatory Commission.

Comment Date: March 26, 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. 03–6014 Filed 3–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–46–000]

Dominion Transmission, Inc., Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Oakford HP Project and Request for Comments on Environmental Issues

March 11, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an Environmental Assessment (EA) that will discuss the environmental impacts of the Oakford HP Project involving the upgrade of horsepower at the Oakford and South Oakford Compressor Stations by Dominion Transmission, Inc. (DTI) and Texas Eastern Transmission, LP (Texas Eastern) in Westmoreland County, Pennsylvania.[1] The project involves increasing the horsepower on two electrical motor-driven compressor units at the South Oakford Station and increasing the horsepower on three

[1] DTI and Teaxs Eastern's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

eletrical motor-driven compressor units at the Oakford Station in Westmoreland County, Pennsylvania. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

In Docket No. CP03–46–000, DTI and Texas Eastern request authorization to increase the horsepower on two existing electrical motor-driven compressor units at the South Oakford Station and three eletrical motor-driven compressor units at the Oakford Station in order to provide greater operating flexibility. This increase in horsepower would allow the stations to increase the daily withdrawl rate as needed. DTI and Texas Eastern proposes to:

- increase the horsepower of engines #3 and #4 from 5,000 to 5,750 at the South Oakford Compressor Station
- increase the horsepower of engines #13, #14, and #15 from 4,000 to 4,600 at the Oakford Compressor Station.

DTI and Texas Eastern would modify the software controls so that each of the engines may be operated at the design rating as described above. This operation would not require any installation, construction, or facility reconfiguration beyond the modifications of the software controls. Therefore, there would be no issues involving land use, vegetation and wildlife, water use and quality, cultural resources, socioeconomics, geological resources, and soils. There would be no issues regarding air emissions because these compressor units are powered by electrical motors. However, based on a comment letter, preliminary review of the proposed modifications and the environmental information provided by DTI and Texas Eastern, existing and proposed noise levels attributed to the South Oakford Compressor Station may warrant additional public comment.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Jr., Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Gas 1, PJ–11.1.
- Reference Docket No. CP03–46–000
- Mail your comments so that they will be received in Washington, DC on or before April 14, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 1).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potentially affected landowners.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

[3] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically. The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the ''FERRIS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS, refer to the section of this notice titled Additional Information. Copies of the appendices were sent to all those receiving this notice in the mail.

Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6011 Filed 3–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

March 10, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 12437–000.

c. *Date filed:* January 27, 2003.

d. *Applicant:* Twin Falls Canal Company.

e. *Name of Project:* Low Line Midway Hydroelectric Project.

f. *Location:* The project would be located on the existing Low Line Canal in Twin Falls County, Idaho. The Low Line Canal conveys water diverted from the Snake River at Milner Dam. The project would not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John J. Straubhar, P.O. Box 5071, Twin Falls, ID 83303–5071, (208) 736–8225.

i. *FERC Contact:* James Hunter, (202) 502–6086.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—*see* the following paragraphs about filing responsive documents.

k. Deadline for filing comments, protests, and motions to intervene: April 11, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The proposed project would consist of: (1) a gated intake structure at the end of a realigned section of Twin Falls Canal, water surface elevation 4019 feet mean sea level (msl), (2) two 12-foot-diameter, 200 to 300-foot-long penstocks, (3) a powerhouse containing two generating units with a total installed capacity of 2,300 kilowatts, and (4) a tailrace with a water surface elevation of 3993.6 feet msl constructed by excavating 1,300 linear feet of the canal floor to elevation 3,986 feet. The average annual generation would be 8 gigawatt hours.

m. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy may also be obtained by calling the Applicant.

n. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

r. The Commission directs, pursuant to section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

s. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion

to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6008 Filed 3–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 10, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 2543–059.

c. *Date Filed:* January 27, 2003.

d. *Applicant:* Clark Fork and Blackfoot, LLC (formerly Montana Power, LLC).

e. *Name of Project:* Milltown Hydroelectric Project.

f. *Location:* On the Clark Fork River in Missoula County, Montana. The project does not utilize federal or tribal lands.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael J. Young, Clark Fork and Blackfoot, LLC, 125 S. Dakota Avenue, Sioux Falls, SD 57104, (605) 978–2836.

i. *FERC Contact:* James Hunter, (202) 502–6086.

j. *Deadline for filing comments, protests, and motions to intervene:* April 11, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Amendment:* The licensee requests that its license be amended to extend the expiration date of the license one year, from December 31, 2007, to December 31, 2008. On January 27, 2003, the licensee filed a notice of intent to relicense the Milltown Project, with the understanding that its notice would become moot if its request to extend the term of the license is granted.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6009 Filed 3–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions, and Establishing Procedural Schedule for Relicensing

March 10, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 487–034.

c. *Date Filed:* September 25, 2002.

d. *Applicant:* PPL Holtwood, LLC.

e. *Name of Project:* Lake Wallenpaupack Hydroelectric Project.

f. *Location:* On Wallenpaupack Creek, in Wayne and Pike Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Gary Petrewski, PPL Holtwood, LLC, Two North Ninth Street, Allentown, PA 18101–1179, *gpetrewski@pplweb.com.*, (610) 774–5996.

i. *FERC Contact:* Patrick K. Murphy, *patrick.murphy@ferc.gov,* (202) 502–8755.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Description of the Project:* The existing Lake Wallenpaupack Project consists of: (1) A dam, comprised of a gravity type concrete structure and earthen embankments, totaling about 1,300 feet long; (2) a 2.5-mile-long, 14-foot diameter steel pipeline, connecting to a surge tank, and two penstocks; (2) a 5,700-acre reservoir; (3) a powerhouse with a total installed capacity of 44 megawatts; and (4) appurtenant facilities. The applicant estimates that the average annual generation is 80,500 megawatt hours.

m. A copy of application is on file with the Commission and is available for public inspection. The application may be viewed on the web 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. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of the availability of the draft EA—August 2003

Notice of the availability of the final EA—December 2003

Ready for Commission's decision on the application—January 2004

Magalie R. Salas,

Secretary.

[FR Doc. 03–6010 Filed 3–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Participation at New England Transmission Cost Allocation Stakeholder Workshop #4

March 11, 2003.

The Federal Energy Regulatory Commission hereby gives notice that on March 14, 2003, members of its staff will attend the New England Transmission Cost Allocation Stakeholder Workshop #4, concerning mechanisms for the allocation of transmission costs. The staff's attendance is part of the Commission's ongoing outreach efforts. The meeting will be held on March 14, 2003 at 10 a.m. at the Swissotel, 1 Avenue de Lafayette, Boston, MA 02111. This meeting is open to the public. Further information about the meeting and a copy of the registration form is available at *http://www.iso-ne.com/seminars/schedule.html*.

The meeting may discuss matters at issue in Docket Nos. ER02–2330, *et al.*, EL00–62, *et al.*, and ER03–210, *et al.*

For more information, contact David Kathan, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (202) 502–6404 or *david.kathan@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6015 Filed 3–14–03; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2598]

Petitions for Reconsideration of Action In Rulemaking Proceedings

March 7, 2003.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying Room CY–A257, 445 12th Street, SW., Washington DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by April 1, 2003. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of the Development of Operational, Technical and Spectrum Requirement for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010 (WT Docket No. 96–86)

Number of Petitions Filed: 1

Subject: In the Matter of the Year 2000 Biennial Regulatory Review-Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services (WT Docket No. 01–108)

Number of Petitions Filed: 3

Marlene H. Dortch,

Secretary.

[FR Doc. 03–6275 Filed 3–14–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Application Pursuant to section 19 of the Federal Deposit Insurance Act; and (2) Activities and Investments of Insured State Banks.

DATES: Comments must be submitted on or before May 16, 2003.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898–7453, Legal Division, Room MB–3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.; Internet address: *comments@fdic.gov*.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Application Pursuant to Section 19 of the Federal Deposit Insurance Act.

OMB Number: 3064–0018.

Form Number: 6710/07.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 14.

Estimated Time per Response: 16 hours.

Total Annual Burden: 224 hours.

General Description of Collection: Section 19 of the Federal Deposit Insurance Act requires insured depository institutions to obtain the FDIC's consent prior to any participation in their affairs by a person convicted of crimes involving dishonesty or breach of trust. Form 6710/07 is the vehicle for requesting FDIC consent.

2. *Title:* Activities and Investments of Insured State Banks.

OMB Number: 3064–0111.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 130.

Estimated Time per Response: 8 hours.

Total Annual Burden: 1,040 hours.

General Description of Collection: Part 362 of the FDIC's rules and regulations, implement the provisions of section 24 of the Federal Deposit Insurance Act that restrict and prohibit insured state banks and their subsidiaries from engaging in activities and investments that are not permissible for national banks and their subsidiaries. The collection of information involves banks or their subsidiaries desiring to engage in activities that would be impermissible absent the FDIC's consent or nonobjection.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC this 12th day of March, 2003.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–6276 Filed 3–14–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency information collection activities: Announcement of Board approval under delegated authority and submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). OMB Desk Officer Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final Approval Under OMB Delegated Authority of The Extension For Three Years, With Minor Revision of The Following Reports:

1. *Report title:* The Weekly Report of Eurodollar Liabilities Held by Selected U.S. Addressees at Foreign Offices of U.S. Banks.

Agency form number: FR 2050.

OMB Control number: 7100–0068.

Frequency: Weekly.

Reporters: Foreign branches and banking subsidiaries of U.S. depository institutions.

Annual reporting hours: 1,872 hours.

Estimated average hours per response: 1.0 hour.

Number of respondents: 36.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2), 353 *et seq.*, 461, 602, and 625). Individual respondent's data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The report collects data on Eurodollar deposits payable to nonbank U.S. addressees from foreign branches and subsidiaries of U.S. commercial banks and Edge and agreement corporations. The data are used for the construction of the Eurodollar component of the monetary aggregates and for analysis of banks' liability management practices.

Current action: The Federal Reserve will raise the reporting threshold from a weekly average of $500 million to $550 million in total Eurodollar liabilities.

2. Report title: The Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks.

Agency form number: FR 2502q.

OMB control number: 7100–0079.

Frequency: Quarterly.

Reporters: Large foreign branches and banking subsidiaries of U.S. depository institutions.

Annual reporting hours: 32,662 hours.

Estimated average hours per response: 3.5 hours.

Number of respondents: 2,333.

Small businesses are not affected.

General description of report: This information collection is required (12 U.S.C. 248(a)(2), 353 *et seq.*, 461, 602, and 625) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The report collects gross assets and liability positions from foreign branches and subsidiaries of U.S. commercial banks and Edge and agreement corporations vis–a–vis individual countries. A separate schedule collects information on Eurodollar liabilities payable to certain U.S. addressees.

Current action: The Federal Reserve will revise the country list in the body of the reporting form to conform to the Department of State's official country list. Claims and liabilities that are not allocated by country of customer will be further broken out into that portion that is attributable to the fair value of derivatives contracts. Claims on and liabilities to other non–U.S. offices of the parent bank will be further broken out into that portion that is attributable to unallocated claims and liabilities. In addition, the instructions will be clarified with respect to the year–end panel review process and the definition of unallocated claims. Finally, the single data item collected on Schedule A will be reported as a seven–day average (one number) instead of daily (five numbers).

Board of Governors of the Federal Reserve System, March 4, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–6060 Filed 3–14–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 31, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Neumann Family Limited Partnership, Detroit Lakes, Minnesota; to acquire voting shares of First Hawley Bancshares, Inc., Hawley, Minnesota, and thereby indirectly acquire voting shares of First National Bank, Hawley, Minnesota.

2. Curtis J. Neumann, Detroit Lakes, Minnesota; to acquire voting shares of First Hawley Bancshares, Inc., Hawley, Minnesota, and thereby indirectly acquire voting shares of First National Bank, Hawley, Minnesota.

3. Helen M. Olson, Hawley, Minnesota; to acquire voting shares of First Hawley Bancshares, Inc., Hawley, Minnesota, and thereby indirectly acquire voting shares of First National Bank, Hawley, Minnesota.

Board of Governors of the Federal Reserve System, March 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–6061 Filed 3–14–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 31, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Jeanie Kicklighter Beck, Glennville, Georgia; to acquire additional voting shares of First Citizens Bankshares, Inc., Glennville, Georgia, and thereby indirectly acquire voting shares of First Citizens bank, Glennville, Georgia.

Board of Governors of the Federal Reserve System, March 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–6248 Filed 3–14–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Premier Bancshares, Inc., Jefferson City, Missouri; to acquire up to 45 percent of the voting shares of Mid–America Bancorp, Inc., Jewell, Kansas, and thereby indirectly acquire voting shares of Heartland Bank, Jewell, Kansas.

Board of Governors of the Federal Reserve System, March 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–6062 Filed 3–14–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Wayne Bancorp, Inc., Wooster, Ohio; to acquire Access Financial Corp., Massillon, Ohio, and thereby engage in finance company activities, pursuant to section 225.28(b)(1) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia; to acquire Lighthouse Financial Services, Inc., Hilton Head Island, South Carolina, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than April 10, 2003.

Board of Governors of the Federal Reserve System, March 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–6063 Filed 3–14–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities: Amended Telemarketing Sales Rule

On January 29, 2003, the Commission's amended Telemarketing Sales Rule, 16 CFR Part 310 (''Rule''), was published in the **Federal Register.**[1] Before publication, Commission staff submitted for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (44 U.S.C. 3501–3520) a supporting statement detailing its revised burden analysis and estimates for existing and new information collection provisions under the Rule. The revised burden estimates are 3,141,264 hours, $47,066,000 in labor costs, and $11,986,000 in capital and other non-labor costs. On February 25, 2003, OMB granted the Commission clearance for these estimates and related information collection provisions (OMB Control Number 3084–0097). Clearance expires February 28, 2006.

William E. Kovacic,

General Counsel.

[FR Doc. 03–6282 Filed 3–14–03; 8:45 am]

BILLING CODE 6750–01–M

[1] 68 FR 4580 (January 29, 2003).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03042]

Expansion of HIV/AIDS, STD and TB Laboratory Activities at the National Institute for Communicable Diseases (NICD) in the Republic of South Africa Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to award fiscal year (FY) 2003 funds for a cooperative agreement program for the expansion of HIV/AIDS, STD and TB laboratory activities in the Republic of South Africa. The Catalog of Federal Domestic Assistance Number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the National Institute of Communicable Diseases (NICD) in South Africa. NICD has the legal authority, expertise, and capacity to perform the key public health role of monitoring communicable diseases such as AIDS, sexually transmitted diseases, and tuberculosis in South Africa.

C. Funding

Approximately $500,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or about March 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.

D. Where To Obtain Additional Information

For general comments or 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 technical questions about this program, contact: David M. Allen, M.D., M.P.H., CDC Global AIDS Program, U.S. Embassy, P.O. Box 9536, Pretoria, South Africa 0001, Telephone: 27 12 346 0170, E-mail: *allend@sacdc.co.za*.

Dated: March 11, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–6264 Filed 3–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment

In accordance with section l0(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment.

Times and Dates: 8:30 a.m.—5 p.m., May 15, 2003.

8:30 a.m.—12 p.m., May 16, 2003.

Place: Sheraton Colony Square Mid-Town, 188 14th Street at Peachtree, Atlanta, Georgia 30361

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Secretary, HHS, the Director, CDC, and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS and other STDs, the support of health care services to persons living with HIV/AIDS, and education of health professionals and the public about HIV/AIDS and other STDs. The Committee will support the Agencies' process of identifying and responding to the prevention and health service delivery needs of affected communities, and the needs of individuals living with or at risk for HIV and other STDs.

Matters To Be Discussed: Agenda items include issues pertaining to (1) HIV and STD prevention for Men Who Have Sex With Men (MSM) (2) AIDS Drug Assistance Program (ADAP) and (3) CARE ACT Reauthorization. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paulette Ford-Knights, Public Health Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333. Telephone 404/639–8008, fax 404/639–3125, e-mail *pbf7@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 10, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–6266 Filed 3–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0496]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the information collection provisions by April 16, 2003.

ADDRESSES: Fax written comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX 202–395–6974, or electronically mail comments to sshapiro@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition—21 CFR 201.323 (OMB Control Number 0910–0439)—Extension

FDA is requesting OMB approval under the PRA (44 U.S.C. 3501—3520) for the labeling requirements for aluminum content in large volume parenterals (LVPs), small volume parenterals (SVPs), and pharmacy bulk packages (PBPs) used in total parenteral nutrition (TPN). As explained in the final rule on aluminum content labeling requirements published in the **Federal Register** of January 26, 2000 (65 FR 4103), aluminum content in parenteral drug products could result in a toxic accumulation of aluminum in the tissues of individuals receiving TPN therapy. Research indicates that neonates and patient populations with impaired kidney function may be at high risk of exposure to unsafe amounts of aluminum. Studies show that aluminum may accumulate in the bone, urine, and plasma of infants receiving TPN. Many drug products used routinely in parenteral therapy may contain levels of aluminum sufficiently high to cause clinical manifestations. Generally, when medication and nutrition are administered orally, the gastrointestinal tract acts as an efficient barrier to the absorption of aluminum, and relatively little ingested aluminum actually reaches body tissues. However, parenterally administered drug products containing aluminum bypass the protective mechanism of the gastrointestinal tract and aluminum circulates and is deposited in human tissues.

Aluminum toxicity is difficult to identify in infants because few reliable techniques are available to evaluate bone metabolism in premature infants. Techniques used to evaluate the effects of aluminum on bone in adults cannot be used in premature infants. Although aluminum toxicity is not commonly detected clinically, it can be serious in selected patient populations, such as neonates, and may be more common than is recognized.

FDA amended its regulations to add labeling requirements for aluminum content in LVPs, SVPs, and PBPs used in TPN. FDA specified an upper limit of aluminum permitted in LVPs and required applicants to submit to FDA validated assay methods for determining aluminum content in parenteral drug products. The agency added these requirements because of evidence linking the use of parenteral drug products containing aluminum to morbidity and mortality among patients on TPN therapy, especially among premature neonates and patients with impaired kidney function.

The information collection reporting requirements resulting from this rulemaking are as follows:

21 CFR 201.323(b)—Requires that the package insert of all LVPs used in TPN therapy state that the drug product

contains no more than 25 micrograms per liter (µg/L). This information must be contained in the ''Precautions'' section of the labeling of all LVPs used in TPN therapy.

21 CFR 201.323(c)—Requires that the maximum level of aluminum present at expiry be stated on the immediate container label of all SVP drug products and PBPs used in the preparation of TPN solutions. The aluminum content must be stated as prescribed in the regulation. The immediate container label of all SVP drug products and PBPs that are lyophilized powders used in the preparation of TPN solutions must contain the statement prescribed in the regulation.

21 CFR 201.323(d)—Requires that the package insert for all LVPs, SVPs, and PBPs used in TPN contain a warning statement, prescribed in the regulation, intended for patients with impaired kidney function and for neonates receiving TPN therapy. This information must be contained in the ''Warnings'' section of the labeling.

21 CFR 201.323(e)—Requires that applicants and manufacturers must use validated assay methods to determine the aluminum content in parenteral drug products. The assay methods must comply with current good manufacturing practice requirements. Applicants must submit to FDA both validation of the method used and release data for several batches. Manufacturers of parenteral drug products not subject to an approved application must make assay methodology available to FDA during inspections. Holders of pending applications must submit an amendment to the application.

Compliance with the information collection burdens under §201.323(b), (c), and (d) (21 CFR 201.323(b), (c), and (d)) consists of submitting application supplements to FDA containing the revised labeling for each product. Based on data concerning the number of applications for LVPs, SVPs, and PBPs used in TPN received by the agency, FDA estimates that the labeling for approximately 200 products will be changed under §201.323(b), (c), and (d). FDA estimates that it will take approximately 14 hours to prepare and submit to FDA each labeling change. FDA estimates that approximately 65 respondents will each submit 1 validated assay method annually under §201.323(e). FDA estimates that it will take approximately 14 hours to prepare and submit to FDA each validated assay.

In the **Federal Register** of December 19, 2002 (67 FR 77792), the agency requested comments on the proposed collection of information. No comments were received.

The burdens can be charted as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
201.323(b),(c),(d)	200	1	200	14	2,800
201.323(e)	65	1	65	14	910
Total					3,710

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 10, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–6227 Filed 3–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0085]

Agency Information Collection Activities; Proposed Collection; Comment Request; Environmental Impact Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in FDA regulations entitled ''Environmental Impact Considerations.''

DATES: Submit written or electric comments on the collection of information by May 16, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Environmental Impact Considerations—21 CFR Part 25 (OMB Control Number 0910–0322)—Extension

FDA is requesting OMB approval for the reporting requirements contained in the FDA regulation entitled ''Environmental Impact Considerations.''

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347), states national environmental objectives and imposes upon each Federal agency the duty to consider the environmental effects of its actions. Section 102(2)(C) of NEPA requires the preparation of an environmental impact statement (EIS) for every major Federal action that will significantly affect the quality of the human environment.

FDA's NEPA regulations are at part 25 (21 CFR part 25). All applications or petitions requesting agency action require the submission of a claim for a categorical exclusion or an environmental assessment (EA). A categorical exclusion applies to certain classes of FDA-regulated actions that usually have little or no potential to cause significant environmental effects and are excluded from the requirements to prepare an EA or EIS. Section 25.15(a) and (d) specifies the procedures for submitting to FDA a claim for a categorical exclusion. Extraordinary circumstances (§ 25.21), which may result in significant environmental impacts, may exist for some actions that are usually categorically excluded. An EA provides information that is used to determine whether an FDA action could result in a significant environmental impact. Section 25.40(a) and (c) specifies the content requirements for EAs for nonexcluded actions.

This collection of information is used by FDA to assess the environmental impact of agency actions and to ensure that the public is informed of environmental analyses. Firms wishing to manufacture and market substances regulated under statutes for which FDA is responsible must, in most instances, submit applications requesting approval. Environmental information must be included in such applications for the purpose of determining whether the proposed action may have a significant impact on the environment. Where significant adverse effects cannot be avoided, the agency uses the submitted information as the basis for preparing and circulating to the public an EIS, made available through a **Federal Register** document also filed for comment at the Environmental Protection Agency. The final EIS including the comments received is reviewed by the agency to weigh environmental costs and benefits in determining whether to pursue the proposed action or some alternative that would reduce expected environmental impact. Any final EIS would contain additional information gathered by the agency after the publication of the draft EIS, a copy of or a summary of the comments received on the draft EIS, and the agency's responses to the comments, including any revisions resulting from the comments or other information. When the agency finds that no significant environmental effects are expected, the agency prepares a finding of no significant impact.

Estimated Annual Reporting Burden for Human Drugs

Under 21 CFR 312.23(a)(7)(iv)(e), 314.50(d)(1)(iii), and 314.94(a)(9)(i), each investigational new drug application (IND), new drug application (NDA), and abbreviated new drug application (ANDA) must contain a claim for categorical exclusion under § 25.30 or § 25.31 or an EA under § 25.40. In 2002, FDA received 2,374 INDs from 1,809 sponsors, 109 NDAs from 79 applicants, 2,575 supplements to NDAs from 276 applicants, 392 ANDAs from 107 applicants, and 3,343 supplements to ANDAs from 222 applicants. FDA estimates that it receives approximately 8,771 claims for categorical exclusions as required under § 25.15(a) and (d) and 22 EAs as required under § 25.40(a) and (c). Based on information provided by the pharmaceutical industry, FDA estimates that it takes sponsors or applicants approximately 8 hours to prepare a claim for a categorical exclusion and approximately 3,400 hours to prepare an EA.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Records	Hours per Response	Total Burden Hours
25.15(a) and (d)	2,031	4.32	8,771	8	70,168
25.40(a) and (c)	22	1	22	3,400	74,800
Total					144,968

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Human Foods

Under 21 CFR 171.1, 71.1, 170.39, and 170.100, food additive petitions, color additive petitions, requests for exemption from regulation as a food additive, and submission of a premarket notification for a food contact substance must contain a claim of categorical exclusion under § 25.30 or § 25.32 or an EA under § 25.40. In 2002, FDA received 12 food additive petitions and 106 food contact substance notifications. FDA estimates that it received approximately 87 claims of categorical exclusions as required under § 25.15(a) and (d) and 31 EAs as required under § 25.40(a) and (c). FDA estimates that it takes petitioners or requestors approximately 8 hours to prepare a claim of categorical exclusion and approximately 210 hours to prepare an EA.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN FOODS[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Records	Hours per Response	Total Burden Hours
25.15(a) and (d)	56	1.6	87	4	348
25.40(a) and (c)	18	1.7	31	210	6,510

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN FOODS[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Records	Hours per Response	Total Burden Hours
Total					6,858

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Medical Devices

Under 21 CFR 814.20(b)(11), premarket approvals (PMAs) (original PMAs and supplements) must contain a claim for categorical exclusion under § 25.30 or §25.34 or an EA under § 25.40. In 1998, FDA received 568 claims (original PMAs and supplements) for categorical exclusions as required under § 25.15(a) and (d), and 0 EAs as required under § 25.40(a) and (c). Based on information provided by less than 10 sponsors, FDA estimates that it takes approximately less than 1 hour to prepare a claim for a categorical exclusion and an unknown number of hours to prepare an EA.

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN FOR MEDICAL DEVICES[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Records	Hours per Response	Total Burden Hours
25.15(a) and (d)	94	6	568	1	568
25.40(a) and (c)	0	0	0	0	0
Total					568

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Biological Products

Under 21 CFR 312.23(a)(7)(iv)(e) and 601.2(a), IND and biologics license applications (BLAs) must contain a claim for categorical exclusion under § 25.30 or § 25.31 or an EA under § 25.40. In 2001, FDA received 535 INDs from 376 sponsors, 80 BLAs from 22 applicants, and 837 BLA supplements to license applications from 168 applicants. FDA estimates that approximately 10 percent of these supplements would be submitted with a claim for categorical exclusion or an EA.

FDA estimates that it received approximately 699 claims for categorical exclusion as required under § 25.15(a) and (d), and 2 EAs as required under § 25.40(a) and (c). Based on information provided by industry, FDA estimates that it takes sponsors and applicants approximately 8 hours to prepare a claim for categorical exclusion and approximately 3,400 hours to prepare an EA for a biological product.

TABLE 4.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICAL PRODUCTS[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Records	Hours per Response	Total Burden Hours
25.15(a) and (d)	415	1.68	699	8	5,592
25.40(a) and (c)	2	1	2	3,400	6,800
Total					12,392

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Under 21 CFR 514.1(b)(14), new animal drug applications (NADAs) and ANADAs, 514.8(a)(1), supplemental NADAs and ANADAs, 511.1(b)(10) investigational new animal drug applications (INADs), 570.35(c)(1)(viii) generally recognized as safe (GRAS) affirmation petitions, and 571.1(c) food additive petitions must contain a claim for categorical exclusion under § 25.30 or § 25.33 or an EA under § 25.40. Since the last OMB approval of these collections of information, FDA's Center of Veterinary Medicine has received approximately 547 claims for categorical exclusion as required under § 25.15(a) and (d) and 19 EAs as required under § 25.40(a) and (c). Based on information provided by industry, FDA estimates that it takes sponsors/applicants approximately 8 hours to prepare a claim for a categorical exclusion and an average of 2,160 hours to prepare an EA.

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN FOR ANIMAL DRUGS[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Records	Hours per Response	Total Burden Hours
25.15(a) and (d)	139	3.9	549	8	4,392
25.40(a) and (c)	14	1.4	19	2,160	41,040
Total					45,432

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on information provided by industry, FDA estimates that the combined burden for the Environmental Impact Considerations is as follows:

TABLE 6.—TOTAL ESTIMATED ANNUAL REPORTING BURDEN FOR ALL CENTERS[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Records	Hours per Response	Total Burden Hours
25.15(a) and (d)	70,168	348	568	5,592	76,676
25.40(a) and (c)	74,800	6,510	0	6,800	88,110
Total					164,786

Dated: March 10, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–6228 Filed 3–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0077]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Emergency Medical Device Shortage Program Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by April 16, 2003.

ADDRESSES: Fax written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX 202-395-6974, or electronically mail comments to *sshapiro@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Emergency Medical Device Shortage Program Survey (OMB Control Number 0910–0491)—Reinstatement

Under section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(d)(2)), the Commissioner of Food and Drugs is authorized to implement general powers (including conducting research) to carry out effectively FDA's mission. Section 510 of the act (21 U.S.C. 360) requires that domestic establishments engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and commercial distribution register their establishments and list the devices they manufacture with FDA. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health, or gross deception of the consumer. These sections of the act enable FDA to enhance consumer protection from risks associated with medical devices usage that are not foreseen or apparent during the premarket notification and review process.

Subsequent to the events of September 11, 2001, FDA began planning for handling device-related issues related to counterterrorism. One of the activities related to planning for addressing terrorism-related medical device shortages is that FDA, working with medical experts and medical device industry organizations, developed a medical device formulary that identifies which medical devices would be needed in responding to terrorist incidents. The National Pharmaceutical Stockpile Program managed by the Centers for Disease Control appears to have not given adequate consideration to medical devices. Therefore, FDA has developed a plan to ensure adequate availability of medical devices in case of terrorist incidents.

Most particularly, consumable supplies or disposable devices are supplied through large regional distributors. Adequate supplies should be available through these existing commercial supply chains. Problems in supplying these items will be due to logistics. In an emergency, FDA plans to ensure adequate availability of these types of devices by working with industry/distributor organizations. These organizations have actively pursued working relationships with appropriate government agencies to facilitate adequate response in emergency situations.

However, there are more sophisticated or specialized devices, for example, ventilators, defibrillators, and portable x-ray machines are sold directly by the manufacturer but are not sold through independent distributors. For these devices, FDA plans to maintain a database of device manufacturers so that specific contact information can be supplied to emergency response personnel as needed. FDA has identified 17 of these devices and has identified 205 manufacturers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Telephone Survey	250	1	250	.5	125

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on conversations with industry and trade association representatives and from internal FDA experience and estimates.

The total number of medical device manufacturers regulated by FDA is estimated to be 70,000. Because most of the medical devices which might be needed in a terrorist attack are available through regular commercial channels, FDA focused this collection of information on the 250 manufacturers who manufacture 17 medical devices. Therefore, FDA estimates that approximately 150 manufacturers would be contacted in a 1–year period. It is also estimated from FDA experience that the survey will take approximately 20 to 30 minutes to complete over the telephone.

Dated: March 7, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–6229 Filed 3–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0075]

Agency Information Collection Activities; Proposed Collection; Comment Request; Administrative Detention and Banned Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for administrative detention and banned medical devices.

DATES: Submit written and electronic comments on the collection of information by May 16, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Administrative Detention and Banned Medical Devices (OMB Control Number 0910–0114)—Extension

FDA has the statutory authority under section 304(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 334(g)), to detain during establishment inspections devices that are believed to be adulterated or misbranded. FDA issued a final rule that published in the **Federal Register** on March 9, 1979 (44 FR 13234 at 13239) on administrative detention procedures, which includes, among other things, certain reporting requirements § 800.55(g) and (k) (21 CFR 800.55(g) and (k)) and recordkeeping requirements. Under § 800.55(g), an applicant of a detention order must show documentation of ownership if devices are detained at a place other than that of the appellant. Under § 800.55(k), the owner or other responsible person must supply records about how the devices may have become adulterated or misbranded, as well as records of distribution of the detained devices. These recordkeeping requirements for administrative detentions allow FDA to trace devices for which the detention period expired before a seizure is accomplished or injunctive relief is obtained.

FDA also has the statutory authority under section 516 of the act (21 U.S.C. 360f) to ban devices that present substantial deception or an unreasonable and substantial risk of illness or injury. The final rule for banned devices that published in the **Federal Register** of May 18, 1979 (44 FR 29221) contained certain reporting requirements §§ 895.21(d) and 895.22(a) (21 CFR 895.21(d) and 895.22(a)). Section 895.21(d) states that if the Commissioner of Food and Drugs (the Commissioner) decides to initiate a proceeding to make a device a banned device, a notice of proposed rulemaking will be published in the **Federal Register**, and this document will contain the finding that the device presents a substantial deception or an unreasonable and substantial risk of illness or injury. The document will also contain the reasons why the proceeding was initiated, an evaluation of data and information obtained under other provisions of the act, any consultations with the panel, and a determination as to whether the device could be corrected by labeling or change of labeling, or change of advertising, and if that labeling or change of advertising has been made. Under § 895.21(d), any interested person may request an informal hearing and submit written comments. Under § 895.22, a manufacturer, distributor, or importer of a device may be required to submit to FDA all relevant and available data and information to enable the Commissioner to determine whether the device presents substantial deception, unreasonable and substantial risk of illness or injury, or unreasonable, direct, and substantial danger to the health of individuals.

Respondents to this collection of information are those manufacturers,

distributors, or importers whose products FDA seeks to detain or ban. As previously stated, the collection of data and information under these regulations is conducted on a very infrequent basis and only as necessary.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Records	Hours per Response	Total Hours
800.55(g)	1	1	1	25	25
895.21(d) and 895.22	26	1	26	16	416
Total					441

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per	Total Annual Records	Hours per Recordkeeper	Total Hours
800.55(k)	1	1	1	20	20
Total					20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Over the past several years, there has been an average of less than one new administrative detention action per year. Each administrative detention will have varying amounts of data and information that must be maintained. Historically, the Center for Devices and Radiological Health has had very few or no annual responses for this information collection and normally reports one response per year.

FDA's estimate of the burden under the administrative detention provision is based on FDA's discussion with one of the three firms whose devices had been detained.

Dated: March 7, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–6230 Filed 3–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0319]

Agency Information Collection Activities; Announcement of OMB Approval; Blood Establishment Registration and Product Listing, Form FDA 2830

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Blood Establishment Registration and Product Listing, Form FDA 2830'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 19, 2002 (67 FR 69747), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0052. The approval expires on February 28, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: March 10, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–6231 Filed 3–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0849]

Determination of Regulatory Review Period for Purposes of Patent Extension; VITREON; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending its determination regarding the regulatory review period for purposes of patent extension for VITREON that appeared in the **Federal Register** of December 17, 1998 (63 FR 69633). FDA is amending the document because the agency agrees with the information provided in a request from the applicant for revision of the regulatory review period.

ADDRESSES: Submit written comments and petitions 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: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: In its application for patent term extension, the applicant claimed November 10, 1989, as the date the investigational new drug (IND) application for VITREON (IND 33,858) was initially submitted. FDA records showed that IND 33,858

became effective on November 10, 1989, but upon reviewing the application, FDA determined that VITREON should be regulated as a device, not a drug, and transferred the application to the Center for Devices and Radiological Health (CDRH) on April 13, 1990. The application was renumbered as an investigational device exemption (IDE) application (IDE G900050). FDA's initial determination of the regulatory review period for VITREON used April 13, 1990, as the effective date for the investigational application (63 FR 69633, December 17, 1998). However, the applicant later claimed in its request for a revision of the regulatory review period dated February 16, 1999 (Docket No. 98E–0489), that FDA's initial determination failed to take into account that the original IND became effective on November 10, 1989, because VITREON was initially considered to be a drug rather than a device. The applicant argued that FDA did not object to the November 10, 1989, submission and that November 10, 1989, should remain valid as the effective date of the investigational application because under both the IND and IDE regulations, an investigational application becomes effective 30 days after submission unless FDA notifies the applicant. Therefore, the applicant requested that the agency correct the date the investigational application became effective to November 10, 1989, the effective date of IND 33,858.

FDA reviewed its records and confirmed that IND 33,858 became effective on November 10, 1989. This application was subsequently transferred to CDRH because the agency decided to regulate the product as a device rather than a drug. Though the transfer of IND 33,858 to IDE G900050 occurred for administrative reasons the application was sufficiently complete to permit a substantive review. For this reason, FDA now accepts the date of November 10, 1989, submitted by the applicant in its request, as the date that the investigational application for VITREON became effective. Therefore, the applicable regulatory review period for the VITREON application is 2,883 days. Of this time, 757 days occurred during the testing phase of the regulatory review period, while 2,126 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: November 10, 1989. November 10, 1989, is the date that IND 33,858 became effective. The application was subsequently transferred to CDRH because FDA decided to regulate VITREON as a device rather than a drug. IND 33,858 was renumbered as IDE G900050 on April 13, 1990. This transfer occurred only for administrative reasons because IND 33,858, later designated IDE G900050, was sufficiently complete to permit a substantive review. For this reason, FDA accepts the date of November 10, 1989, as the date that a clinical investigation involving this device was begun.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: December 6, 1991. FDA has verified the applicant's claim that the premarket approval application (PMA) for VITREON (PMA P910068) was initially submitted December 6, 1991.

3. *The date the application was approved*: September 30, 1997. FDA has verified the applicant's claim that PMA P910068 was approved on September 30, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Any interested person may petition FDA, on or before September 15, 2003, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 3, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–6226 Filed 3–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–12]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Grant Application Standard Logic Model; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 31, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Lauren_Wittenberg@omb.eop.gov;* fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed revision to the currently approved information collection for selecting applicants for the Fair Housing Initiatives (FHIP) Program grants.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the

accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Grant Application Standard Logic Model.

Description of Information Collection: Applicants of HUD Federal Financial Assistance will be required to indicate intended results and impacts. Grant recipients will be required to report against their baseline performance standards. This process will replace various, current progress reporting requirements and reduce reporting burdens. It will also promote greater emphasis on performance and results in grant programs.

OMB Control Number: 2535-pending.

Agency Form Numbers: HUD-pending.

Members of Affected Public: Individuals, Not-for-profit institutions, State, Local or Tribal Government, Business or other for-profit.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: This information collection is estimated to total one hour per submission. Of the estimated 11,000 grant applicant/recipients, approximately 6,600 report quarterly and 4,400 report annually. Total annual reporting burden is estimated at 30,800 hours.

Status of the Proposed Information Collection: New Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: March 11, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–6321 Filed 3–14–03; 8:45 am]

BILLING CODE 4210–72–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 16, 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).

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests permits to export captive-born tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. This notification covers the import of any potential progeny born while overseas. The permit numbers are 068349, Rook; 068350, Segal; 068351, Rajee; 068352, Kali; 068353, Pashawn; 068354, Maja; 068355, Sjiba; and 068356, Ice. This notification covers activities conducted by the applicant over a three years period.

PRT–066160

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to export three captive-born tigers (*Panthera tigris*) to the Ouwehands Zoo, Rhenen, the Netherlands for the purpose of enhancement of the species through conservation education.

PRT–810465

Applicant: A.R. Galloway Exotic Ranch, Pearsall, TX

The applicant requests renewal of a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvauceli*) and Eld's deer (*Cervus eldi*) from their captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a five year period. Permittee must apply for renewal annually.

PRT–067307

Applicant: Shark Reef at Mandalay Bay, Las Vegas, NV

The applicant requests a permit to authorize the transfer in interstate commerce of three sub-adult, captive-bred Komodo monitors (*Varanus komodensis*) from the Miami Metrozoo, Miami, Florida, for the purpose of conservation education and enhancement of the survival of the species.

PRT–067128

Applicant: Smithsonian Institution, Washington, DC

The applicant requests a permit to import biological samples collected from maned wolves (*Chrysocyon brachyurus*) in Noel Kempff Mercado National Park, Bolivia for the purpose of scientific research to aid species conservation. This notification covers activities conducted by the applicant over a five year period. Permittee must apply for renewal annually.

PRT–001904

Applicant: U.S. Fish and Wildlife Service, Mexican Wolf Reintroduction Project, Region 2, Albuquerque, NM

The applicant requests renewal of a permit to import, export and reexport live Mexican or lobo wolves (*Canis lupus baileyi*) for breeding and reintroduction and to import biological samples for genetic studies for the enhancement of the propagation or survival of the species. This notification covers activities conducted by the applicant over a five year period.

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–067925

Applicant: Alaska Science Center, USGS, Anchorage, AK

Permit Type: Take and import.

Name and Number of Animals: *Enhydra lutris nereis,* 20; *Enhydra lutris lutris,* 150.

Summary of Activity to be Authorized: The applicant requests a permit for scientific research to conduct take activities with sea otters in California and Alaska and to import biological samples from sea otters in Russia, Canada, and Japan in order to assess the population status and health of sea otters.

Source of Marine Mammals: Central California coast; Alaska; Russia, Canada, and Japan.

Period of Activity: Up to 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–068430

Applicant: Arnold Goldschlager, Hillsborough, CA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada 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.

February 28, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–6318 Filed 3–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Mead's Milkweed (Asclepias meadii) Draft Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability for public review of the draft recovery plan for the Mead's milkweed, a species that is federally listed as threatened under the Endangered Species Act of 1973 (Act). The purpose of this plan is to recover this species in order that it can be removed from the list of Threatened and Endangered Species. This species occurs or may occur on public and private land in Illinois, Indiana, Iowa, Kansas, Missouri, and Wisconsin. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before May 16, 2003.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Chicago, Illinois, Ecological Services Field Office, 1250 South Grove Avenue, Suite 103, Barrington, Illinois 60010–5091 or by accessing the Web site: *http://midwest.fws.gov/Endangered.*

FOR FURTHER INFORMATION CONTACT: Mr. Kristopher Lah, (847) 381–2253. TTY users contact the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the Federally listed threatened and endangered species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for reclassification and delisting, and provide estimates of the time and costs for implementing the recovery measures needed.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into consideration in the course of implementing approved recovery plans.

The Mead's milkweed was listed as threatened on September 1, 1988. The species is known to persist at 171 sites in 34 counties in eastern Kansas, Missouri, south-central Iowa, and southern Illinois. Populations no longer occur in Wisconsin and Indiana. Seventy-five percent of the Mead's milkweed populations are in the Osage Plains Physiographic Region in Kansas and Missouri. The remainder of the populations occur in the Shawnee Hills of Illinois; the Southern Iowa Drift Plain in Iowa; the Glaciated Plains, Ozark Border, Ozark Springfield Plateau, and the Ozark-St. Francois Mountains of Missouri; and the Glaciated Physiographic Region of Kansas. Mead's milkweed populations have been eliminated by wide-scale agriculture in the eastern part of the species' range. Many large populations occur in private hay meadows where a century of annual mowing, which prevents sexual reproduction, has severely reduced genetic diversity. Among the surviving populations in eastern Missouri, Illinois and Iowa, most apparently consist of a few genetically invariant clones that are incapable of sexual reproduction. Population restoration efforts are being made in Illinois, Indiana, and Wisconsin by introducing Mead's milkweed into suitable habitat.

Mead's milkweed occurs primarily in tallgrass prairie, and occasionally in thin-soil glades or barrens. This plant is essentially restricted to late-successional prairie habitat, which has never been plowed and only lightly grazed, or hay meadows that are cropped annually for hay. Plants reproduce sexually by seed and spread vegetatively by rhizomes, especially under midsummer haymowing regimes. As with other native milkweeds, Mead's is either self-incompatible or subject to severe inbreeding depression. Mead's milkweed populations that are managed by prescribed burning experience an increase in flowering, reproduction, and seedling establishment and are more genetically diverse than sites that are mowed.

In order to accomplish recovery, the following actions are recommended in

the draft recovery plan: (1) Protect habitat; (2) manage habitat; (3) increase size and number of populations; (4) conduct field surveys for new population occurrences or potential habitat for introduction; (5) conduct research on restoration, management and introduction techniques; (6) maintain conservation populations; (7) promote public understanding; and (8) review and track recovery progress.

Recovery will be achieved, and the species may be removed from the list of Threatened and Endangered Species when the following criteria are met: (1) 26 populations are distributed across plant communities and physiographic regions within the historic range of the species, (2) each of these 26 populations is highly viable, and (3) monitoring data indicates that these populations have been stable or increasing for 15 years.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan. Written comments and materials regarding the plan should be sent to the Field Supervisor, Ecological Services Field Office (see **ADDRESSES** section). Comments received will be available for public inspection by appointment during normal business hours.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 19, 2003.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 03–6265 Filed 3–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Assessment/Habitat Conservation Plan Related to Application for an Incidental Take Permit for the Long Point Homeowner's Association Development

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public and other agencies of the availability of a draft Environmental Assessment (EA)/Habitat Conservation Plan (HCP) and Incidental Take Permit (ITP) application for review and comment. The draft EA/HCP and ITP application were submitted to the U.S. Fish and Wildlife Service (Service) by the Long Point Homeowner's Association proposing residential development of the Long Point Subdivision on Kelleys Island, Erie County, Ohio. Federally-threatened Lake Erie water snakes (*Nerodia sipedon insularum*) occupy the project area and it has been determined that the proposed actions will result in incidental take. The Long Point Homeowner's Association submitted an ITP application to the Service for incidental take pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The submission of the ITP application required the development of an HCP by the applicants detailing measures to be taken to avoid, minimize, and mitigate impacts to Lake Erie water snakes.

DATES: Written comments must be received on or before May 16, 2003.

ADDRESSES: Written comments can be mailed to the address or fax number below. Electronic mail comments should be submitted to: *longpointhcp@fws.gov.* Persons wishing to review the documents may obtain copies by writing, telephoning, faxing, or e-mailing: Regional HCP Coordinator, U.S. Fish and Wildlife Services, 1 Federal Drive, Fort Snelling, MN 55111–4056, Telephone: (612) 713–5343, Fax: (612) 713–5292. The draft EA/HCP is also available at the following internet address: *http://midwest.fws.gov/nepa/.* Copies of the draft EA/HCP may also be viewed at four public libraries listed in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, Regional HCP Coordinator, Telephone: (612) 713–5343, or e-mail *peter_fasbender@fws.gov*

SUPPLEMENTARY INFORMATION:

Public Involvement

The draft EA/HCP is available for public review and comment for a period of 60 days. This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). Copies of the documents can be obtained as indicated in the **ADDRESSES** section. In addition, documents will be available for public inspection during normal business hours (8–4:30), at the U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota, and at the Reynoldsburg Ecological Services Field Office, 6950 Americana Parkway, Suite H, Reynoldsburg, Ohio and at the following libraries:

Port Clinton Public Library, 310 Madison St., Port Clinton, Ohio 43452

Sandusky Library, 114 W. Adams St., Sandusky, Ohio 44870

Sandusky Library, 528 Division St., Kelleys Island, Ohio 43438

Oak Harbor Public Library, 147 W. Main St., Oak Harbor, Ohio 43449

All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)]. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

Incidental Take Permits

Section 9 of the Endangered Species Act (Act) and Federal regulations prohibit ''take'' of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct (16 U.S.C. 1538). Harm may include significant habitat modification where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. The Service may under limited circumstances issue permits to take listed species, provided such take is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered species are found in 50 CFR 17.22.

Background on Habitat Conservation Plan

The Long Point Homeowner's Association proposes to develop the 15-acre Long Point Subdivision on Kelleys Island, Erie County, Ohio. The Lake Erie water snake and its habitat occur on the 15-acre tract. Within the HCP boundary, 7 acres will be cleared and 6.1 acres permanently maintained for the proposed development of the seven residential lots known as the Long Point Subdivision. Incidental take of Lake Erie water snakes is expected to occur due to the loss and degradation of sheltering and hibernation habitat and due to the increase in human activity in the project area. Loss of suitable habitat would

potentially result in a reduction in overwinter survival due to the loss of hibernacula and increased predation due to the loss of vegetation for shelter. More human activity on the 15-acre property would increase the likelihood of human disturbance and disruption of snakes, vehicular strikes of snakes, harassment and/or predation of snakes by pets, and mortality of snakes caused by mowing.

The purpose of the HCP is to ensure incidental take will be minimized and mitigated to the maximum extent practicable and will not appreciably reduce the likelihood of the survival and recovery of this species in the wild. The Long Point Homeowner's Association designed the HCP in consultation with the Service to ensure the project area will continue to support suitable habitat for the species, while allowing for incidental take of Lake Erie water snakes from the proposed activities. Measures in the HCP designed to avoid, minimize, and mitigate the impacts of the proposed action on Lake Erie water snakes include: (1) Seasonal and temperature restrictions on ground disturbing activities including construction and mowing; (2) establishment of a shoreline buffer area to conserve habitat; (3) restrictions on pesticide and fertilizer use; (4) construction of artificial hibernacula; (5) restrictions on size and placement of structures including residences, garages, decks, driveways, and septic systems; and (6) monitoring the Lake Erie water snake population response to the proposed construction and mitigation for 15 years.

Background on Environmental Assessment

The Proposed Action consists of issuing an ITP and implementation of the HCP. The draft EA considers three action alternatives and the ''No Action'' alternative. The NEPA process will be completed after the comment period, at which time the Service will evaluate the permit application (if appropriate to the selected alternative), the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to the Long Point Homeowner's Association for the incidental take of Lake Erie water snakes associated with the proposed activities on Kelleys Island, Erie County, Ohio. The final permit decision will be made no sooner than 60 days from the date of this notice.

The area encompassed by the HCP may contain facilities eligible to be listed on the National Register of Historic Places and other historical or archeological resources may be present. The National Historic Preservation Act and other laws require these properties and resources be identified and considered in project planning. The public is requested to inform the Service of concerns about archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns.

Authority: 16 U.S.C. 1531, *et seq.*; 42 U.S.C. 4321–4347.

Dated: February 26, 2003.

Lynn M. Lewis,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 03–6239 Filed 3–14–03; 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 December 24, 2002, a notice was published in the **Federal Register** (67 FR 78504), that an application had been filed with the Fish and Wildlife Service by Robert B. Michalek for a permit (PRT–065467) to import one polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population, Canada, for personal use.

Notice is hereby given that on February 13, 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 January 15, 2003, a notice was published in the **Federal Register** (68 FR 2069), that an application had been filed with the Fish and Wildlife Service by Raymond Mancuso for a permit (PRT–066169) to import one polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on February 14, 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 December 11, 2002, a notice was published in the **Federal Register** (67 FR 76183), that an application had been filed with the Fish and Wildlife Service by David G. Aul for a permit (PRT–065354) to import one polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population, Canada, for personal use.

Notice is hereby given that on February 27, 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 28, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–6317 Filed 3–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, April 7, 2003 from 8 a.m. to 5 p.m. local time, and on Tuesday, April 8, 2003 from 8 a.m. to 3 p.m. local time.

ADDRESSES: The Advisory Board will meet at the Four Points Sheraton Hotel, 10220 N. Metro Parkway East, Phoenix, AZ.

Written comments pertaining to the Advisory Board meeting should be sent

to: Bureau of Land Management, National Wild Horse and Burro Program, WO260, Attention: Ramona Delorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business March 27, 2003. *See* **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Nordin, Wild Horse and Burro Public Outreach Specialist, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. Nordin* at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, April 7, 2003 (8 a.m.–5 p.m.)

8 Call to Order & Introductions
8:30 Old Business
10:15 Program Update Report
12 Lunch
1:30 Program Update Report (continued)
4 Public Comments
4:45 Recap/Summary
5–6 Adjourn; Roundtable to Follow

Tuesday, April 8, 2003 (8 a.m.–3 p.m.)

8 Program Update Report (continued)
8:30 Program Update Discussion
10:30 New Business
11 Board Recommendations
12 Lunch
1 Board Recommendations (continued)
3 Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal advisory committee management regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on April 7, 2003, at the appropriate point in the agenda. This opportunity is anticipated to occur at 4 p.m. local time. Persons wishing to make statements should register with the BLM by noon April 7, 2003, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. BLM will honor your request to the extent allowed by law. BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet_Nordin@blm.gov.* Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: March 11, 2003.

Aaron Horton,

Acting Deputy Assistant Director, Renewable Resources and Planning.

[FR Doc. 03–6238 Filed 3–14–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–DES–02–51]

Banks Lake Drawdown, Columbia Basin Project, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of comment period for the Banks Lake Drawdown, Washington, draft Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), prepared a draft Environmental Impact Statement (draft EIS) to examine the impacts of alternatives to lower the minimum surface elevation for Banks Lake in August from 1,565 feet to 1,560 feet. The notice of availability appeared in 68 FR 1196–1197 on January 9, 2003.

DATES: The comment period for written comments on the draft EIS has been extended to April 11, 2003.

ADDRESSES: Written comments on the Draft EIS should be submitted to Mr. Jim Blanchard, Special Projects Officer, Bureau of Reclamation, 32 C Street, PO Box 815, Ephrata, WA 98823–0815; or by fax 509–754–0239, or by email at: *jblanchard@pn.usbr.gov.*

See the **SUPPLEMENTARY INFORMATION** section below for locations where copies of the DEIS are available for public review and inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Blanchard, Special Projects Officer, at 509–754–0226 (relay users may dial 711). Those wishing to obtain a copy of the draft EIS in the form of a printed document or on compact disk (CD–ROM with reader included) or a summary of the draft EIS may contact Mr. Blanchard.

SUPPLEMENTARY INFORMATION:

Public Disclosure

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Review and Inspection of the DEIS

Copies of the DEIS are available for public review and inspection at the following locations:

- Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 18th and C Streets, NW., Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, Colorado 80225.
- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234.
- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington 98901.
- Bureau of Reclamation, Ephrata Field Office, 32 C Street, Ephrata, Washington 98823.

Libraries

- Bridgeport Community Library, Douglas County, 1206 Columbia Street, Bridgeport, WA 509–686–7281.
- Coulee City Community Library, 405 W. Main Street., Coulee City, WA 509–674–2313.
- Des Moines Library, 21620 11th Avenue S, Des Moines, WA 206–824–6066.
- East Wenatchee Community Library, Douglas County, 271 9th Street NE., East Wenatchee, WA 509–886–7404.
- Ephrata Public Library, 45 Alder NW., Ephrata, WA 509–754–3971.
- Grand Coulee Community Library, 225 Federal, Grand Coulee, WA 509–633–0972.
- Moses Lake Public Library, 418 E. 5th Avenue, Moses Lake, WA 509–765–3489.
- Quincy Community Library, 108 B Street SW., Quincy, WA 509–787–2359.
- Royal City Community Library, 356 Camelia, Royal City, WA 509–346–9281.
- Seattle Public Library, 800 Pike Street, Seattle, WA 206–386–4636.
- Soap Lake Community Library, 32 E Main, Soap Lake, WA 509–246–1313.
- Warden Community Library, 305 S Main, Warden, WA 509–349–2226.
- Wenatchee Public Library, Chelan County, 310 Douglas Street Wenatchee, WA 509–662–5021.

Internet

The DEIS is also available on the Internet at *http://www.pn.usbr.gov.*

Dated: February 28, 2003.

J. William McDonald,

Regional Director, Pacific Northwest Region, Bureau of Reclamation.

[FR Doc. 03–6268 Filed 3–14–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–476]

In the Matter of Certain Radios and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Terminate the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting complainant's motion to terminate the investigation based on withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3116. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at http://edis.usitc.gov. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On August 14, 2002, the Commission instituted this investigation based on a supplemented complaint (''complaint'') filed by Bose Corporation (''complainant'') against Sun Coast Merchandise Corporation (''respondent''). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radios and components thereof by reason of infringement of U.S. Trademark Registration No. 2,299,158. 67 FR 53007 (2002).

On February 4, 2003, after the private parties reached a confidential settlement agreement (''Settlement''), complainant filed a Motion to Terminate Investigation (''motion''). On February 10, 2003, complainant supplemented its motion with a copy of the Settlement. Respondent did not oppose the motion or the supplement's filing. On February 14, 2003, the Commission investigative attorney filed a response in support of the motion and the investigation's termination. On February 21, 2003, the ALJ issued an ID (Order No. 22) granting the motion. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.
Issued: March 10, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–6154 Filed 3–14–03; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 3–4, 2003.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Longboat Key Club, 301 Gulf of Mexico Drive, Longboat Key, Florida.

FOR FURTHER INFORMATION CONTACT: John K. Rabeij, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 10, 2003.

John K. Rabeij,

Chief, Rules Committee Support Office.

[FR Doc. 03–6293 Filed 3–14–03; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: the Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: April 25, 2003.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

John K. Rabief,

Chief, Rules Committee Support Office.

[FR Doc. 03–6294 Filed 3–14–03; 8:45 am]

BILLING CODE 2219–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 28–29, 2003.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Fess Parker's Double Tree, 633 East Cabrillo Boulevard, Santa Barbara, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 10, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–6295 Filed 3–14–03; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: May 1–2, 2003.

TIME: May 1 (8:30 a.m. to 5 p.m.), May 2 (8:30 a.m. to 12 noon).

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 10, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–6296 Filed 3–14–03; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: May 15, 2003.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 10, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–6297 Filed 3–14–03; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

Action: 60-day emergency notice of information collection under review: revision of a currently approved collection; application for permit, user limited display fireworks.

The Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by March 27, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Attn: Megan Morehouse, Public Safety Branch, 800 K Street, NW., Suite 710, Washington, DC 20001.

Request written comments and suggestions from the public and affected agencies concerning the proposed

collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Application For Permit, User Limited Display Fireworks.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: ATF F 5400.21, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-profit institutions, State, Local or Tribal Government. The purpose of this collection is to enable ATF to ensure that persons seeking to obtain a permit under 18 U.S.C. Chapter 40 and responsible persons of such companies are not prohibited from shipping, transporting, receiving, or possessing explosives, on a one-time basis.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 150 respondents will complete the application in approximately 1 hour and 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 225 hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: March 12, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–6322 Filed 3–14–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; application and permit for temporary importation of firearms and ammunition by nonimmigrant aliens.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until May 16, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Thomas R. Stewart, Chief, Firearms and Explosives Import Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit For Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6NIA (5330.3D), Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. This information collection is needed to determine if the firearms or Ammunition listed on the application qualify for importation and to certify that a nonimmigrant alien is in compliance with 18 U.S.C. 922(g)(5)(B). This application will also serve as the authorization for importation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 15,000 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 7,500 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 12, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–6323 Filed 3–14–03; 8:45 am]

BILLING CODE 4410–FB–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 69573 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Teresa R. Pierce, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *tpierce@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7555.

FOR FURTHER INFORMATION CONTACT: Teresa R. Pierce, NSF Reports Clearance Officer at (703) 292–7555 or send e-mail to *tpierce@nsf.gov.*

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: 2003 National Survey of College Graduates.

OMB Approval Number: 3145–0141.

Abstract: The National Survey of College Graduates (NSCG), formerly called the National Survey of Natural and Social Scientists and Engineers, has been conducted biennially since the 1970s. The 2003 NSCG will consist of a sample of individuals under the age of 76 with at least a bachelor's degree as of April 1, 2000, the day of Census 2000.

The 2003 NSCG will be the baseline survey for NSCG surveys for the rest of the decade. The purpose of this longitudinal study is to provide national estimates on the science and engineering workforce and changes in employment, education, and demographic characteristics. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to ''* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The NSCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force data system, which produces national estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering* and *Science and Engineering Indicators.* A public release file of collected data, designed to protect respondent confidentiality, will be made available to researchers on CD–ROM and on the World Wide Web.

The Bureau of the Census, as in the past, will conduct the study for NSF. Questionnaires will be mailed in October 2003 and nonrespondents to the mail questionnaire will be followed by computer-assisted interviewing. The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

Expected Respondents: A sample of approximately 233,000 persons identified as having at least a bachelor's degree will receive the mail questionnaire. During the computer-assisted followup stage, the sample design uses a subsampling procedure similar to the one used on the American Community Survey as a cost efficient design strategy. The sample and subsample will be selected according to generally accepted probability sampling procedures.

Burden on the Public: The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. NSF estimates that the total annual burden will be 73,649 hours during the year.

Dated: March 11, 2003.

Teresa R. Pierce,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–6224 Filed 3–14–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Business and Operations Advisory Committee (9556).

Date/Time: April 8, 2003; 8 a.m. to 5:30 p.m. (e.s.t.).

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA.

Type of Meeting: Open.

Contact Person: Mary Ann Birchett, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 292–8100.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Agenda: April 8, 2003.

A.M.: Introductions and Updates—Office of Budget, Finance, and Award Management and Office of Information and Resource Management activities.

Presentation and Discussion—NSTC Sub-Committee on Research Business Models; Information Technology Security.

P.M.: Presentation and Discussion—Emergency Preparedness: Meeting with NSF Deputy Director; Committee Discussion; Planning for next meeting; feedback; other business.

Dated: March 11, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–6225 Filed 3–14–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* ''Reports Concerning Possible Non-Routine Emergency Generic Problems''.

2. *Current OMB approval number:* 3150–0012.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Nuclear power plant, non-power reactor, and materials applicants and licensees.

5. *The number of annual respondents:* 204 (104 reactor licensees; 100 material licensees).

6. *The number of hours needed annually to complete the requirement or request:* 53,680 (43,680 for reactor licensees and 10,000 for materials licensees).

7. *Abstract:* NRC is requesting approval authority to collect information concerning possible non-routine generic problems which would require prompt action from NRC to preclude potential threats to public health and safety.

Submit, by May 16, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *Infocollects@nrc.gov*.

Dated at Rockville, Maryland, this 10th day of March 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–6285 Filed 3–14–03; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–327]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License DPR–77 issued to the Sequoyah Nuclear Plant (SQN) for operation of Unit 1 located in Hamilton County, Tennessee.

The proposed amendment would revise the SQN, Unit 1, Updated Final Safety Analysis Report (UFSAR). The revision provides an alternative methodology using a Bar-Lock Mechanical Splice in lieu of the Cadweld splice used in the original design and construction of the Unit 1 concrete shield building dome. This proposed Bar-Lock mechanical splice is described in Topical Report No. 24370–TR–C–001, ''Alternate Rebar Splice—Bar-Lock Mechanical Splices,'' and is requested for implementation upon the restoration of the dome as part of the upcoming steam generator replacement project for SQN, Unit 1.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in title 10 of the Code of Federal Regulations (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. No changes in event classification, as discussed in UFSAR chapter 15, will occur due to use of the Bar-Lock couplers.

The restoration of the temporary concrete construction openings in the shield building will utilize Bar-Lock couplers to splice new rebar to the existing rebar. The shield building structure limits the release of radioactivity following an accident and protects the systems, structures, and components inside containment from external events. The accidents of interest are those that rely on the shield building to limit the release of radioactivity to the environment, and those that result from some external events. The design of the shield building is such that it is not postulated to fail and initiate an accident described in the UFSAR.

The Bar-Lock coupler qualification tests detailed in Topical Report 24370-TR–C–001 demonstrate that the Bar-Lock coupler meets the American Society of Mechanical Engineers (ASME) strength requirements and is, therefore, acceptable for use in nuclear safety-related applications. Based on these test results, it is concluded that use of the Bar-Lock couplers in restoring the temporary

concrete construction openings will not reduce the structural capability of the repaired structure. The shield building will continue to perform its design function as described in the SQN UFSAR.

Therefore, the proposed use of the Bar-Lock couplers will not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The design of the shield building is such that it is not postulated to fail and initiate an accident described in the UFSAR. The Bar-Lock couplers are passive devices and as such will not initiate or cause an accident.

The restoration of the temporary concrete construction openings in the shield building will utilize Bar-Lock couplers to splice new rebar to the existing rebar. The Bar-Lock coupler qualification tests detailed in Topical Report 24370–TR–C–001 demonstrate that the Bar-Lock coupler meets the ASME strength requirements and is, therefore, acceptable for use in nuclear safety-related applications. Based on these test results, it is concluded that use of the Bar-Lock couplers in restoring the temporary concrete construction openings will not reduce the structural capability of the shield building. The shield building will, therefore, continue to perform its design functions as described in the SQN UFSAR.

Therefore, the possibility of a new or different accident situation occurring as a result of this condition is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. As indicated in the SQN UFSAR, the structural design of the shield building is in compliance with the American Concrete Institute (ACI) 318–63 building code working stress design requirements. The reinforcing steel conforms to the requirements of ASTM (American Society for Testing and Materials) A 615, Grade 60. The SQN UFSAR states that reinforcing bars were lap spliced in accordance with ACI 318–63 requirements for Strength Design.

The restoration of the temporary concrete construction openings in the shield building will utilize Bar-Lock couplers to splice new rebar to the existing rebar. The restoration of the construction openings, including use of the Bar-Lock couplers, will conform to the requirements of ACI 318. Therefore, following completion of the modification, the shield building will continue to comply with ACI 318 requirements.

In addition to conforming to ACI 318 requirements, the Bar-Lock coupler qualification tests detailed in Topical Report 24370–TR–C–001 demonstrate that the Bar-Lock coupler meets the ASME strength requirements.

Therefore, a significant reduction in the margin to safety is not created by this modification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 16, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention

[1] The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and 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.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, *see* the application for amendment dated February 14, 2003, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 11th day of March 2003.

For the Nuclear Regulatory Commission.

Raj K. Anand,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–6289 Filed 3–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Error in Draft Environmental Impact Statement for the Construction and Operation of the Proposed Mixed Oxide Fuel Fabrication Facility at the Savannah River Site, South Carolina and Extension of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of error in Draft Environmental Impact Statement; extension of public comment period.

SUMMARY: U.S. Nuclear Regulatory Commission (NRC) noticed in the **Federal Register** (68 FR 9728; February 28, 2003) the availability of a Draft Environmental Impact Statement (DEIS) on the proposed construction and operation of a mixed oxide (MOX) fuel fabrication facility at the Savannah River Site in South Carolina and the opportunity for stakeholders to provide comment on the DEIS. That the **Federal Register** notice also provided information of public meetings that the NRC will be hosting on March 25, 26, and 27, 2003, to accept oral and written comments on the DEIS. The U.S. Environmental Protection Agency (EPA) also noticed the filing of the DEIS in the **Federal Register** (68 FR 9650, February 28, 2003).

Since issuing the DEIS, NRC has identified an error in the DEIS. The error affects the calculation of the 1-year exposure to members of the public following hypothetical accidents at the proposed MOX facility, pit disassembly and conversion facility, and waste solidification building. The risk associated with these potential accidents is still considered to be very small. Correcting the error will not change the estimated low probability that such accidents would ever occur, but correcting the error is expected to substantially reduce these potential impacts.

NRC is revising the calculations of the 1-year public accident impacts and plans to issue errata sheets in early April to stakeholders who were mailed a copy of the DEIS. The NRC will also post the revised information on the MOX website, which is provided below. The NRC plans to discuss this issue at the above noted public meetings.

Extension of public comment period: The NRC is extending the public comment period on the proposed MOX facility DEIS by 30 days. Comments should be submitted by May 14, 2003. Submit written comments to: Michael T. Lesar, Chief, Rules and Directives

Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments will also be accepted by e-mail. Interested parties may e-mail their comments to *teh@nrc.gov*. Comments will also be accepted by fax at (301) 415–5398, Attention: Tim Harris.

Availability of Documents for Review: The DEIS, and other documents on which the DEIS is based, are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm.html*. A selected group of these documents are on the MOX web page: *http://www.nrc.gov/materials/fuel-cycle-fac/mox/licensing.html*. For those without access to the internet, paper copies of any electronic documents may be obtained for a fee by contacting the NRC's Public Document Room at 1–800–397–4209.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice, please contact: Tim Harris at (301) 415–6613.

Dated at Rockville, Maryland, this 6th day of March 2003.

For the Nuclear Regulatory Commission,

Lawrence E. Kokajko,

Acting Chief, Environmental and Performance Assessment Branch Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–6288 Filed 3–14–03; 8:45 am]

BILLING CODE 7590–01–U

POSTAL RATE COMMISSION

Plant Tours

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission tours.

SUMMARY: Postal Rate Commissioners and staff members will tour several facilities in March and April. The purpose of the tours is to observe various printing, mailing and shipping operations.

DATES: 1. March 26–27, 2003: FedEx facility (Memphis, TN).

2. March 28, 2003: The Oxford Eagle (Oxford, MS).

3. April 11, 2003: AOL/Time Warner (Birmingham, AL).

4. April 15, 2003: Brookhaven/Prentiss Printers (Brookhaven, MS).

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

Steven W. Williams,

Secretary.

[FR Doc. 03–6251 Filed 3–14–03; 8:45 am]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Spouse Annuity Under the Railroad Retirement Act; OMB 3220–0042 section 2(c) of the Railroad Retirement Act (RRA), provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the RRA. The age requirements for a spouse annuity depend on the employee's age and date of retirement and the employee's years of railroad service. The requirements relating to the annuities are prescribed in 20 CFR 216, 218, 219, 232, 234, and 295.

The RRB currently uses the electronic AA–3cert, Application Summary and Certification process and manual Form AA–3, Application for Spouse/Divorced Spouse Annuity, to obtain the information needed to determine an applicant's entitlement to an annuity and the amount of the annuity.

The AA–3cert process obtains information from an applicant by means of an interview with an RRB field-office representative. During the interview, the field-office representative enters the information obtained into an on-line information system. Upon completion of the interview, the applicant receives Form AA–3cert, Application Summary and Certification, which summarizes the information that was provided by/or verified by the applicant, for review and signature. The RRB also uses manual Form AA–3 in instances where the RRB representative is unable to contact the applicant in person or by telephone, *i.e.,* the applicant lives in another country.

The RRB estimates the burden for the collection as follows:

ESTIMATED BURDEN

Form No.	Estimated annual responses	Estimated completion time (per response)	Estimated annual burden (hours)
AA–3CERT	8,400	30	4,200
AA–3 (manual)	100	58	97
Total	8,500	.....	4,297

No changes are proposed to Form AA–3cert or Form AA–3. Completion is required to obtain a benefit. One response is requested of each respondent.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Office at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–6240 Filed 3–14–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street NW., Washington, DC 20549.

Extension

Rule 17f–1 File No. 270–236, OMB Control No. 3235–0222.
Form N–17f–1, File No. 270–316, OMB Control No. 3235–0359.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting for public comment the following summary of previously approved information collection requirements. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17f–1 [17 CFR § 270.17f–1] under the Investment Company Act of 1940 (the ''Act'') is entitled: ''Custody of Securities with Members of National Securities Exchanges.'' Rule 17f–1 provides that any registered management investment company (''fund'') that wishes to place its assets in the custody of a national securities exchange member may do so only under a written contract that must be ratified initially and approved annually by a majority of the fund's board of directors. The written contract also must contain certain specified provisions. In addition, the rule requires an independent public accountant to examine the fund's assets in the custody of the exchange member at least three times during the fund's fiscal year. The rule requires the written contract and the certificate of each examination to be transmitted to the Commission. The purpose of the rule is to ensure the safekeeping of fund assets.

Commission staff estimates that approximately 10 funds maintain their assets with a national securities exchange member.[1] The annual burden of the rule's requirements is estimated to be approximately 4.5 hours for each of these funds.[2] Commission staff estimates the total annual burden for all funds is 45 hours.

Form N–17f–1 is entitled: ''Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges.'' Form N–17f–1 is the cover sheet for accountant examination certificates filed under rule 17f–1 of the Act. Rule 17f–1 requires the accountant's certificate of each examination be attached to form N–17f-1 and transmitted to the Commission promptly after each examination. The form facilitates the filing of the accountant's certificate, and increases the accessibility of the certificate to both Commission's staff and interested investors.

The annual burden of the rule's requirements is estimated to be approximately 27 minutes for each of the 10 funds estimated to maintain their assets with a national securities exchange member.[3] The total annual burden for all funds therefore is estimated to be 4.5 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by rule 17f–1 and Form N–17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The Commission requests written comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6343 Filed 3–14–03; 8:45 am]

BILLING CODE 8010–01–P

[1] The Commission's records show that 10 funds filed Form N–17f–1 during calendar year 2002.

[2] The Commission staff estimates, based upon the experience of staff familiar with the information collection requirements of the rule, that each fund spends approximately 4.5 hours annually in complying with the rule's requirements: 4 hours of clerical time (1 hour to prepare the custodial contract for board review and to transmit the contract, and 1 hour each of the three times the fund transmits the accountant's certificate) and 0.5 hours for the board of directors to ratify the custodial contract.

[3] Commission staff estimates that it takes approximately nine minutes of clerical time to prepare each Form N–17f–1. This estimate is based on Commission staff members filling out the form. Each fund is required to file Form N–17f–1 three times annually, for an average hour burden per fund of 27 minutes.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Koppers Inc. (Formerly Known as Koppers Industries, Inc.) To Withdraw Its 9⅞% Senior Notes (Due 2007) From Listing and Registration on the New York Stock Exchange, Inc. File No. 1–12716

March 11, 2003.

Koppers Inc. (formerly known as Koppers Industries, Inc.), a Pennsylvania corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 12d2–2(d) thereunder,[2] to withdraw its 9⅞% Senior Notes (due 2007) (''Security''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

In making its decision to withdraw the Issuer's Security from the Exchange, the Issuer states that: (i) As of January 28, 2003, there were approximately 18 holders of the Security, including holders of record and those firms that hold the Security through Cede & Co.; (ii) based upon the covenants contained in the indenture under which the Security was issued, the Issuer will continue to provide to the holders of the Security information as if the Issuer were required by law to file 1934 Act reports; (iii) the Issuer is not obligated under the indenture under which the Security was issued, nor any other documents, to maintain a listing of the Security on the NYSE or any other exchange; (iv) the Issuer believes that the burden and expense of complying with requirements of the 1934 Act, particularly in view of certain of the enhanced obligations imposed by the Sarbanes-Oxley Act of 2002, upon companies whose securities are listed

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

on a national securities exchange, are disproportionate given the small number of holders of the Security; and (v) holders of the Security will accordingly benefit, to the extent that any cost savings realized by delisting improves the cash flow and creditworthiness of the Issuer. The Issuer believes that the delisting of the Security should not have a material impact on the holders of the Security.

The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before April 3, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–6242 Filed 3–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 17, 2003:

Closed Meetings will be held on Tuesday, March 18, 2003 at 10 a.m., and Thursday, March 20, 2003 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, March 18, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;
Institution of injunctive actions;
Adjudicatory matters; and
Opinion.

The subject matter of the Closed Meeting scheduled for Thursday, March 20, 2003 will be:

Regulatory matter involving a financial institution;
Institution and settlement of administrative proceedings of an enforcement nature;
Settlement injunctive actions; and
Litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 11, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–6390 Filed 3–12–03; 4:53 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47472; File No. SR–Amex–2002–48]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to its Marketing Performance Standards for Exchange Specialists

March 7, 2003.

On May 30, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b-4 thereunder,[2] a proposed rule change to adopt marketing performance standards for Exchange specialists. On January 27, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for public comment in the **Federal Register** on February 5, 2003.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[6] which requires, among other things, that the Exchange's procedures be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's marketing performance standards should help promote a better understanding of the needs of listed companies and certain member organizations of the Exchange, as well as an understanding of the specialist's function, the operations of the Exchange market, and the markets that are maintained in the issuers' stocks. In addition, the standards will help specialists to perform their functions better by receiving input on performance by issuers and member firms.[7]

The Commission further notes that, to ensure that specialist contacts can occur without the distractions of a normal business day and that such communications will fall within the scope of permissible disclosures as provided by Exchange rules, specialists will be required to either make contacts

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated January 14, 2003 (''Amendment No. 1''). Amendment No. 1 clarified in the proposed rule text that contacts by exchange specialists to issuers or representatives of member organizations will be conducted either off the Exchange floor or, if on the Exchange floor, outside of normal auction market business hours.

[4] Securities Exchange Act Release No. 47281 (January 29, 2003), 68 FR 5941.

[5] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] The Performance Committee would be responsible for taking appropriate remedial action in the event that a specialist fails to meet the objective marketing standards.

off the Exchange Floor, or, if on the Exchange Floor, outside of regular auction market business hours. Finally, specialists will be required to maintain records of these contacts, which will be reviewed by Amex staff.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–2002–48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6246 Filed 3–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47478; File No. SR–NASD–2003–28]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing a Thirty-Day Waiver of Certain ViewSuite Data Services Fees Assessed Under NASD Rule 7010(q)

March 10, 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 March 3, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to waive for thirty calendar days certain fees assessed under NASD Rule 7010(q) upon distributors for each new subscriber to Nasdaq ViewSuite products. Proposed new language is in italics; proposed deletions are in brackets.[3]

* * * * *

Rule 7010. Charges for Services and Equipment

(a)–(p) No Change.

(q) Nasdaq Data Entitlement Packages:

(1) Depth View and Power View—

(A) No Change.

(B) No Change.

(C) No Change.

(D) Thirty-Day Free-Trial Offer. Nasdaq will offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the fees for any ViewSuite service (Depth View or Power View) that such subscriber or potential subscriber chooses to try for the 30-day period. This waiver does not include fees assessed for the NQDS service.[4] This fee waiver period will be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber is first entitled by a distributor to receive access to Depth View or Power View. A distributor may only provide this waiver to a specific individual subscriber once.

(i) Depth View. For the period of the offer, the DepthView fee of $50 per professional user and $25 per non-professional user will be waived.

(ii) PowerView. For the period of the offer, the PowerView fee of $45 per professional user and $20 per non-professional user will be waived.

(2) Total View—

(A) No Change.

(B) No Change.

(C) 30-Day Free-Trial Offer. Nasdaq will offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the fees for TotalView. This waiver does not include fees assessed for the NQDS service.[5] This fee waiver period will be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber is first entitled by a distributor to receive access to TotalView. A distributor may only provide this waiver to a specific individual subscriber once.

(i) For the period of the offer, the TotalView fee of $120 per professional user and $141 per non-professional user will be waived.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth below in sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The launch of SuperMontage, Nasdaq's integrated quotation and execution system, vastly expanded Nasdaq's ability to offer market data to market participants that choose to display trading interest on Nasdaq that goes beyond the best bid and offer: Nasdaq DepthView, PowerView, and TotalView, collectively referred to as the ''ViewSuite'' products, offer a wide array of quotation information to market data vendors and broker/dealer distributors. DepthView shows the aggregate size, by price level, of all Nasdaq market participants' attributed and unattributed quotations/orders that are in the top five price levels in SuperMontage. PowerView bundles the Nasdaq Quotation Dissemination Service or ''NQDS'' and DepthView. TotalView offers the PowerView services plus all Nasdaq market participants' attributed quotations/orders that are in the top five price levels in SuperMontage, in addition to the aggregate size of all unattributed quotes/orders at each of the top five price levels.

On November 18, 2002, the Commission approved a rule proposal that established fees assessed for the ViewSuite products, which are offered exclusively through distributors.[6] DepthView is offered through distributors to professional subscribers for $50 per month per controlled

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Simultaneous with this proposed rule change, Nasdaq has submitted SR–NASD–2003–27 which proposes the addition of NASD Rule 7010(q)(3) and (q)(4), two pilot pricing initiatives for the ViewSuite products. These two filings are completely independent and the approval or rejection of one has no affect on the rule language proposed in the other.

[4] *The NQDS-only fees (incremental to the Level 1 charges) are $30 for professional users and $9 for non-professional users.*

[5] *The NQDS-only fees (incremental to the Level 1 charges) are $30 for professional issuers and $9 for non-professional users.*

[6] *See* Securities Exchange Act Release No. 46843 (Nov. 18, 2002), 67 FR 70471 (Nov. 22, 2002).

device[7] and to non-professional subscribers for $25 per month per controlled device, plus $1,000 per distributor per month. PowerView is offered through distributors to professional subscribers for $75 per month per controlled device and to non-professional subscribers for $29 per month per controlled device, plus $1,000 per month per distributor. TotalView is offered through distributors to professional subscribers for $150 per month per controlled device and to non-professional subscribers for $150 per month per controlled device, plus $7,500 per month per distributor.[8]

In order to increase the availability of the ViewSuite Products within the securities industry, Nasdaq proposes to waive all fees that are incremental to the NQDS fees assessed upon distributors for new individual subscribers to each ViewSuite product for a period of up to 30 days. Nasdaq has repeatedly been asked to offer a free trial period so that potential subscribers can test the ViewSuite products before committing to subscribe. Based upon these requests, Nasdaq believes that offering a free trial period will make this data more widely available and enable ViewSuite to reach viability sooner. This fee waiver period would be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber contacts a distributor to receive access to a ViewSuite product. A new individual subscriber who has already signed a Level 1 or NQDS agreement would not be obligated to sign any additional agreement or addendum regarding the ViewSuite product(s) until and unless he or she decided to continue to subscribe to such product(s) after the expiration of the free trial period. Nasdaq believes that this waiver is fair and non-discriminatory because it applies to all potential subscribers to ViewSuite products.

The fee waiver only covers the fees assessed for the ViewSuite product(s) over and above the NQDS charges because NQDS is currently a product covered and shareable under the UTP Plan. All fees (including fee waivers) for data services covered under the UTP Plan are subject to review and approval by the UTP Plan Participants, and therefore are not solely governed by Nasdaq. Therefore, Nasdaq chooses to offer a waiver only to those fees assessed for the portion of the ViewSuite data services that are solely governed by Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[9] in general, and with section 15A(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)[11] and 15A(b)(6)[12] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq gave the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the rule filing will establish a voluntary program available to all Nasdaq distributors that may increase the availability and distribution of market data. The voluntary program applies to market data that Nasdaq offers exclusively to distributors and not directly to individual investors. In addition, acceleration of the operative date will permit Nasdaq to establish the fee waiver program immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

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

[7] A ''controlled device'' is defined, in footnote one of Rule 7010(q), as any device that a distributor of the Nasdaq Data Entitlement Package(s) permits to: (a) access the information in the Nasdaq Data Entitlement Package(s); or (b) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq Data Entitlement Package(s).

[8] To comply with the SEC Vendor Display Rule, distributors must also provide their controlled devices with the Level 1 service, separately priced at $20 per professional user and capped at $1 per non-professional user. The Level 1 charges are not included in the fees discussed in this filing.

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] *Id.*

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–28 and should be submitted by April 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6243 Filed 3–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47481; File No. SR–NASD–2003–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding the Automated Confirmation Transaction Service (''ACT'') Workstation

March 11, 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 March 3, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to introduce a new product known as the ACT Workstation. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

6100. AUTOMATED CONFIRMATION TRANSACTION SERVICE (ACT)

6110. Definitions

(a)–(g) No change.

(h) The terms ''Gross Dollar Thresholds'' *or ''Super Caps''* in the risk management application of ACT shall mean the daily dollar amounts for purchases and sales that a clearing broker establishes in the ACT system for each correspondent executing broker that may be raised or lowered on an inter-day or intra-day basis. If the value of a correspondent's trades, including those aggregated from transactions in all automated systems owned and operated by the Association or its subsidiaries, equals or exceeds [the] *any* gross dollar threshold[s], the system will alert the clearing broker.

(i)–(k) No change.

(l) The term ''Pre-alert'' shall mean the alert notifying the correspondent executing broker and the clearing broker that the correspondent executing broker has equaled or exceeded 70% of [the] *any* purchase or sale gross dollar amount[s]. The Association reserves the right to modify the percentage of the pre-alert as necessary and upon prior notification to the ACT Participants.

(m)–(n) No change.

(o) The term ''Single Trade Limit'' shall mean the *pre-established* dollar amount [established by the Association] for a single trade that enables an ACT clearing firm to review the trade before it is obligated to clear the trade. When a correspondent executing broker negotiates a trade that equals or exceeds the Single Trade Limit, its clearing broker shall have a period of fifteen (15) minutes to review and agree or decline to act as principal for clearing that trade. [Initially, the Single Trade Limit shall be set at $1,000,000.] The Association reserves the right to modify the [dollar amount of the Single-Trade Limit or the] time frame for clearing broker review as necessary and upon prior notification to the ACT Participants.

(p) No change.

6120. Participation in ACT

(a) No change.

(b)(1)–(3) No change.

(4) Clearing Broker Obligations

(A) No change.

(B) ACT clearing brokers may utilize the ACT Risk Management functions upon execution of the ACT Participant Risk Management Agreement. Clearing brokers that utilize[d] the ACT Risk Management functions may establish for each correspondent executing broker daily Gross Dollar Thresholds and may raise or lower the thresholds on an inter-day or intra-day basis. ACT clearing brokers will receive a system alert when a correspondent executing broker equals or exceeds [its] *any* gross dollar threshold[s], and will also receive a system pre-alert when a correspondent executing broker equals or exceeds 70% of [the] *any* daily threshold[s].

(C) For trades effected by a correspondent executing broker that equal or exceed [the ACT system's] *a* Single Trade Limit [of $1,000,000], clearing brokers have fifteen (15) minutes from the time of trade report input to ACT to review the trade and accept or decline to act as principal to the trade. If the clearing broker does not make an affirmative acceptance or declination of the trade report within fifteen (15) minutes, the trade report will be subject to [normal ACT processing and the clearing broker will be obligated to act as principal for the trade] *processing in accordance with the pre-established criteria described in Rule 6150(b)(6).*

* * * * *

6150. ACT Risk Management Functions

(a) No change.

(b) If a clearing broker voluntarily uses ACT risk management, the ACT system will provide the following risk management capabilities to clearing brokers that have executed an ACT Participant Risk Management Agreement:

(1) Trade File Scan

Clearing brokers will be able to scan the trading activities of their correspondent executing brokers through a Nasdaq terminal.

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq provided the Commission with notice of its intent to file the proposed rule change on January 9, 2003. Nasdaq has asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii). The Commission has decided not to waive the 30-day operative delay.

(2) Gross Dollar Thresholds (*''Super Caps'') and Sizeable Limits*

Clearing brokers will be able to establish, on an inter-day or intra-day basis, gross dollar thresholds (*also known as ''Super Caps'')* for purchases and sales for their correspondent executing brokers [, and the ACT system will alert the clearing broker and its correspondent if the correspondent's trading activity equals or exceeds either threshold]. *When any of a correspondent's gross dollar thresholds are exceeded, notice will be furnished to the clearing broker, and any trade in excess of an applicable ''sizeable limit'' that is negotiated by the correspondent will be subject to review by the clearing broker until such time as the correspondent's trading activity no longer exceeds a gross dollar threshold. Specifically, the clearing broker will have 15 minutes from execution to review any single trade negotiated by the correspondent that equals or exceeds the applicable sizeable limit in order to decide to act as principal for the trade or to decline to act as principal. If the clearing broker does not affirmatively accept or decline the ''sizeable trade,'' at the end of 15 minutes the system will act in accordance with pre-established processing criteria, as described below.*

(A) ACT Workstation Users.

(i) Clearing brokers that use the ACT Workstation may establish gross dollar thresholds and sizeable limits for each of their correspondent executing brokers. They may establish different gross dollar thresholds and sizeable limits for each type of security (*i.e., Nasdaq National Market, Nasdaq SmallCap Market, Consolidated Quotations Service, or OTC Bulletin Board), as well as an aggregate gross dollar threshold and sizeable limit for all types of securities.*

(ii) Notice will be provided to all ACT Participants when a correspondent's aggregate gross dollar threshold is exceeded, but will be provided solely to the clearing broker if the gross dollar threshold for a type of security is exceeded.

(iii) Clearing brokers that use the ACT Workstation may also establish the default processing criteria that will apply to sizeable trades when a correspondent's gross dollar threshold has been exceeded; the clearing broker may specify that after 15 minutes, if the clearing broker does not affirmatively accept or decline the trade, such trades should be either automatically declined or automatically subjected to normal ACT processing in which the clearing broker will act as principal to clear the trades.

(B) Other ACT Risk Management Users.

(i) Clearing brokers that do not use the ACT Workstation may establish aggregate gross dollar thresholds for each of their correspondent executing brokers, but may not establish gross dollar thresholds for each type of security (i.e., Nasdaq National Market, Nasdaq SmallCap Market, Consolidated Quotations Service, or OTC Bulletin Board).

(ii) Notice will be provided to all ACT Participants when a correspondent's aggregate gross dollar threshold is exceeded.

(iii) The sizeable limit is $200,000 for all clearing brokers that do not use the ACT Workstation. When a correspondent's aggregate gross dollar threshold is exceeded, no trade in excess of the sizeable limit will be accepted for ACT processing unless the clearing broker accepts the trade within 15 minutes of execution.

(3) Gross Dollar Threshold Pre-Alert

[In addition to the gross dollar threshold alert, t]*T*he ACT system will also alert the clearing broker and its correspondent when the correspondent's trading activity equals or exceeds 70% of [either] *any* gross dollar threshold *established by the clearing broker for that correspondent.*

(4) End of Day Recap

Clearing brokers that access ACT through computer interface will be able to receive an end of day recap of all trade detail information of their correspondents.

(5) On-line Review

Clearing brokers that access ACT through computer interface will be able to receive intra-day activity of their correspondents as it is reported.

(6) Single Trade Limit

Clearing brokers will have 15 minutes from trade report input to ACT to review any single trade executed by their correspondent executing brokers that equals or exceeds [$1,000,000] *a pre-established limit* in order to decide to act as principal for the trade or to decline to act as principal. If, however, the clearing firm does not affirmatively accept or decline the trade, at the end of 15 minutes the system will *act in accordance with pre-established processing criteria, as described below* [subject the trade to normal ACT processing and the clearing firm will be obligated to act as principal to clear the trade].

(A) ACT Workstation Users. Clearing brokers that use the ACT Workstation may establish single trade limits for each of their correspondent executing brokers, and may establish different limits for each type of security (i.e., Nasdaq National Market, Nasdaq SmallCap Market, Consolidated Quotations Service, or OTC Bulletin Board). Such clearing brokers may also establish the default processing criteria that will apply to trades that exceed the single trade limit after 15 minutes if the clearing broker does not affirmatively accept or decline the trade; the clearing broker may specify that such trades should be either automatically declined or automatically subjected to normal ACT processing in which the clearing broker will act as principal to clear the trades.

(B) Other ACT Risk Management Users. For clearing brokers that do not use the ACT Workstation, the single trade limit is $1,000,000. If such a clearing broker does not affirmatively accept or decline a trade that exceeds the single trade limit, at the end of 15 minutes the system will subject the trade to normal ACT processing and the clearing broker will be obligated to act as principal to clear the trade.

[(g) Super Cap]

[The Super Cap is set at two times the gross dollar thresholds for purchases and sales, but in no event less than $1,000,000. When a correspondent's super cap is exceeded, notice will be furnished to ACT participants and no trade in excess of $200,000 will be accepted for ACT processing unless the clearing broker accepts the trade within 15 minutes of execution.]

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a)–(f) No change.

(g) Automated Confirmation Transaction Service

The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

Transaction Related Charges:	
Comparison	$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Automated Give-Up.	$0.029/side
Late Report—T+N.	$0.288/side
Browse/query	$0.288/query*
Terminal fee	$57.00/month (ACT only terminals)

CTCI fee	$575.00/month
[Nasdaq] *WebLink* ACT.	$300/month (full functionality) or $150/month (up to an average of twenty transactions per day each month)**
Trade reporting	$0.029/side (applicable only to reportable transaction not subject to trade comparison through ACT)***
Risk Management Charges.	$0.035/side and $17.25/month per correspondent firm (maximum $10,000/month per correspondent firm)
Corrective Transaction Charge.	$0.25/Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side; $0.25/Break, Decline transaction, paid by each party
ACT Workstation	*$525/logon/month****

* Each ACT query incurs the $0.288 fee; however, the first accept or decline processed for a transaction is free, to insure that no more than $0.288 is charged per comparison. Subsequent queries for more data on the same security will also be processed free. Any subsequent query on a different security will incur the $0.288 query charge.

** For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.

*** The trade reporting service charge is applicable to those trades input into ACT for reporting purposes only, such as NSCC Qualified Special Representative reports and reports of internalized transactions.

*****A firm that uses ACT risk management through one or more NWII terminals when the ACT Workstation is introduced will be eligible to evaluate the ACT Workstation for a free, three-month trial period, provided that the firm continues to pay charges associated with its NWII terminal(s) during that period.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing of trades completed in Nasdaq, OTC Bulletin Board, and other over-the-counter securities. ACT handles transactions executed through Nasdaq's automated trading systems, as well as transactions negotiated over the telephone. It also manages post-execution procedures for transactions in exchange-listed securities that are traded in the Nasdaq InterMarket.

An integral part of ACT is the risk management function. The ACT risk management function provides firms that clear for other firms with the capability to establish acceptable levels of credit for their introducing firms. ACT risk management also enables clearing brokers to monitor buy/sell trading activity of their introducing firms, establish trading thresholds, allow or inhibit large trades, add or delete clearing relationships, and access a real-time database of correspondent trading activity.[6]

On or about March 10, 2003, Nasdaq will be introducing the ACT Workstation, a new product that is designed to allow clearing firms to access the ACT risk management function without using an NWII terminal. In conjunction with the launch of the new product, Nasdaq is also making several minor modifications to the ACT risk management function, and offering certain enhancements to ACT risk management that will be available through the ACT Workstation. Following the launch of the ACT Workstation, however, ACT risk management will continue to be available through NWII terminals and WebLink ACT.[7]

Currently, ACT risk management allows users to receive alerts when a correspondent broker's trading activity exceeds user-defined gross dollar thresholds. In addition, when a correspondent broker's trading activity exceeds a ''Super Cap'' equal to twice its gross dollar threshold, ACT provides notice of this event to all ACT participants and allows the clearing broker to decline trades compared through ACT that are in excess of $200,000 (known as ''sizeable'' trades). Nasdaq is combining the functionality of the gross dollar threshold and the Super Cap, so that the limit on sizeable trades will apply whenever a correspondent broker's trading activity exceeds its gross dollar threshold. In effect, a firm's gross dollar threshold and its Super Cap will be the same dollar amount. Nasdaq has made this change in response to requests from ACT risk management users, who view the restriction of sizeable trades as a more meaningful risk management tool than the alerts associated with gross dollar thresholds in the current system.

Users of the ACT Workstation will be able to establish gross dollar thresholds and sizeable limits for their correspondent firms that vary based on the type of security being traded by the correspondent firm (*i.e.*, Nasdaq National Market, Nasdaq SmallCap, OTC Bulletin Board, or CQS), as well as aggregate gross dollar thresholds and sizeable limits.[8] For example, a clearing broker might establish a gross dollar limit of $500,000 and a sizeable limit of $200,000 for purchases of Nasdaq National Market securities, and lower limits of $200,000 and $100,000 for OTC Bulletin Board securities. If the $200,000 OTCBB limit was exceeded, OTCBB trades in excess of $100,000 would be subject to review, but trades in Nasdaq National Market securities could continue without review. Nasdaq believes that this enhancement, which has been requested by many ACT risk management users, will provide clearing brokers with greater flexibility in managing their exposure in markets with varying degrees of liquidity and risk. The clearing broker will receive notice when a gross dollar threshold for a particular type of security is exceeded, and all ACT participants will receive notice when an aggregate gross dollar threshold is exceeded.

Currently, ACT risk management imposes a ''single trade limit'' of $1,000,000. When a trade in excess of this amount is negotiated by a correspondent broker, its clearing broker has 15 minutes to decide whether to accept or decline the trade. If the clearing broker takes no action, the trade is automatically accepted for normal ACT processing. The ACT Workstation will allow clearing brokers to establish single trade limits that vary based on the type of security (*i.e.*, Nasdaq National

[6] *See* NASD Rule 6150.

[7] ''WebLink ACT'' is Nasdaq's new name for ''Nasdaq ACT,'' an internet-based version of ACT introduced in 2001. Securities Exchange Act Release No. 43968 (February 15, 2001), 66 FR 11342 (February 23, 2001) (SR–NASD–2001–05).

[8] As is currently the case, clearing brokers that use ACT risk management through NWII terminals or WebLink ACT will not be able to vary gross dollar thresholds on the basis of the type of security, nor will they be able to establish a sizeable limit other than $200,000.

Market, Nasdaq SmallCap, OTC Bulletin Board, or CQS), and to specify the ''default'' processing to occur if the clearing broker does not acknowledge a trade in excess of the single-trade limit within 15 minutes. Thus, the clearing broker may specify that these ''blockbuster'' sized trades will be automatically declined (rather than automatically accepted) if the clearing broker does not act within 15 minutes.[9] ACT Workstation users will also be able to specify the default processing for sizeable trades by a firm that has exceeded its gross dollar threshold.

The ACT Workstation will also include improvements in the system's graphical user interface, such as customizable screen layouts, summary screens, and pop-up alerts. Like an NWII terminal, the ACT Workstation will connect to Nasdaq through Nasdaq's application programming interface (''API''). In fact, firms will be able to download the ACT Workstation software directly to the same equipment that currently serves as an NWII terminal. Accordingly, transition to the new product will be easy for firms to achieve.

The price for the ACT Workstation will be $525 per logon per month. However, for the first three months following the launch of the new product, Nasdaq will offer the ACT Workstation to existing NWII users as a complimentary service. This will allow current users to test the new product without having to eliminate their existing NWII terminals or pay simultaneously for both products.[10] At the end of the three-month period, users will have the option to discontinue use of either the NWII terminal or the ACT Workstation, or to pay for both.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A of the Act,[11] in general, and with Sections 15A(b)(5)[12] and 15A(b)(6)[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[14] and rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2003–29 and should be submitted by April 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6245 Filed 3–14–03; 8:45 am]

BILLING CODE 8010–01–P

[9] For clearing brokers that use ACT risk management through NWII terminals or WebLink ACT, the single trade limit will remain $1,000,000 for all types of securities, and trades in excess of the single trade limit will continue to be automatically accepted if the clearing broker does not decline them within 15 minutes.

[10] As noted above, the ACT Workstation software can be downloaded to the same equipment that serves as an NWII terminal. Accordingly, a single computer may serve as both an NWII terminal and an ACT Workstation.

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(5).

[13] 15 U.S.C. 78o–3(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47482; File No. SR–NASD–2003–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Bid Price Test in Nasdaq Listing Standards

March 11, 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 March 7, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposed rule change as ''non-controversial'' pursuant to Rule 19b–4(f)(6) of the Act,[3] which renders it effective immediately upon filing. 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] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq has proposed to modify and extend until December 31, 2004, the existing pilot program relating to compliance periods for the bid price criteria for Nasdaq National Market and Nasdaq SmallCap Market issuers; to eliminate the provision which permitted, on a pilot basis, certain companies that transferred to the SmallCap Market to return to the Nasdaq National Market under the continued inclusion criteria;[4] and to permanently modify the continued bid price requirement for certain Nasdaq National Market issuers by requiring these issuers meet a $1 bid price instead of the existing $3 requirement. During the pilot period, Nasdaq will assess the effectiveness of these changes.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)–(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(7) No change.

(8)(A)–(C) No change.

(D) A failure to meet the continued inclusion requirement for minimum bid price on The Nasdaq SmallCap Market shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. If the issuer has not been deemed in compliance prior to the expiration of the 180 day compliance period, it will be afforded an additional 180 day compliance period, provided that on the 180th day following notification of this deficiency, the issuer meets any of the three criteria for initial inclusion set forth in Rule 4310(c)(2)(A) based on the issuer's most recent publicly filed financial information. *If the issuer has not been deemed in compliance prior to the expiration of the second 180 day compliance period, it will be afforded an additional 90 day compliance period, provided that on the last day of the second 180 day compliance period, the issuer meets any of the three criteria for initial inclusion set forth in Rule 4310(c)(2)(A) based on the issuer's most recent publicly filed financial information.* Compliance can be achieved during *any* [either 180 day] compliance period by meeting the applicable standard for a minimum of 10 consecutive business days.

(E) No change.

(9)–(29) No change.

(d) No change.

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), (f), (g), (h) or (i) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a) No change.

(b) Maintenance Standard 2—First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

(1)–(3) No change.

(4) Minimum bid price per share of [$3] *$1;*

(5)–(6) No change.

(c)–(d) No change.

(e) Compliance Periods.

(1) No change.

(2) [For issuers subject to the $1.00 bid price requirement under Maintenance Standard 1 or the $3.00 bid price requirement under Maintenance Standard 2, a] A failure to meet the continued inclusion requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 [90] calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the *180* [90] day compliance period. Nasdaq may, in its discretion, require an issuer [under Maintenance Standard 1] to maintain a bid price of at least $1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq will consider the following four factors: (i) Margin of compliance (the amount by which the price is above the $1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above $1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).

(3)–(4) No change.

(f)–(h) No change.

(i) Transfers between The Nasdaq National and SmallCap Markets For Bid Price Deficient Issuers

(1) If a National Market issuer has not been deemed in compliance prior to the expiration of [the 90 day] *a* compliance period for bid price or otherwise so chooses, it may transfer to The Nasdaq SmallCap Market, provided that it meets all applicable requirements for continued inclusion on the SmallCap Market set forth in Rule 4310(c) (other than the minimum bid price requirement of Rule 4310(c)(4)) or Rule 4320(e), as applicable. A Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market must pay the entry fee set forth in Rule 4520(a). The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series.

(2) Following a transfer to The Nasdaq SmallCap Market pursuant to paragraph (1), a domestic or Canadian Nasdaq National Market issuer [under Maintenance Standard 1] will be afforded the remainder of [the initial] *any* [180 day] compliance period set forth in Rule 4310(c)(8)(D) *as if the issuer had been listed on The Nasdaq SmallCap Market* [and may thereafter be eligible for the subsequent 180 day compliance period pursuant to that rule]. The [90 day grace] *compliance* period*s* afforded by this rule and any time spent in the hearing process will be deducted *in determining the length of the remaining* [from the] applicable [grace] *compliance* periods on The Nasdaq SmallCap Market. [Any issuer that was formerly listed on The Nasdaq National Market, and which transferred to The Nasdaq SmallCap Market pursuant to this paragraph, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the $1 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the

[4] An issuer that has transferred to the Nasdaq SmallCap Market in reliance on the existing pilot rule would be permitted to return to the Nasdaq National Market under the terms of the rule in effect at the time of transfer.

compliance periods described in Rule 4310(c)(8)(D) and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. An issuer qualifying for such a transfer pursuant to the maintenance requirements is not required to pay the entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.]

[(3) Following a transfer to The Nasdaq SmallCap Market pursuant to paragraph (1), an issuer formerly qualifying for listing on The Nasdaq National Market under Maintenance Standard 2 or a non-Canadian foreign issuer, which is not subject to the $1 bid price requirement, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the applicable bid price requirement for continued listing on The Nasdaq National Market for a minimum of 30 consecutive business days within 360 days following the notification of the initial bid price deficiency, and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. An issuer qualifying for such a transfer pursuant to the maintenance requirements is not required to pay the entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Following the extraordinary market conditions surrounding the September 11th tragedy, Nasdaq implemented a moratorium on enforcement of its bid price rules.[5] In January 2002, immediately after the moratorium ended, Nasdaq implemented a pilot program, which expires at the end of this year, to extend certain compliance periods applicable to the bid price rule on the SmallCap Market.[6] Specifically, the current pilot program extends the bid price compliance period for SmallCap Market issuers from 90 days to 180 days. Thereafter, SmallCap Market issuers are allowed an additional 180-day compliance period if they meet heightened requirements based upon certain core financial initial listing standards. In addition, National Market issuers that are bid-price deficient are allowed to transition to the SmallCap Market and benefit from the longer compliance periods it affords, as long as they meet SmallCap Market continued listing standards (with the exception of the bid price requirement).

After careful consideration, Nasdaq continues to believe that the bid price requirements are a valuable measure of compliance. However, Nasdaq believes that the measurement periods for the requirements should be extended and modified to provide additional flexibility to both National Market and SmallCap Market issuers that are engaged in turnaround strategies in what Nasdaq considers to be a continuing difficult and historically unique climate. Nasdaq proposes that these modifications also be subject to implementation on a pilot basis, in order to allow Nasdaq to assess the efficacy of the changes and whether it is appropriate to recommend further, more permanent action.

Specifically, this proposal would modify and extend the pilot as follows:

- Extend the bid price grace period for all National Market issuers from 90 calendar days to 180 calendar days. Pursuant to a separate rule filing,[7] Nasdaq also will propose to provide an additional 180-calendar-day compliance period for those National Market issuers able to demonstrate compliance with the core National Market initial listing criteria (*i.e.*, $30,000,000 in equity; $75,000,000 in market value of listed securities; $75,000,000 in total assets and total revenues; or $15,000,000 in equity and $1,000,000 in income from continuing operations before income taxes in the most recently completed fiscal year, or two of the last three fiscal years);
- Maintain the initial 180-calendar-day bid price compliance period for all SmallCap Market issuers as well as the additional 180-day compliance period for SmallCap Market issuers demonstrating compliance with the core SmallCap Market initial listing criteria (*i.e.*, $5,000,000 in equity; $50,000,000 in market value of listed securities; or $750,000 in net income from continuing operations in the most recently completed fiscal year, or two of the last three fiscal years) and provide an additional 90-day compliance period, if the issuer maintains compliance with the heightened, initial inclusion criteria noted above, as measured at the end of each compliance period. Pursuant to the separate rule filing, Nasdaq also will propose further extensions to the bid price compliance periods;
- Extend the expiration date of the pilot program from December 31, 2003, to December 31, 2004.

Nasdaq believes that this proposal is consistent with the public interest because it conditions entitlement to the extended grace periods upon compliance with heightened requirements—core financial initial listing standards,[8] rather than continued listing standards. Nasdaq states, moreover, that these extended compliance periods will provide issuers with the time necessary to execute business and compliance plans that can address their bid price deficiencies, which Nasdaq believes in many cases may be attributable, at least to some degree, to the challenging economic conditions and continuing market downturn. Nasdaq also believes that this proposal benefits investors by lessening the disruption that can be associated with a company's move from the Nasdaq Stock Market to less liquid and regulated markets. However, given the extended compliance periods proposed, Nasdaq also proposes to eliminate the provision that permitted, on a pilot basis, certain companies that transferred to the SmallCap Market to return to the National Market under the continued inclusion criteria.[9]

In addition, Nasdaq proposes to change the National Market continued

[5] *See* Securities Exchange Act Release No. 44857 (September 27, 2001), 66 FR 50485 (October 3, 2001) (SR–NASD–2001–61).

[6] *See* Securities Exchange Act Release No. 45387 (February 4, 2002), 67 FR 6306 (February 11, 2002) (SR–NASD–2002–13).

[7] This rule proposal will be filed pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), and subject to public notice and comment prior to any Commission action on such proposal.

[8] Of course, companies will not be obligated to meet the requirements in NASD Rules 4420(c)(6)(A) or 4310(c)(2)(A)(ii) that currently traded issuers meet the bid price and market value of listed securities standards prior to applying for listing as these requirements apply to companies not currently listed on Nasdaq.

[9] An issuer that has transferred to the SmallCap Market in reliance on the existing pilot rule would be permitted to return to the National Market under the terms of the rule in effect at the time of transfer.

listing bid price requirement from $3 to $1 for those issuers qualifying for continued listing based on the market value of listed securities or total assets and total revenue, as set forth in NASD Rule 4450(b).[10] Nasdaq does not believe that any material additional protection is afforded to investors as a result of the $3 bid price requirement. Further, investors and issuers are often confused by the dual price requirements. Nasdaq notes that no other marketplace has such a dual price requirement, and there are only about 40 issuers currently subject to the $3 bid price requirement.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[11] in that it is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. As previously mentioned, Nasdaq is proposing this rule change to allow issuers additional time to comply with the bid price requirements if they demonstrate compliance with heightened financial standards. Under the proposed pilot, issuers meeting heightened standards will have additional time to execute business and compliance plans, which Nasdaq states will minimize disruption to investors and provide greater transparency and consistency.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq asserts that the proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f)(6) of Rule 19b–4 thereunder,[13] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[14] Nasdaq asserts that the proposed rule change does not alter the $1 minimum bid price requirement, but merely extends the existing compliance periods applicable to this requirement. Nasdaq believes that the proposed compliance periods are generally comparable to, or more stringent than, those available on other marketplaces and already approved by the Commission.[15] Nasdaq further states that the proposal to change the National Market continued listing bid price requirement from $3 to $1 for those issuers qualifying for continued listed under NASD Rule 4450(b) is comparable to, or more stringent than, bid price requirements currently existing on other markets and already approved by the Commission.[16]

Nasdaq has requested that the Commission waive the 30-day period, which would make the rule operative immediately. The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case.[17] The Commission believes that no purpose would be served by having 30 days pass before the rule becomes operative because, issuers and investors could become confused as to which grace periods applied during the intervening period. Allowing the rule to become operative immediately will allow Nasdaq to explain its bid price standards more clearly to issuers that might have need of the grace period.

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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–34 and should be submitted by April 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6344 Filed 3–14–03; 8:45 am]

BILLING CODE 8010–01–U

[10] This proposal is not part of the pilot program discussed above.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)

[14] In addition, Nasdaq complied with the requirement in Rule 19b–4(f)(6) that the self-regulatory organization give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of such proposed rule change, or such shorter time as designated by the Commission.

[15] Nasdaq states that the proposed compliance period for the Nasdaq National Market is similar to the existing compliance period available on the New York Stock Exchange (''NYSE''). *See* NYSE Rule 802.01C. Nasdaq also states that the proposed compliance period for the Nasdaq SmallCap Market is more stringent than the American Stock Exchange (''Amex'') listing standards, which do not have a specific minimum price requirement or compliance period. *See* Amex Rule 1003(f)(v).

[16] The proposed $1 bid price is the same as the NYSE continued listing requirement. *See* NYSE Rule 802.01C. As noted above, Amex does not have this requirement.

[17] For purposes only of accelerating the operative date of this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice–4310]

60-Day Notice of Proposed Information Collection: Form DS–4024, American Citizens Services Internet Based Registration Service (IBRS); OMB Control Number 1405–XXXX

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB: Type of Request: A new Internet Based Information Collection system that permits U.S. citizens who travel or reside abroad to register their destination and emergency contacts with the Department of State. This facilitates the provision of emergency assistance to U.S. citizens during crisis or disaster.

Originating Office: Bureau of Consular Affairs, Overseas Citizens Services CA/OCS.

Title of Information Collection: American Citizens Services Internet Based Registration Service (IBRS).

Frequency: Daily.

Form Number: DS–4024.

Respondents: American citizens traveling and residing overseas.

Estimated Number of Respondents: (estimate) 3.2 million.

Average Hours Per Response: (10 minutes).

Total Estimated Burden: 800,000.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

For Additional Information: Public comments, requests for additional information, regarding the collection listed in this notice should be directed to Mike Meszaros, Bureau of Consular Affairs, Overseas Citizens Services, Office of Policy Review and Interagency Liaison, 1800 G Street NW., Washington, DC 20520–4811 who may be reached on 202–312–9750.

Dated: January 27, 2003.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–6316 Filed 3–14–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4271]

Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union Notice of Meeting

The Department of State announces that the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) will convene on Monday, April 28, 2003, beginning at 10 a.m. in Room 1408, U.S. Department of State, Harry S Truman Building, 2201 C Street, NW., Washington, DC.

The Advisory Committee will recommend grant recipients for the FY 2003 competition of the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union in connection with the ''Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, as amended.'' The agenda will include opening statements by the Chairman and members of the committee, and, within the committee, discussion, approval, and recommendation that the Department of State negotiate grant agreements with certain ''national organizations with an interest and expertise in conducting research and training concerning the countries of Eastern Europe and the independent states of the former Soviet Union,'' based on the guidelines contained in the call for applications published in the **Federal Register** on November 19, 2002. Following committee deliberation, interested members of the public may make oral statements concerning the Title VIII program in general.

This meeting will be open to the public; however, attendance will be limited to the seating available. Entry into the Harry S Truman building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify Susan Nelson, INR/RES, U.S. Department of State, (202) 736–4610 by Wednesday, April 23, 2003, providing their date of birth, Social Security Number, and any requirements for special needs. All attendees much use the 2201 C Street, NW., entrance to the building. Visitors who arrive without prior notification and without photo identification will not be admitted.

Dated: March 7, 2003.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. 03–6315 Filed 3–14–03; 8:45 am]

BILLING CODE 4710–32–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Notice; Meeting No. 1544

TIME AND DATE: 9 a.m. (EST), March 19, 2003, TVA Chattanooga Office Complex Auditorium, 1101 Market Street, Chattanooga, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on January 14, 2003.

New Business

B—Purchase Awards

B1. Contract with Edwards Supply Co., Inc., for custodial supplies and equipment.

B2. Supplement to Contract No. 2232 with SSC Service Solutions for custodial services at various TVA locations.

B3. Contracts with Milan Express and Overnite Transportation for purchase of less-than-truckload transportation services for TVA operations.

C—Energy

C1. Contract with VA Tech Elin Transformatoren GMBH & Co for extra-high voltage transformers.

C2. Contract with Roberts & Schaefer Company/AZCO, Inc., for coal-handling system equipment and engineering services for any TVA fossil plant.

C3. Contract with Twentymile Coal Company for bituminous coal for Widows Creek Fossil Plant Units 1–6.

C4. Contract with Mitsui Babcock LLC to design, manufacture, deliver, and install NO_XStar equipment for Colbert Fossil Plant Unit 4.

C5. Contract with Industrial Control Distributors, LLC, for valves and gauges and their related parts.

E—Real Property Transactions

E1. Grant of a 30-year public recreation easement, with conditional option for renewals, to the city of Soddy-Daisy, Tennessee, affecting approximately 23.3 acres of land on Chickamauga Reservoir in Hamilton County, Tennessee, Tract No. XTCR–163RE.

E2. Grant of permanent and temporary construction easements to the State of North Carolina for a highway and bridge project, affecting approximately 1.6

acres of land on Hiwassee Reservoir in Cherokee County, North Carolina, Tract No. XTFBR–31H.

E3. Deed modification to allow placement of fill and construction of residences for Sunset Bay Development planned by Tennessee Emmons, LLC, affecting approximately 14 acres of former TVA land on Norris Reservoir in Union County, Tennessee, Tract Nos. XNR–721, S.2X, and XNR–255, S.2X.

E4. Sale of noncommercial, nonexclusive permanent easements to William K. Kerr and Adam A. McCall for construction, operation, and maintenance of private water-use facilities, affecting approximately 0.12 acre of land on Tellico Reservoir in Loudon and Monroe Counties, Tennessee, Tract Nos. XTELR–237RE and XTELR–238RE.

E5. Abandonment of certain easement rights affecting approximately 0.2 acre of land on Fort Loudoun Reservoir in Knox County, Tennessee, Tract No. FL–198F, S.1X, to allow placement of fill and construction of a residence by Patrick Schaad.

Information Items

1. Approval of the abandonment of a portion of the easements for TVA's Trinity-Finley No. 1 and No. 2 161-kV transmission line, affecting approximately 11.57 acres of land in exchange for transmission line easement rights affecting approximately 39.14 acres in Morgan County, Alabama, and satisfaction of certain contingencies.

2. Approval of a contract supplement for continued Electric Power Research Institute membership.

3. Approval of the sale of a permanent easement to Knoxville Tourism and Sports Corporation affecting approximately 0.13 acre of land in Knoxville, Tennessee, Tract No. XKOC–2E.

4. Approval to enter into lease financing arrangements for combustion turbine generating facilities at the Lagoon Creek Combustion Turbine Plant and the Kemper County, Mississippi, site.

5. Approval of the accounting treatment for the minimum unfunded pension liability for fiscal year 2002, the adoption of SFAS No. 143, and the change in methodology for estimating and recording unbilled revenue.

6. Certification and approval of the Tennessee Valley Authority Fiscal Year 2002 Information Statement and Analysis of Results of Operations and Financial Condition contained in the Fiscal Year 2002 Annual Report.

7. Approval of the Corporate Accountability and Disclosure Plan, creation of and delegation of authority to a Disclosure Control Committee, and the Disclosure and Financial Ethics Code.

8. Approval of the sale of an option to enter into an interest rate swap associated with a call provision which TVA has on $1 billion of TVA Power Bonds and for delegations to take related actions.

9. Approval of the sale of a permanent easement to RiverCity Company affecting approximately 1.95 acres of land in Chattanooga, Tennessee, Tract No. XHBOB–1E.

FOR MORE INFORMATION CONTACT: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: March 12, 2003.

Clifford L. Beach, Jr.,

Attorney and Assistant Secretary.

[FR Doc. 03–6392 Filed 3–13–03; 9:37 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 20–73A ''Aircraft Ice Protection''

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on a draft Advisory Circular (AC) 20–73A, Aircraft Ice Protection. The draft AC provides general information related to the approval of aircraft ice protection provisions in accordance with Title 14 of the Code of Federal Regulations (14 CFR) parts 23, 25, 29, and 33. This draft AC also provides guidance and general information relative to operation of aircraft in icing environments that may affect the aircraft's airworthiness.

DATES: Sumbit comments on or before May 10, 2003.

ADDRESSES: Send all comments on the proposed draft AC to: Federal Aviation Administration, Aircraft Certification Service, Room 815, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. You may deliver comments to: Federal Aviation Administration, 800 Independence Avenue, SW., Room 815, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. George T. Soteropoulos, Federal Aviation Administration, Aircraft Certification Service, Room 815, AIR–120, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–97960, FAX: (202) 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the draft AC listed in this notice by submitting written data, views, or arguments, to the address listed above. Your comments should identify ''Commments to AC 20–73A.'' You can examine all comments on the draft AC before and after the closing date, at the Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal Holidays between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service considers all communications received on or before the closing date before issuing the final AC.

Background

Since its release on April 21, 1971, AC 20–73 continues to be followed as a means of compliance for inflight icing regulations. The objective of this revision is to provide a uniform and modern means of compliance with regulations for aircraft and engine ice protection requirements. This revision of AC 20–73 is extensive. It addresses common ice protection means of compliance for airplanes, rotorcrafts, and engines, with references to other applicable advisory circulars that address specific types of aircraft, engines, or regulations. An effort has been made in this revision to make the information congruent with compliance means provided in other existing guidance material and policies. Note however that there are instances where current technology is considered sufficient to justify changes, and means of compliance not previously addressed in guidance and policy material are discussed in this proposed document.

How To Obtain Copies

You may get a copy of the draft AC from the Internet at: *http://www.airweb.faa.gov/rgl.* You may also request a copy from Mr. George T. Soteropoulos.

See the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Issued in Washington, DC, on March 7, 2003.

Susan J. M. Cabler,

Deputy Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–6336 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 201: Aeronautical Operational Control (AOC) Message Hazard Mitigation (AMHM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 201 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 201: Aeronautical Operational Control.

DATES: The meeting will be held on April 15–17, 2003, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at Fedex, MD–10/MD–Training Module D, Memphis, TN.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.* (2) Bill Yancey, Fedex, (901) 224–5353.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 201 meeting. The agenda will include:

- April 15–17:
- Opening Session (Welcome, Introductory and Administrative Remarks, Review Federal Advisory Committee Act and RTCA Procedures, Review Agenda, Background).
- Review comments to Aeronautical Operational Control (AOC) Message Hazard Mitigation draft document Version 0A.
- Drafting group work on other sections of the document.
- Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Note: This agenda will be followed as appropriate over the course of 3 days.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 6, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–6335 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–115–05]

No Smoking Placards and Signs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on no-smoking placards.

DATES: Send your comments on or before April 16, 2003.

ADDRESS: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Michael T. Thompson, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1157; fax (425) 227–1149; e-mail: *michael.t.thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT**. Mark your comments, ''Comments to Policy Statement No. ANM–03–115–05.''

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The proposed policy will further simplify the certification process pertaining to the requirement for no-smoking placards legible to each occupant seated in compartments where smoking is prohibited. The FAA has determined that a lighted sign can be considered a placard if it is continuously illuminated for the occupants. These signs must illuminate without the cockpit or cabin crew having to turn the signs on, which can be accomplished by hardwiring the signs such that the signs are illuminated whenever the airplane's normal electrical power is on or by providing equivalent control of the signs by software.

Issued in Renton, Washington, on March 9, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6337 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Extend Comment Period for an Environmental Impact Statement: St. Louis City and St. Louis County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extend comment period for an environmental impact statement.

SUMMARY: The FHWA is issuing this notice to advise the public that we are extending the comment period for an environmental impact statement (EIS) for improvements on I–64 in the City of St. Louis and St. Louis County, Missouri.

FOR FURTHER INFORMATION CONTACT: Donald L. Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101; Telephone: (573) 636–7104 or Mr. Kevin Keith, Chief Engineer, Missouri

Department of Transportation, P.O. Box 270, Jefferson City, MO 65102.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), prepared a draft EIS for a project that has been proposed to improve the transportation system in the City of St. Louis and St. Louis County, Missouri. The Notice of Availability for the New I–64 EIS (volumes 1 and 2) was published in the **Federal Register** on January 3, 2003. The end of the official comment period was to be February 28, 2003. However, the comment period has been extended to April 14, 2003. Please note the new Comment Period end date, April 14, 2003. Comments or questions should be directed to the FHWA or MoDOT at the addresses provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 4, 2003.

Donald L. Neumann,

Programs Engineer, Jefferson City.

[FR Doc. 03–6314 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Extend Comment Period for An Environmental Impact Statement: Texas and Howell Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extend comment period for an environmental impact statement.

SUMMARY: The FHWA is issuing this notice to advise the public that we are extending the comment period for an environmental impact statement (EIS) for improvements on Route 17 in Texas and Howell Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Donald L. Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101; Telephone: (573) 636–7104 or Mr. Kevin Keith, Chief Engineer, Missouri Department of Transportation, PO Box 270, Jefferson City, MO 65102.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), prepared a draft EIS for a project that has been proposed to improve the transportation system in Texas and Howell Counties, Missouri. The Notice of Availability for the Route 17 draft EIS was published in the **Federal Register** on December 27, 2002. The end of the official comment period was to be February 18, 2003. However, the comment period has been extended to April 15, 2003. Please note the new Comment Period end date, April 14, 2003. Comments or questions should be directed to the FHWA or MoDOT at the addresses provided above.

(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 and activities apply to this program.)

Issued on: March 5, 2003.

Donald L. Neuman,

Programs Engineer, Jefferson City.

[FR Doc. 03–6313 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–03–14448; Notice 3]

Pipeline Safety: Qualification of Pipeline Personnel

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) will conduct a public meeting to discuss progress in implementing the operator qualification (OQ) rule for gas and hazardous liquid pipelines. OPS will continue to develop the protocols and guidance materials, and provide an opportunity for public comment. A panel of experts will address technical issues associated with protocols and related materials. A record of the previous public meeting on Qualification of Pipeline Personnel that was held in San Antonio, TX, is available in this docket (RSPA–03–14448).

DATES: The public meeting will be held on March 25, 2003, beginning at 8:30 a.m., ending at 4 p.m.

ADDRESSES: The public meeting will be held at the Sheraton Phoenix East Hotel & Convention Center, 200 N. Centennial Way, Mesa, AZ 85201 (Tel: 800–456–6372 or 480–898–8300); Fax: 480–964–9279; web: *http://www.sheratonmesa.com/.* The deadline for making a hotel reservation is March 18, 2003 (refer to the U.S. DOT Operator Qualification Group block for government rates). This meeting is free and open to the public. You may register electronically for this meeting at: *http://primis.rspa.dot.gov/meetings.*

The program will continue to address the 13 issues generated by the first public meeting held in January 2003, and will be open for technical input. This will include presentations on definitions of terms discussed at the last meeting. Persons wishing to make a presentation or statement at the meeting should notify Janice Morgan, (202) 366–2392, no later than March 21, 2003.

Although we encourage persons wishing to comment on operator qualification and inspection protocols to participate in the public meeting, written comments will be accepted. You may submit written comments on operator qualification and inspection issues 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 2.

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 (volume 65, number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: You may contact Richard Sanders at (405) 954–7214 or (405) 954–7219, regarding the agenda of this public meeting. General information about OPS programs may be obtained by accessing OPS's Internet home page at *http://ops.dot.gov.*

Information on Services for Individuals with Disabilities:

For information on facilities or services for individuals with disabilities

or to request special assistance, contact Janice Morgan, (202) 366–2392.

SUPPLEMENTARY INFORMATION: The operator qualification rules at 49 CFR 192.801 (for gas pipelines) and at 49 CFR 195.501 (for hazardous liquid pipelines) require every pipeline operator to have and follow a written qualification program that includes provisions to identify covered tasks and to ensure that all persons performing these tasks are qualified. By October 28, 2002, all gas and hazardous liquid pipeline operators should have completed the qualification of all individuals performing covered tasks on pipeline facilities.

On March 25, 2003, OPS will conduct a public meeting to continue discussions on the progress in implementing the operator qualification rule for gas and hazardous liquid pipelines. OPS will present a detailed review of the development of the operator qualification inspection protocols. The meeting will focus on areas considered high priority and discussion on compliance issues from Federal and State pipeline safety personnel. These issues, as identified at a previous public meeting on January 22, 2003, in San Antonio, TX, are as follows:

(1) Scope of Operator Qualification
(2) Evaluation of Knowledge, Skills, and Physical Ability
(3) Re-evaluation Intervals
(4) Maintenance versus New Construction
(5) Treatment of Emergency Response
(6) Additional Covered Tasks
(7) Extent of Documentation
(8) Abnormal Operating Conditions
(9) Treatment of Training
(10) Criteria for Small Operators
(11) Direction and Observation of Non-Qualified People
(12) Noteworthy Practices
(13) Persons Contributing to an Incident or Accident

All persons attending the meeting will have an opportunity to comment on operator qualification compliance issues and to question the expert panel on the new operator qualification compliance protocols.

Issued in Washington, DC on March 12, 2003.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 03–6331 Filed 3–14–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34233]

Norfolk Southern Railway Company—Reinstitution of Service—Between Toledo and Maumee in Lucas County, OH

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board grants an exemption under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 10901, for the reinstitution of service by Norfolk Southern Railway Company (NSR) over 3.2 miles of the Toledo to Maumee branch line extending from milepost TM–9.3 in Toledo to milepost TM–12.5 near Maumee, in Lucas County, OH.

DATES: This exemption is effective April 16, 2003. Petitions to stay must be filed by April 1, 2003. Petitions to reopen must be filed by April 11, 2003.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34233, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative, John V. Edwards, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–9241.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 565–1600. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from Dā 2 Dā Legal Copy Service by calling (202) 293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 11, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–6284 Filed 3–14–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 911

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 911, Application for Taxpayer Assistance Order (ATAO).

DATES: Written comments should be received on or before May 16, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Taxpayer Assistance Order (ATAO).

OMB Number: 1545–1504.

Form Number: 911.

Abstract: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails or take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the district where the taxpayer lives.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms and state, local or tribal governments.

Estimated Number of Respondents: 93,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 46,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: March 10, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–6222 Filed 3–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8725

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8725, Excise Tax on Greenmail.

DATES: Written comments should be received on or before May 16, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax on Greenmail.

OMB Number: 1545–1086.

Form Number: 8725.

Abstract: Form 8725 is used by persons who receive ''greenmail'' to compute and pay the excise tax on greenmail imposed under Internal Revenue Code section 5881. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to Form 8725 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 12.

Estimated Time Per Respondent: 7 hours, 4 minutes.

Estimated Total Annual Burden Hours: 85.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: March 10, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–6223 Filed 3–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of New System of Records—Call Detail Records—VA (90VA194).

SUMMARY: The Privacy Act of 1974, 5 U.S.C. 552a(e), requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled ''Call Detail Records—VA'' (90VA194).

DATES: Comments on the establishment of this new system of records must be received no later than April 16, 2003. If no public comment is received, the new system will become effective April 16, 2003.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or email comments to ''*OGCRegulations@mail.va.gov*''. All relevant material received before April 16, 2003 will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420, telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

Some Veterans Health Administration (VHA) facilities use call detail records to verify telephone usage, to allocate costs of telephone services to individual users, to identify unofficial telephone calls, to seek reimbursement for unofficial calls, and as a basis for taking action when employees or other individuals misuse or abuse VHA telephone systems. The establishment of the VHA telephone Call Detail Records as a new system of records is required because of the ability to retrieve information about individuals from the system through the use of a personal identifier such as the name of the individual, office symbol, or some other identifying information.

The purpose of the system of records is to establish a repository for the information that is collected to accomplish the purposes described.

Designated individuals at each facility maintain records. These records cover individuals who are assigned VHA telephone numbers or are authorized to use VHA telephone services, as well as other agencies and individuals who receive or make calls billed to VHA. Records are maintained on electronic media (hard disk and floppy disks) and paper and are stored in secure areas available only to facility staff that issue authorization codes, maintain the user database and produce monthly activity reports. Individuals including VA employees, contractors, and non-VA employees authorized to use VHA telephone services, who inappropriately make unofficial calls billed to VHA, can be responsible for the cost of those calls. Pursuant to 5 U.S.C. 552a(b)(12), VA may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) to recover this cost.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine use disclosures of information which will be maintained in the system:

1. Disclosure may be made to individuals to determine their responsibility for telephone calls.

Records from this system of records may be disclosed to appropriate VA employees to assist in the planning and effective management of VA telephone services, and to determine that VA telephones are being used in an efficient and economical manner.

2. Disclosure may be made to another Federal agency or a telecommunications company providing telephone services to permit maintenance and repair of the account.

Records may be disclosed to a telecommunications company as requested by VA for such uses as repairing or upgrading the system.

3. Information from this system of records may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of that individual.

Individuals sometimes request the help of a member of Congress in resolving some issues relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information in response to the inquiry.

4. Disclosure may be made to the National Archives and Records Administration (NARA) for records management inspections under authority of Title 44 United States Code.

NARA is responsible for archiving old records no longer actively used, but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal government's records. VA must be able to turn records over to these agencies in order to determine the proper disposition of such records.

5. Disclosure may be at VA's initiative made to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

6. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the reporting of an investigation, the letting of a grant or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

VA must be able to provide information to agencies conducting background checks on applicants for employment.

7. Records from this system of records may be disclosed in a proceeding before a court, adjudicative body, or other administrative body when the Agency, or any Agency component or employee (in his or her official capacity as a VA employee), is a party to litigation; when the Agency determines that litigation is likely to affect the Agency, any of its components or employees, or the United States has an interest in the litigation, and such records are deemed to be relevant and necessary to the legal proceedings; provided that the disclosure is compatible with the purpose for which the records were collected.

Whenever VA or another party is involved in litigation and VA policies or operations could be affected by the outcome of the litigation, VA would be able to disclose information to the court or parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by the use of the information in the particular litigation is compatible with a purpose for which VA collects the information.

8. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

VA occasionally contracts out certain functions when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

9. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

10. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

11. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination

practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

12. Disclosure may be made to the Federal Labor Relations Authority, including its General Counsel, when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

Routine uses 9—12 are necessary in order for the VA to comply with the statutory mandates.

13. Disclosure may be made to the VA-appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclose the information as required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: March 3, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

90VA194

SYSTEM NAME:

Call Detail Records-VA.

SYSTEM LOCATION:

Records are maintained at Veterans Health Administration (VHA) facilities. Address locations for Department of Veterans Affairs (VA) facilities are listed in VA Appendix 1 of the biennial publication of the VA's systems of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are assigned VHA telephone numbers or are authorized to use VHA telephone services, and individuals who receive or make calls billed to VHA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Call detail records consist of information on Federal Telecommunication System (FTS) telephone calls placed from VHA telephones or otherwise billed to VHA including the originating and destination telephone numbers; states and cities called; date and time of call; duration of each call; cost of call; name and title of caller; request number; account code; deactivation code; authorization code records indicating the assignment of telephone numbers to organizations and individuals; and the organizational location of telephones.

PURPOSE(S):

The records are used to generate call detail records; to verify telephone usage; to allocate costs of telephone services to individual users; to identify unofficial telephone calls; and to justify action when individuals misuse or abuse VA telephone services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38 United States Code, section 501.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to individuals to determine their responsibility for telephone calls.

2. Disclosure may be made to another Federal agency or a telecommunications company providing telephone services to permit maintenance and repair of the account.

3. Information from this system of records may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of that individual.

4. Disclosure may be made to the National Archives and Records Administration (NARA) for records management inspections under Title 44 of United States Code.

5. Disclosure may be made at VA's initiative to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

6. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the reporting of an investigation, the letting of a grant or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. Records from this system of records may be disclosed in a proceeding before a court, adjudicative body, or other administrative body when the Agency, or any Agency component or employee (in his or her official capacity as a VA employee), is a party to litigation; when the Agency determines that litigation is likely to affect the Agency, any of its components or employees, or the United States has an interest in the litigation, and such records are deemed to be relevant and necessary to the legal proceedings; provided that the disclosure is compatible with the purpose for which the records were collected.

8. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

9. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

10. Disclosure may be made to the VA-appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

11. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in

connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

12. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

13. Disclosure may be made to the Federal Labor Relations Authority, including its General Counsel, when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), VA may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media (hard disk and floppy disks) and paper.

RETRIEVABILITY:

Records may be retrieved by name, authorization code, VA organizational unit, originating telephone number, destination telephone number, location code, date, time, cost, and/or duration of call.

SAFEGUARDS:

1. Access to telecommunication areas at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Generally, VA telecommunication areas are locked at all times and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to file information or the user database is controlled by access codes. The system recognizes authorized VA employees by individually unique passwords or access codes. Contractors accessing the database remotely use encryption and access codes.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with record disposition authority approved by the Archivist of the United States. Destruction of hard copy (paper) records is by shredding or burning or some other method that will macerate the record content. Working disks are erased as soon as the purpose for which they have been established has been served.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Implementation and Training Services, Communications Services Office (194D), Office of Information, State Route 9, Building 307A, Martinsburg, West Virginia 25401.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the designated individual at the VHA facility where the records are maintained. Individuals must furnish the following information for their records to be located and identified: a. Full name; b. VA assigned telephone number or telephone service authorization number; and c. description of information being sought, including the time frame of information being sought.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the designated individual at the VHA facility where the records are maintained. Individuals must furnish the following information for their records to be located and identified: a. Full name; b. VA assigned telephone number or telephone authorization number, and; c. Description of information being sought, including the time frame of information being sought. Individuals requesting access must also follow VA's Privacy Act regulations regarding verification of identify and access to records (38 CFR Part 1).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of records about themselves should contact the designated individual at the VHA facility where the records are maintained. Individuals must furnish the following information for their records to be located and identified: a. Full name; b. VA assigned telephone number or telephone service authorization number; and c. Description of information being sought, including the time frame of the information being sought. Individuals requesting amendment must also follow VA's Privacy Act regulations regarding verification identify and amendment of records (38 CFR part 1).

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from the following sources: a. Local VA telephone directories and other telephone assignment records; b. call detail records provided by suppliers of telephone services; and c. the individual on whom the record is maintained.

[FR Doc. 03–6330 Filed 3–14–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
March 17, 2003

Part II

Federal Communications Commission

47 CFR Parts 1, 2, 73, 74, 78 and 101
Broadcast Auxiliary Service Rules; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 73, 74, 78 and 101

[ET Docket No. 01–75; FCC 02–298]

Broadcast Auxiliary Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends our rules pertaining to the Broadcast Auxiliary Services (BAS) to permit BAS stations to introduce new technologies and create a more efficient BAS that can more readily adapt as the broadcast industry converts to the use of digital technology, such as digital television (DTV). We also make conforming amendments our rules pertaining to the Radio Broadcast Services, the Cable Television Relay Service (CARS), and to our rules pertaining to Fixed Microwave Services (FS). In many cases, the BAS, CARS, and FS share frequency bands and have technically and operationally similar stations, and our rule changes will permit these three services to operate under consistent regulatory guidelines.

DATES: Effective April 16, 2003, except for §§ 74.535 and 74.637 which became effective on October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ted Ryder, Office of Engineering and Technology, (202) 418–2803.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* ET Docket No. 01–75, FCC 02–298, adopted October 30, 2002, and released November 13, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Report and Order

1. The *Report and Order* amends part 74 of our rules pertaining to the Broadcast Auxiliary Services (BAS) to permit BAS stations to introduce new technologies and create a more efficient BAS that can more readily adapt as the broadcast industry converts to the use of digital technology, such as digital television (DTV). We also make conforming amendments to part 73 of our rules pertaining to the Radio Broadcast Services, to part 78 of our rules pertaining to the Cable Television Relay Service (CARS), and to part 101 of our rules pertaining to Fixed Microwave Services (FS). In many cases, the BAS, CARS, and FS share frequency bands and have technically and operationally similar stations, and our rule changes will permit these three services to operate under consistent regulatory guidelines.

BAS Technical Rules (Part 74) and Conforming Technical Rules for Parts 74, 78 and 101 Digital Modulation in All Television and Aural BAS Bands

2. Section 74.637 of the Commission's rules sets forth emission requirements for TV BAS operations. Digital modulation provides for analog or digital modulation in the 6425–6525 MHz, 17.7–19.7 GHz, and 31.0–31.3 GHz bands. Although the rules do not specifically prohibit digital modulation in other TV BAS bands (*i.e.*, 2025–2110 MHz and 2450–2483.5 MHz (2 GHz), 6875–7125 MHz (7 GHz), and 12.7–13.25 GHz (13 GHz)), the Commission's policy relative to BAS has been to allow digital modulation only in bands where it specifically authorized. Therefore, under current policy, licensees must obtain a waiver of the rules to transmit using digital modulation in the 2 GHz, 7 GHz, and 13 GHz bands.

3. The *Report and Order* modified § 74.637 to permit use of any available digital modulation technique in all TV BAS bands and also modifies § 74.535 to permit digital modulation in all aural BAS bands. We find that permitting digital modulation in the 2 GHz, 7 GHz, 13 GHz TV BAS bands, and all aural BAS bands will provide licensees with increased flexibility in the provision of BAS operations, promote more efficient use of this spectrum, and facilitate the transition to reduced channel bandwidths in the 2 GHz band, and to DTV.

4. In order to facilitate the expeditious processing of the approximately 500 pending applications for digital BAS operations, the following BAS rules will became effective October 30, 2002, the adopted date of the *Report and Order:* §§ 74.535 and 74.637. Pursuant to 5 U.S.C. 553(d)(1) and 553(d)(3), we find good cause to make these rules effective immediately rather than to follow the normal practice of making them effective 30 days after publication in the **Federal Register**, due to the pendency of the BAS applications. Accordingly, we began processing these BAS applications on October 30, 2002, the adoption date of the *Report and Order*. Defective BAS applications filed on or before November 13, 2002, the release date of the *Report and Order,* will be returned with the opportunity to amend. Defective BAS applications filed after November 13, 2002, the release date of the *Report and Order* may be subject to dismissal. In addition, we will allow relief from any new frequency coordination requirement imposed by the rules we adopted, such as new prior coordination procedures for fixed systems proposed in applications accepted for filing before the effective date of the rules. Specifically, we deem digital applications filed before the effective date of the rules in the *Report and Order* to have been properly coordinated under the existing coordination requirements, absent any evidence to the contrary, and we will not require re-coordination of these applications under prior coordination procedures effective under the new rules that also permit digital modulation (see footnote 22 in the *Report and Order*). We conclude that adherence to the existing frequency coordination requirements has been sufficient to ensure that these digital and analog/digital systems do not cause harmful interference to existing stations, and that re-coordination, or the imposition of frequency coordination where it was not previously required, would be unnecessarily burdensome to the applicants. Moreover, most digital BAS systems that have been applied for are operating under an STA and we have not received any evidence of interference from these systems. We therefore will not require re-coordination for digital applications filed before the effective date of the rules. Finally, we will exercise flexibility with respect to compliance with the technical rules adopted herein when processing these applications.

Maximum Effective Isotrophic Radiated Power for Short Paths

5. We have modified the rules to implement in §§ 74.644 and 78.108 the same equation codified at § 101.143 for determining the maximum effective isotrophic radiated power for short paths (EIRP) for path lengths shorter than the specified minimum. Further, we are grandfathering existing fixed links that are less than 17 km in length in the 2450–2483.5 MHz band. However, we will not permit grandfathered or other existing links that are modifying from analog operation to analog/digital or digital operation, to retain grandfathered status, and thus continue operation at their current elevated power levels, or be

treated as minor modifications, even if operation is interference-free or is frequency coordinated, unless operation at the higher power levels is justified. Such continuation would otherwise ignore the existing requirement in §§ 74.644 and 78.108(c) that power in excess of that specified be justified by an appropriate technical showing, and could lead to the continuation of unnecessarily excessive power levels, thus defeating the spectral efficiency intended by minimum path length requirements. We decline to classify the conversion from analog to analog/digital or digital operation as a minor modification. Such a change is and will remain classified as major under § 1.929. Further, while operation without interference is possible, and frequency coordination may demonstrate the ability of the system to operate without interference, neither would necessarily justify the continuation of higher power levels, or thus warrant the continuation. We therefore decline to accept such conditions as sufficient justification to warrant the continuation of higher power levels, and will continue to require an appropriate technical showing justifying the elevated power, as required by § 74.644. With respect to MRC's recommendation to require upgrade of old analog receivers to avert harmful interference from a system converting to multiplexed analog/digital operation, we decline to impose such an upgrade, as our rules do not contain minimum receiver performance requirements.

6. We decline to designate the 1990–2110 MHz and 2450–2483.5 MHz bands for use by Remote Pickup BAS operations. We also decline to phase out fixed operation in these bands, to prohibit new fixed path lengths shorter than 17 km in these bands, or to phase out existing short paths in these bands in five years. We recognize that it is possible that the removal of fixed paths could free up spectrum for mobile use in some areas. However, we find that such action would unnecessarily limit the flexibility of TV BAS to accommodate fixed paths, where such paths are feasible and desirable with respect to mobile use of the band. This is particularly true for short paths, whose reduced EIRP can accommodate them in a spectrally efficient way. Moreover, the forced relocation of existing fixed links would be a burden on licensees.

Transmitter Power

7. We find that the proposals to harmonize power limits among parts 74, 78, and 101, and to express those limits as maximum EIRPs will provide consistency and promote greater efficiency in our rules. We have adopted our proposals as stated in the *Notice of Proposed Rule Making,* (NPRM) 66 FR 28686, May 24, 2001, and are specifying the following EIRP limits: (a) For aural BAS operations in the 944–952 MHz band, 40 dBW; (b) for fixed operations for TV BAS in the 1990–2110 MHz and 2450–2483.5 MHz bands, 45 dBW; and (c) for mobile operations for TV BAS in the 1990–2110 MHz and 2450–2483.5 MHz bands and CARS operations in the 1990–2110 MHz band, 35 dBW. We have also deleted output power limitations for fixed systems as it will permit flexibility in designing systems. However, we will maintain output power limitations in the rules for mobile systems. Maintaining these limits will reduce the potential for interference from mobile systems because they limit EIRP for omnidirectional mobile systems and reduce off-axis EIRP for directional mobile systems.

8. Comsearch asked that the part 101 EIRP limit for the 12,200–13,250 MHz band be amended from 50 dBW to conform to the parts 74 and 78 limit of 55 dBW. We generally agree. We believe that providing common technical standards for similar stations simplifies the manufacturing and licensing process. We note that, except for LTTS, fixed stations under part 101 have not been eligible for new licenses in the 12,700–13,200 MHz portion of the band since 1983. These stations were designed and have been operating for the last 19 years or more with the 50 dBW limit. Thus, we see no reason to modify that limit for these stations. We will increase the EIRP limit to 55 dBW for all FS stations in the 13,200–13,250 MHz portion of the band. Further, we note that the rules for common carriers in the LTTS specify that they are subject to the technical rules of parts 74 and 78 in certain frequency bands shared with BAS and CARS. Therefore, they also will be subject to the higher 55 dBW limit we are adopting for fixed stations. To avoid confusion in the rules, we will amend § 101.807 to clearly state that LTTS stations in certain bands shared with BAS and CARS should follow the power rules of parts 74 and 78.

9. We found that maintaining the same EIRP limits for digital and analog systems is appropriate because, although digital systems would normally require less EIRP to operate, lowering their maximum EIRP could render them more susceptible to interference from higher powered analog systems. Finally, regarding BAS station operations at 2483.5–2500 MHz, the new EIRP limits should not apply to grandfathered systems. Accordingly, in the final rules, we will specify that only the 2450–2483.5 MHz band is available for BAS stations. We note, however, that this action in no way affects the continued rights of grandfathered BAS stations in the 2483.5–2500 MHz band, as described in footnote NG147 of the Table of Frequency Allocations.

Emission Masks

10. Emission masks serve to maximize spectrum efficiency by permitting reasonable and practical information transfer within a channel and at the same time limiting out-of-band emissions to minimize adjacent channel interference. Our rules contain a number of emission masks tailored to specific operations and channel sizes. For example, different emission masks are authorized under parts 74, 78, and 101. Although the same equipment is often certified and used by licensees in different services, our rules, in some cases, allow each service to use a different emission mask for the same type of emission (*e.g.*, FM, AM, etc.) in the same frequency band. The Commission in the *NPRM* proposed to make the FM and digital modulation emission mask requirements for BAS consistent with the requirements for FS in part 101 and proposed to adopt standard measurement procedures to measure emissions. Additionally, the Commission proposed to grandfather existing equipment authorized pursuant to current emission masks.

11. Commenters did not address our proposals to standardize the emission masks between part 74 and part 101. Most comments addressed nuances of the rules, such as how they apply to composite systems. On the specific emission masks proposed, the comments received were supportive. We believe that maintaining the status quo in the 2 GHz band would harm the industry more than help it. By providing certainty to manufactures and users regarding equipment, we believe that the industry will be able to move forward and begin making wide scale use of digital equipment to increase spectral efficiency and to ensure that equipment is available for broadcasters as they transition to DTV. Accordingly, we adopted the proposals to amend the part 74 aural and TV BAS emission masks to make them consistent with the emission masks of part 101. As stated in the *NPRM,* imposing a single set of standards across shared frequency bands will simplify the manufacturing and equipment authorization processes. Additionally, consistent rules will provide a level of certainty to licensees regarding the expected RF environment,

minimize the potential of harmful interference and simplify the frequency coordination process. In addition, we adopt our proposal to grandfather existing equipment, and will do so for existing equipment and equipment of current production lines authorized, via certification or verification pursuant to the current emission standards, up to two years after the adoption of this *Report and Order,* and for stations authorized to use such equipment pursuant to an application filed up to two years after the adoption of this *Report and Order*. However, any such non-conforming equipment replaced on or after two years after the adoption of this *Report and Order* must be replaced by conforming equipment.

12. We will require Coded Orthogonal Frequency Division Multiplexing (COFDM) systems to meet the emission limitations of the digital mask. We will grandfather existing equipment and equipment of current production lines for two years consistent with our decision. Finally, we clarify that the correct emission type for COFDM is W7D.

13. MRC, the only commenter to address the issue of hybrid digital/analog systems, supports our proposal to apply the digital mask to such systems if the digital traffic is 50% or more of the total peak deviation. We adopted this proposal. For comparison digital/analog systems, similar to hybrid systems, we will apply the appropriate analog or digital emission mask based on the percentage of the channel that carries a digital signal. Specifically, this percentage will be calculated as the system's digital necessary bandwidth divided by the aggregate necessary bandwidth. For purposes of equipment authorization and licensing, the output power and EIRP of a composite system will be its aggregate output power and EIRP. Both composite and hybrid systems will ease the transition to DTV as they provide a migration path for licensees to transition from an analog NTSC signal to a dual analog/digital (NTSC/ATSC) signal, and eventually to only a digital signal. We believe that the procedures we have adopted will simplify and advance the transition to DTV while protecting the ability of coordinators to engineer systems.

14. To determine the emission designator for a composite system, we will use the aggregate necessary bandwidth of the system, which is comprised of the analog necessary bandwidth, any band between the analog and digital signals, and the digital necessary bandwidth. The emission designator will also use the appropriate emission type, such as F9F or F9W, indicating that the system accommodates at least one analog and at least one digital signal. We note that licensees who modify their equipment from an analog system to a composite analog/digital system, must also modify their station authorization to show the new emission type using ULS. Under the rules, such a change would be considered major and require a new frequency coordination.

15. We did not receive any comments with regard to our proposals for standardized measurement procedures. We continue to believe that our procedures should ensure that all equipment is measured consistently. Therefore, for measuring compliance with the emission mask, for emissions removed from the center frequency by 250% of the emission bandwidth or less, we will permit a reduction of the measurement reference bandwidth below the mask reference bandwidth to a value not less than 1% of the emission bandwidth, or the next higher measurement bandwidth available. This will allow for more accurate emissions measurements just outside the edge of the emission bandwidth, which might otherwise be blurred by the contribution of much greater emissions within the emission bandwidth. For measurements outside this range, we will use the International Telecommunication Union (ITU) guidelines of a 100 kHz resolution bandwidth for systems operating on frequencies below 1 GHz and a 1 MHz resolution bandwidth for systems operating on frequencies above 1 GHz. We realize that this may create a situation where the emissions mask reference bandwidth stated in the rule is less than the measurement resolution bandwidth. If this occurs, there could be some blurring of spectral spikes that might otherwise be detected. We believe that the benefits of simplification and standardization outweigh the potential for such effects to result in interference to adjacent channels. Further, to protect adjacent channel operations, we will require that the emission mask attenuation requirement be corrected to decrease with the ratio of measurement resolution bandwidth to mask reference bandwidth, *i.e.*, by a factor of 10 $\log_{10}(B_{res}/B_{ref})$, where B_{res} is the measurement resolution bandwidth and B_{ref} is the emissions mask reference bandwidth in the rule. Finally, we note that the analog FM emission mask does not specify a mask reference bandwidth, which, in conjunction with the measurement resolution bandwidth, could be used to calculate the correction. However, it is the policy of the Commission's Laboratory Division, which approves equipment authorizations, to require the use of a mask reference bandwidth of 100 kHz for this mask. Accordingly, we have amended the analog FM emission mask for part 74 TV and aural BAS to reflect a 100 kHz emission mask reference bandwidth.

Automatic Transmit Power Control

16. Automatic transmit power control (ATPC) is a function that provides for more efficient spectrum use by ensuring that the transmitter only uses the power necessary to maintain reliable communications. Radios that use ATPC operate with certain power levels during normal propagation conditions. When the receiver detects a drop in received signal level, due to multipath or a rain fade, for example, the receiver sends a signal to the transmitter to gradually increase power. When the received signal level begins to rise, the receiver sends a signal to the transmitter to reduce power. By operating in this manner, interference levels into nearby microwave paths are reduced and more frequencies can be coordinated and used in any given geographic area. Additionally, by keeping signal levels low, ATPC reduces power consumption of the radio, which lowers operating costs and increases equipment reliability.

17. As proposed in the *NPRM*, we will permit TV BAS, aural BAS, and CARS licensees to use ATPC, and we encourage using TIA TSB 10–F guidelines. While the benefits of using ATPC for BAS may not be as great in other services because BAS generally uses one-way, rather than two-way, communications, the benefits can still be significant. For those stations using two-way communications, ATPC will permit more systems to be frequency coordinated, thus promoting the maximum utilization of spectrum. With respect to TIA TSB 10–F, we recognize the value of standardized, industry-wide frequency coordination guidelines.

Interference to Geostationary Satellites

18. We have adopted our proposal to consolidate in part 101 any parts 74 and 78 technical rules that pertain to protecting geostationary satellites from interference from terrestrial systems. This action will decrease redundancy in our rules and ensure that future changes to GSO protection requirements are consistent across affected services. In this connection, we have updated the frequencies listed in § 101.145(b) and (c) to encompass the BAS and CARS bands subject to RF radiation limits directed towards satellites. We note that this will result in the addition of the frequency

band 6875–7075 MHz to § 101.145(b) and the frequency band 12.75–13.25 GHz to § 101.145(c). We are removing § 78.105(a)(4), which restricts CARS antenna orientation to prevent interference to GSO satellites in the 12.70–12.75 GHz band, as these protections are redundant with those afforded by § 78.106(b) for the larger 12.70–13.25 GHz band.

Frequency Coordination

19. We adopted frequency coordination procedures for all TV and aural BAS and CARS frequency bands. The rules adopted in the *R&O* will require all fixed stations, except for those in the 1990–2110 MHz band, to use the frequency coordination procedures of § 101.103(d). For mobile BAS and CARS, we will maintain the use of § 101.103(d) procedures in those bands where it is currently required (*i.e.*, 6425–6525 MHz and 17.7–19.7 GHz) and flexibly permit use of § 101.103(d) or local coordination procedures for the 2450–2483.5 MHz, 6875–7125 MHz, and 12,700–13,250 MHz bands. For all other mobile BAS and CARS stations, we will continue to allow mobile stations to coordinate locally. In the 1990–2110 MHz band, we will maintain the current system which allows for local coordination of all stations. The rules will be applied uniformly across the United States for both urban and rural environments.

20. For the 1990–2110 MHz band, we will continue to maintain procedures which allow for local frequency coordination for all stations '' fixed and mobile. In this band, we deviate from the policy articulated above for fixed stations based on unique circumstances of this band. Specifically, it is used predominantly by mobile TV pickup stations, but also supports some fixed links and it is currently transitioning to accommodate MSS in the 1990–2025 MHz portion of the band. Because each area of the United States may transition to MSS at different times, local frequency coordinators may be in the best position to accommodate requests to local operating conditions. We have adopted changes to §§ 74.638 and 78.36 which supplement local frequency coordination procedures for fixed systems to require the submission of a certification attesting that all co-channel and adjacent-channel licensees and applicants potentially affected by the proposed fixed use of the frequencies have been notified and are in agreement that the proposed facilities can be installed without causing harmful interference to other users.

21. An additional issue related to frequency coordination involves protection standards for stations. The *NPRM* discussed the importance of uniform frequency coordination procedures and standards to simplify coordination in shared bands and minimize the potential of stations causing interference. In this regard, the procedures in part 101 have served the FS well in the past, providing a firm and uniform, yet adaptable, basis for engineering systems without harmful interference, while maximizing frequency re-use. Thus, we believe that these same procedures will similarly benefit BAS and CARS. We note that these criteria are consistent with those already in effect for all BAS and CARS operations in the 12.7–13.25 GHz band Therefore, we have adopted § 101.105 interference criteria for use where § 101.103(d) frequency coordination procedures apply to BAS and CARS.

Frequency Tolerance

22. We have eliminated separate frequency tolerance requirements for base and mobile operations, and adopted a frequency tolerance of 0.001% for fixed and mobile TV BAS equipment operating in the 2450–2483.5 MHz band. We found that having consistent frequency tolerance requirements for both fixed and mobile transmitters will simplify frequency coordination and improve spectrum efficiency. Similarly, by adopting a frequency tolerance requirement, we will ensure that spectrally efficient equipment is used and, for example, in the 2450–2483.5 MHz band, that the potential for adjacent channel interference is reduced. In that regard, to accommodate existing product lines in the 2450–2483.5 MHz band such as those of MRC, we will delay the effective date of the 0.001% tolerance in that band for two years. We found that this will accommodate MRC's existing product line, and strikes a balance between the benefits of spectrum efficiency afforded by a tighter tolerance and the indefinite accommodation sought by MRC for non-compliant product lines. Thus, we will grandfather existing equipment and equipment of current production lines exceeding the new 0.001% tolerance in the 2450–2483.5 MHz band and authorized, via certification or verification, up to two years after the adoption of the *Report and Order*, and stations authorized to use such equipment pursuant to an application filed up to two years after the adoption of the *Report and Order*. However, any such non-conforming equipment replaced on or after two years after the adoption of the *Report and Order* must be replaced by conforming equipment.

Use of the 13.150–13.2125 GHz Band by BAS and CARS Pickup Stations

23. As proposed in the *NPRM*, we are updating § 74.602(a) Note 2 to implement, in accordance with the *NGSO Order*, 66 FR 7606, January 24, 2001, expansions in mobile TV BAS and CARS pickup stations' use of the 13.15–13.2125 GHz band and the exclusion of NGSO FSS from that band. We note that the recent *Optel Order* 67 FR 43257, June 27, 2002, has rendered BAS pickup stations primary, and CARS stations, secondary to BAS pickup stations, in the 13.20–13.25 GHz band, and we have updated § 74.602(a), Note 2, to reflect this status in the 13.20–13.2125 sub-band. Consistent with these actions, we have also updated § 78.18(1) with respect to CARS, and footnote NG53 to the Table of Frequency Allocations in § 2.106. Further, we are grandfathering at their current status all fixed stations licensed in the 13.15–13.2125 GHz band prior to the effective date of the rules in the *Report and Order*.

Use of the 31.0–31.3 GHz and 38.6–40.0 GHz Bands by the BAS and CARS

24. We adopted the proposals in the *NPRM* to eliminate references to the 31.0–31.3 GHz and 38.6–40.0 GHz bands from BAS and CARS technical rules, and to grandfather BAS incumbents in the 38.6–40.0 GHz band. We note that the incumbent BAS licensees remain bound by the operational parameters specified on their current authorizations. We also clarify that, as stated in footnote US291 to the Table of Frequency Allocations, mobile BAS facilities in the 38.6–40.0 GHz band operate on a secondary basis with respect to stations operating in accordance with the Table of Frequency Allocations, which include Winstar's operations under part 101. In this connection, consistent with our actions removing references to the 38.6–40.0 GHz band from part 74, we are removing Auxiliary Broadcasting from that band in the Table of Frequency Allocations. We are also removing footnote US291 from the Federal Government and Non-Federal Government columns of the table and replacing it with footnote NG175 in the Non-Federal Government column only, revised to show that the band is no longer available for BAS, and that incumbent mobile BAS operations licensed as of the effective date of the rules in the *Report and Order* are grandfathered and may continue to operate indefinitely on a secondary basis with respect to part 101 licensees. We are revising § 2.106, Table of Frequency Allocations, and part 74 of our rules.

BAS Service Rules (Part 74)

Temporary Conditional Authority

25. The Commission proposed in the *NPRM* to allow BAS applicants who apply for new or modified stations to operate under temporary conditional authority after an application has been properly filed with the Commission. This type of operating authority is permitted in other coordinated services, such as those authorized under parts 90 and 101 and Remote Pickup BAS. The Commission proposed to make such temporary conditional authority subject to the following conditions:

- The applicant must be eligible to operate the particular class of broadcast auxiliary station.
- The station must be operating in conformance with the rules for that particular class of station and in accordance with the terms of the frequency coordination.
- The application does not propose operation in an area that requires international coordination.
- The application does not request a waiver of the Commission's rules.
- The proposed station will not significantly affect the environment as defined in part 1, subpart I of the Commission's rules.
- The antenna structure either has a FCC Registration Number or is determined to not need one.
- The proposed station affords protection to radio ''quiet'' zones and monitoring stations.

The Commission also proposed to allow temporary conditional authority for low power auxiliary stations authorized under part 74, subpart H. To effectuate these changes, the Commission proposed to remove § 74.431(g) and to adopt new § 74.25 to allow temporary conditional authorizations for all broadcast auxiliary services. We find that providing BAS applicants with the ability to operate under temporary conditional authority is appropriate. We are removing § 74.431(g) and adopting a new § 74.25 to allow temporary conditional authorizations for all broadcast auxiliary services.

Short Term Operation

26. Section 74.24 provides broadcast licensees regulated under part 73 of our rules (*i.e.*, AM, FM, and TV broadcast stations, including Class A stations) with the authority to operate a broadcast auxiliary station on a short-term secondary basis, for up to 720 hours per year, without prior authorization from the Commission, subject to providing notification to the local frequency coordinator, and to co-channel and adjacent channel CARS licensees. This rule section provides broadcasters with flexibility to respond to short term situations that occur outside of a station's normal operating area without coming to the Commission with requests for STA. However, the same flexibility is not afforded to broadcast network entities, cable network entities, or LPTV stations, even though these entities are eligible to hold BAS licenses. To promote consistent treatment of licensees with similar operations, we adopted our proposal to extend the short-term operation rules to broadcast network entities, cable network entities, and LPTV stations. This action will simplify the process for these entities when it is necessary to provide coverage of events outside of its normal coverage area. In addition, our proposal to codify rules and procedures for designating a coordinator for major special events was supported by commenters and is adopted as proposed with one clarification; we will specify in § 74.24(g)(2)(i) that the initial request for such designation be made in writing. Such designations will be made by public notice which will include all necessary contact information. We will maintain the current limitation of 720 hours per year per frequency for short-term operation.

27. Extending this rule to cover additional entities raises questions regarding compliance with the various station identification rules. Therefore, because broadcast network and cable network entities do not have individual station call signs for identification purpose, we will require them to use their network or cable entity name along with their base of operations city for compliance with the station identification rules. Using such a scheme will make it easy to identify the proper point of contact should a problem arise.

Use of UHF–TV Channels for TV STLs and TV Relay Stations

28. We adopt, with some modification, our proposals with respect to the future use of UHF–TV channels by TV STLs, TV relay stations, and TV translator relay stations. We will permit these stations to obtain authorizations without submitting an engineering analysis so long as they meet the specified technical parameters—maximum EIRP of 35 dBW, maximum transmitting antenna beamwidth of 25 degrees, and use of vertical polarization. In addition, we will limit future licensing, beginning as of the effective date of the rules of the *Report and Order*, of TV STLs and TV relay stations to channels 14–51; current stations on channels 52–69 will be grandfathered under the terms of their current authorization until the end of the DTV transition or until new primary licensees require the removal of such operations. Finally, we will permit future licensing of TV translator relay stations on all UHF–TV channels 52–69 through the end of the DTV transition as long as harmful interference is not caused to new primary services.

29. We decline to adopt any additional restrictions or review procedures which would unnecessarily burden licensees or the licensing process. We will however make a slight wording change to § 74.602(h)(1) to clarify that if any of the specified parameters are exceeded, an engineering analysis must accompany the application. We also point out that stations licensed under § 74.602(h) are secondary and regardless of their operating parameters, must protect all primary stations using the UHF–TV spectrum, including land mobile stations.

TV BAS Sound Channels

30. In the *NPRM*, the Commission stated that its understanding of current industry practice is for broadcasters to use multiplexing techniques, rather than separate sound channels, to transmit the aural portion and video portion of their programming over a single TV BAS channel. Therefore, the Commission proposed to eliminate § 74.603(b). Additionally, the Commission proposed to eliminate the corresponding provision of § 74.502(b) that provides TV BAS licensees' authorization to use the aural BAS channels. The Commission also sought comment on whether it should remove § 74.603(c), which provides grandfathering rights so that TV BAS stations could continue operating aural STL or relay stations that were in service prior to July 10, 1970. SBE, the only commenter on this issue, confirms the Commission's understanding of current industry practice and concurs with the proposals. Accordingly, we adopted the proposals to eliminate §§ 74.603(b), 74.502(b), and 74.603(c).

Remote Pickup Broadcast Auxiliary Frequency Assignment

31. The Commission amends the channel plan for 150 MHz and 160 MHz Remote Pickup stations to list channels every 7.5 kilohertz and allow licensees to stack up to four channels for a total of 30 megahertz. In addition, we will modify the Group N1 and N2 450 MHz channels to list channels every 6.25 kilohertz and allow licensees to stack up to eight channels for a total of 50

megahertz. We will also modify the Group P channels to list them every 6.25 kHz and allow licensees to stack up to two channels. Further, we will require new Remote Pickup station equipment designed to operate on channels 30 kilohertz wide or less to comply with the part 90 technical standards, including emission mask, frequency tolerance, and transient frequency behavior. By harmonizing all RPU channels and equipment with the Part 90 PLMR channel plan, licensees will benefit from economies of scale resulting from the use of equipment consistent with part 90 operations. Additionally, this will simplify station coordination and reduce the potential for harmful interference.

32. To ease the transition to this new channel plan, we adopted our proposal to provide a three-year period for licensees operating on the channels adopted in 1984 to modify their licenses to the new channels. After three years, they may remain on their current channel assignments, but on a secondary, non-interference basis. Consistent with our action for the N_1 and N_2 channels we will also provide three years to licensees operating on the 10 kilohertz P channels to modify their licensees to the new channel plan. After that time they may remain on their current channel assignment but on a secondary basis. This will provide for a smooth transition to the new channels where incumbent operations will not inhibit the growth of systems on the new frequency plan.

Federal Narrowbanding of 162–174 MHz Band Land Mobile Frequencies

33. In accordance with the comments of SBE and our proposal, we amended the rules to require that existing and applied for Remote Pickup BAS facilities on 166.25 MHz and 170.15 MHz use no more than 12.5 kilohertz channel bandwidth by January 1, 2005. This will apply to all stations on these frequencies that obtained licenses or applied for licenses on or before the effective date of the rules in this *Report and Order*. This approach will ensure that existing licensed stations and applicants who are planning stations on these frequencies have adequate time to transition to narrowband equipment. To further ease this transition, we will not require licensees to modify their licenses. Instead, the Commission will automatically issue a superseded license, effective January 1, 2005, showing the reduction in authorized bandwidth. Additionally, in the event that the January 1, 2005 deadline for Federal Government systems is extended, we will consider amending the rules to implement the extension for Non-Government systems on the 166.25 MHz and 170.15 MHz frequencies as well. Stations applied for after the effective date of the rules in the *Report and Order* must comply with the 12.5 kilohertz channel bandwidth requirement. Rather than placing these requirements in footnote US11 as proposed, we will instead amend § 74.462. This action is appropriate as it consolidates all Remote Pickup BAS service rules in one place.

34. With respect to Remote Pickup BAS base stations operating as an integral part of the EAS, we are adopting a procedure recommended by NTIA to ensure that such stations will be protected Under this procedure NTIA will place a notation in the Government Master Frequency (GMF) database licensing record of these stations which will require Government stations to protect them from harmful interference. Thus, there is no need to amend footnote US11.

950 MHz Aural BAS Channel Splits

35. The *Report and Order* in MM Docket 85–36, 50 FR 48596, November 26, 1985, specified that the 950 MHz Aural BAS Channel Plan listed in § 74.502(b) would become effective upon a future Order from the Commission to be issued when the licensing system was capable of accommodating this channel plan. With the implementation of ULS for licensing, we are implementing that rule section with this *Report and Order*.

Universal Licensing System and BAS

36. The *Universal Licensing System* (ULS) is an automated licensing system and integrated database designed to provide greater efficiency in the licensing process by using a consolidated set of application forms, automating many license review processes, and facilitating electronic application filing and data retrieval. The *ULS Report and Order*, 63 FR 68904, December 14, 1998, consolidated the application and processing rules for all wireless services into Subpart F of Part 1, now the only rule section that wireless applicants and licensees, including BAS applicants and licensees, must consult regarding application procedures, such those as for amendments, modifications, and STAs. The Commission's WTB, which is responsible for licensing BAS, began using ULS for Aural and TV BAS licensing in August, 1999 and for Remote Pickup BAS in September, 2000. As a result, several BAS service rules require updating to reflect new ULS application processing procedures. Many of these changes, such as updating application form numbers, are ministerial in nature.

Applications Procedures and Construction Periods

37. We have adopted the proposals from the *NPRM* regarding applications and STA filing procedures. We are amending §§ 1.901 and 1.902 to reference part 74 and are adding a new § 74.6 to reference BAS applicants and licensees to the application and processing rules in part 1, subpart F. These changes will simplify our rules and result in processing efficiencies for BAS licensing. We observe that specific changes to the ULS system, including forms, affect multiple services. Thus, we lack adequate notice to all potentially affected services and we therefore decline to adopt changes to Form 601. We note that no commenter opposed the proposal with respect to STAs. Therefore, we are also adopting the proposals amending part 74 to require that BAS STA requests follow the procedures outlined in § 1.931. We clarify that electronic filing is not required for STAs; they may be filed either electronically or manually.

38. We have also adopted the proposed rule amendments to remove the construction requirements for BAS stations from part 73 and place them in a new § 74.34. This approach will promote timely construction of facilities, ensure consistent construction requirements among the services, and prevent warehousing of spectrum. We note that the rules already require licensees to file a notification of completion of construction. Failure to file such a notification results in the termination of the license by the Commission.

Classification of Filings as Major or Minor

39. The Commission proposed to amend the part 74 rules to adhere to the procedures adopted in the ULS proceeding for major and minor amendments and modifications; *i.e.*, amendments to aural and TV BAS applications and modifications to aural and TV BAS licenses would be evaluated based on the rules defining a major change in §§ 1.929(a) and 1.929(d), and Remote Pickup BAS applications would follow the rules set forth in §§ 1.929(a) and 1.929(c)(4). In many cases, the rules adopted in the *ULS Report and Order*, 63 FR 68904, December 14, 1998, provide more flexibility than is afforded BAS licensees under part 74. For example, §§ 74.551 and 74.651 require aural and TV BAS licensees to file an application

and obtain Commission approval for any change in which the location of the transmitting antenna changes, but § 1.929(d)(1)(i) classifies changes in transmitting antenna location that are 5 seconds or less in latitude and/or longitude as minor. The proposal made in the *NPRM* would implement rule changes that treat BAS applicants in a consistent manner with the treatment given other wireless services.

40. We have adopted our proposals to amend the part 74 rules so that BAS applicants and licensees are subject to the same rules as specified for the land mobile and microwave services for determining major and minor application and license changes. This action will align Remote Pickup BAS processing rules with those for similar services under part 90 and align the rules for TV and aural BAS with the rules for part 101. Thus, similar stations will be treated in a consistent manner.

41. We note that changes in emissions, such as a conversion from analog to digital modulation or to composite analog/digital modulation, are already classified as major changes under the rules in §§ 1.929(c)(4)(ii) and (d)(1)(iv), and frequency coordination would be required when a major change is requested. With regard to location changes of less than 5 seconds in latitude and/or longitude, we note that the Commission in the *ULS Reconsideration Order*, 66 FR 53231, October 1, 1999, clarified that such minor changes are not exempt from the coordination requirement. The Commission explained that an applicant requesting a minor change must still coordinate as required by § 101.103(d)(2)(ix) prior to implementing the change and that this process is sufficient to ensure that minor changes are properly coordinated to avoid harmful interference, without imposing an unnecessary filing burden on applicants. We find that this procedure will work equally well for part 74 services.

Emission Designators

42. Section 74.462 of the Commission's rules specifies authorized emissions for Remote Pickup BAS frequencies and frequency bands. In the *NPRM*, the Commission observed that this section contains emission designators that no longer conform to current ITU specifications or to those contained in subpart C of part 2 of the Commission's rules in the *NPRM* the Commission proposed to update § 74.462 to replace all outdated emission designators with emission designators that conform to ITU specifications and part 2 rules. We have adopted our proposal and updated the emission designators of § 74.462.

AMPTP Petition

43. Video assist devices produce low resolution images that can be used by a production crew to make decisions with respect to content, lighting, and image framing. Often, these video assist devices are connected via cable. However, cable is not always practical due to the distance from the camera to the video monitor or because the camera needs to be mobile to follow the action. To improve their utility and increase safety, the Commission, based on a petition filed by AMPTP on November 15, 1999, RM–9856, proposed to allow the use of wireless assist video devices (WAVDs) on a secondary, non-interference basis on unused TV channels in the upper VHF and the UHF bands.

Authorization of WAVDs

44. We have adopted our proposal to allow the use of WAVDs on a secondary, non-interference basis on vacant upper VHF–TV and UHF–TV channels. In the *NPRM*, we proposed to authorize WAVDs as low power auxiliary stations under part 74, subpart H. We believe that this is the appropriate subpart in which to place WAVDs due to their similarity to existing low power auxiliary devices, rather than the Remote Pickup BAS rules. If after gaining experience with WAVDs, we determine that communications on television channels needs to be prioritized, we can revisit this issue.

Eligibility, Permitted Use, and Licensing of WAVDs

45. As proposed in the *NPRM*, we have adopted our proposal to permit all entities eligible to hold part 74 licenses to use WAVDs. This includes television and motion picture producers. We have also adopted our proposal to restrict the use of WAVDs from use at live events or for ENG operations. We clarify that WAVDs may be used to produce cable, satellite, and motion picture events for later showing on television (through free over the air TV, cable TV systems, and satellite TV systems) or in theaters, but may not be used in the production of live events. Similarly, we have adopted our proposal that WAVDs be excluded from operating under the short-term operation rule. This will ensure that WAVDs are properly coordinated and television stations, notified, to ensure that the potential of these devices to interfere with television broadcasts is minimized.

46. We have also adopted our proposal to require that WAVD stations be licensed prior to operating. Such licenses will be obtained through the ULS using FCC Form 601. In addition, consistent with our licensing of other low power auxiliary devices, WAVD licenses will normally be issued for a period of eight years and, for those held by a broadcast station, run concurrently with the license term of that station. For other license holders, the expiration date will be determined by the area of the country in which the station operates.

47. We address the request of AMPTP to allow third party contractors to obtain WAVD licenses. AMPTP states that third party contractors may wish to operate and/or rent WAVDs to studios. We will not expand the eligibility for WAVD licenses to entities beyond those proposed. We stress that this does not preclude the operation of WAVDs by third party contractors. A party under contract to a television or motion picture producer may rent equipment and even operate it for the producer. However, such operation would be under the authority of the producer's license. This arrangement is consistent with rules in other services where entities are able to operate equipment under the authority of another entity's license. Based on our experience, we believe that this arrangement best promotes accountability and compliance with our rules.

Authorized Frequencies

48. In light of the lack of comments on this issue, we have adopted our proposals regarding authorized frequencies as proposed in the *NPRM*. Accordingly, WAVDs may operate on unused television broadcast frequencies in the 180–210 MHz, 470–608 MHz and 614–698 MHz bands. As proposed, we will not allow WAVDs to operate in the 174–180 MHz and 210–216 MHz bands (TV channels 7 and 13), in order to protect the Low Power Radio Service (LPRS), which supports auditory assistance devices and health care aids that operate pursuant to part 95 and other low power devices operating under § 90.265 of our rules. In addition, this channel restriction will protect from interference the Navy's SPASUR radar system, which operates in the 216.88–217.08 MHz band. We find that given the amount of spectrum we are authorizing for WAVDs, these restrictions will have minimal impact on their ability to identify spectrum on which to operate.

49. We adopt the proposal to exclude WAVDs from using land mobile radio channels in the 470–512 MHz band (TV channels 14–20) in areas around the coordinates listed in § 90.303 because

nomadic WAVDs could not likely share spectrum with land mobile operations. We also adopt the proposal to require WAVDs to maintain at least 6 megahertz frequency separation from such land mobile channels when operating within these areas. This frequency and geographic separation is necessary to protect public safety land mobile use, which in the 470–512 MHz private land mobile bands could occur on any of the channels allocated in a given area. Therefore, all TV channels listed in § 90.303 are excluded from WAVD use at the locations listed. As discussed in the *NPRM*, the band 482–488 MHz (TV channel 16) will also be excluded from WAVD use in the New York City area to protect New York City public safety entities which are using that spectrum under a waiver. Similarly, the band 476–494 MHz (TV channels 15–17) will be excluded from WAVD in areas near the Gulf of Mexico to protect the PLMRS and communication links in the ORS under part 22 of our rules. Communications with mobile stations under these rules are generally limited to stations within the Gulf (*e.g.*, stations on boats or aircraft) or to stations on the shore. Finally, WAVDs will be excluded from the band 488–494 MHz (TV channel 17) in areas near Hawaii to protect common carrier control and repeater stations for point-to-point inter-island communications.

50. The frequencies on which we will exclude WAVD use are summarized in the following table. We reiterate that these exclusions will not prevent WAVDs from operating on channels listed in the table when WAVDs are a sufficient distance from the cities listed in the following table.

Area	Excluded frequencies (MHz)	Excluded channels
Boston, MA	470–494	14–17
Chicago, IL	470–488	14–16
Cleveland, OH (WAVDs may operate until further order from the Commission)	470–494	14–17
Dallas/Fort Worth, TX	476–494	15–17
Detroit, MI (WAVDs may operate until further order from the Commission)	470–494	14–17
Hawaii	488–494	17
Houston, TX	482–500	16–18
Los Angeles, CA	470–494, 500–518	14–17, 19–21
Miami, Fl	470–482	14–15
New York/ N.E. New Jersey	470–494	14–17
Philadelphia, PA	494–518	18–21
Pittsburgh, PA	470–482, 488–506	14–15, 17–19
San Francisco/Oakland, CA	476–500	15–18
Washington DC/MD/VA	482–506	16–19

51. Finally, as proposed in the *NPRM,* we will exclude WAVDs from operating in the 608–614 MHz band (TV channel 37) to protect radio astronomy operations in that band. This exclusion is consistent with the Table of Allocations in part 2 of our rules, which specifies that no stations will be authorized to transmit in that band. We also note we have recently authorized the use of medical telemetry in the 608–614 MHz band, and this exclusion will also protect those operations. Finally, WAVDs will not be allowed to use channels above 698 MHz (channel 51) in the UHF–TV band due to a recent spectrum reallocation of those channels to uses other than broadcasting. We find that these exclusions are justified to protect existing operations in these bands.

Technical and Operational Requirements

52. The *NPRM* proposed conservative technical and operational requirements to allow WAVDs to operate without harming other operations. Specifically, the NPRM proposed: (1) To limit the ERP of WAVDs to 250 milliwatts (mW); (2) to require that the transmitting devices use a permanently attached antenna; (3) to allow WAVDs bandwidths of up to 6 megahertz, limited to transmitting on a single TV channel (*i.e.*, WAVD transmissions may not overlap the TV channel edge); (4) to use the same emission limitations being proposed for other TV BAS transmitters in this proceeding; (5) to authorize WAVD transmitters under the certification procedures of part 2 of our rules; (6) to require WAVDs to maintain a 129 km separation distance from TV broadcasting stations operating on the same frequency and a 200 km separation distance from cities where land mobile operations are authorized; (7) to require WAVD operators to achieve prior notification, rather than coordination, with the local broadcast coordinator or any adjacent channel TV station within 161 km of each intended WAVD operation at least 10 business days in advance of operation; (8) that WAVD licensees be subject to the station identification requirements of § 74.882; and (9) that manufacturers include certain information in the product literature that is included with WAVDs to indicate the requirements for using these devices.

53. The various technical and operational requirement proposals for WAVDs set forth in the NPRM were designed to protect other users of the TV bands without unnecessarily hindering WAVD operations. Most of these were unopposed, and we will adopt them as proposed. Specifically, we have adopted the ERP limit of 250 mW, the bandwidth limit of 6 megahertz on a single TV channel, the requirement to meet the same emissions limitations as other part 74 transmitters, part 2 certification procedures for WAVD transmitters, the proposed separation distances from TV and land mobile stations, the requirement that WAVD licensees follow the station identification requirements of § 74.882; and the requirement that manufacturers include certain information in their product literature.

54. With respect to the antenna issue raised by commenters, we agree with SBE that the use of unintended antennas should be avoided because they could increase the interference potential. We also agree with AMPTP that a permanently attached antenna may result in increased repair costs. We believe that a reasonable compromise between these positions exists. We note that our part 15 rules contain a provision allowing either permanently attached antennas or devices with unique couplings to permit antennas to be more easily repaired. This has worked well in the preventing unintended antennas from being attached to low power unlicensed devices and we believe a similar requirement would work here. Accordingly, we have adopted a

requirement that WAVDs contain a permanently attached antenna or contain a unique connector that allows for easy antenna repair while preventing the use of unauthorized antennas.

55. We believe that notification is more appropriate than full coordination for WAVDs. We take this position based on the low ERP, limited range, and non-interference status of WAVDs. In addition, because WAVDs may be used at multiple locations in support of a production, notification will be less burdensome than coordination for both the WAVD licensee and the coordinator while still providing adequate protection to broadcast transmissions. In this connection, have adopted our proposal to consider the absence of a response from a coordinator after ten business days have passed as an approval. Once the WAVD operator has made reasonable attempts to notify the BAS coordinator or appropriate TV stations, we find that failure of these entities to respond to the WAVD operator approval is an insufficient basis to delay use of WAVDs. We find that this approach strikes a reasonable balance between the requirements of producers and the needs of the coordinator to study notifications and respond to operators as necessary. We will require WAVD licensees to notify, for informational purposes only, nearby co-channel and adjacent channel TV stations (*i.e.*, those stations within 161 km of the WAVD location). As stated, this will be informational only and television stations will not be able to prevent a WAVD from operating. However, this informational notification may help identify the source of interference if any is experienced after a WAVD begins operating. We have adopted all other aspects of the notification proposal as proposed in the *NPRM.*

Final Regulatory Flexibility Analysis

56. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Propose Ruled Making, Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules.*[2] The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. The comments received are discussed further. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

(A) Need for and Objective of the Report and Order

57. The *Report and Order* updates the Broadcast Auxiliary Service (BAS) rules in part 74 and will permit increased compatibility between Broadcast Auxiliary Services, the Cable Television Relay Service (CARS), and Fixed Service Microwave (FS) systems operating on shared spectrum. Specifically, we permit TV and aural BAS stations to use any available digital modulation technique in all BAS frequency bands so that BAS stations can take advantage of the latest developments in technology and make smooth the transition to digital TV and digital radio; update BAS emission masks to facilitate the introduction of digital equipment and to provide consistency with emission masks used in part 101 of the rules; modify the equation used by BAS and CARS services for determining the maximum effective isotropic radiated power (EIRP) for short path lengths (this change eliminates the steep reduction in EIRP for BAS and CARS path lengths shorter than the minimum); allow BAS and CARS stations to use automatic transmit power control (ATPC) in order to facilitate more efficient spectrum use; update transmitter power rules for BAS and CARS services to provide EIRP limits for all frequency bands; require TV BAS and CARS services to prior coordinate their frequency use when using shared frequency bands to minimize the potential for harmful interference occurring when a new station begins transmitting. We also permit ''wireless assist video devices'' to operate on certain VHF and UHF TV spectrum, thereby increasing spectrum efficiency and promoting equipment, which will increase safety at production sites as well as lower film and television production costs. In addition, we update many other BAS rules and make minor rule changes to clarify or fix typographical errors in the existing rules.

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

58. In the Notice, the Commission performed an IRFA and asked for comments that specifically addressed issues raised in the IRFA. No parties filed comments directly in response to the IRFA. However, commenters made recommendations regarding channel splitting, and the Commission, in response, is overlaying narrowband channels in various bands and is authorizing an effective date for channel splitting in the 950 MHz aural BAS band.

(C) Description and Estimate of the Number of Entities Affected to Which Rules Will Apply

59. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the action taken.[4] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[6] A small business concern is one that: (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).[7] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[8] Nationwide, as of 1992, there were approximately 275,801 small organizations.[9] Finally, ''small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.''[10] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[11] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *See Notice of Proposed Rule Making,* ET Docket No. 01–75, 16 FCC Rcd 10556, 10601 (2001), 66 FR 28686, May 24, 2001.

[3] *See* 5 U.S.C. 604.

[4] 5 U.S.C. 603(b)(3).

[5] *Id.,* 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[7] Small Business Act, 15 U.S.C. 632.

[8] 5 U.S.C. 601(4).

[9] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[10] 5 U.S.C. 601(5).

[11] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

of fewer than 50,000.[12] The United States Bureau of the Census (Census Bureau) estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

60. The rules adopted in the *Report and Order* affect licensees of BAS (Remote Pickup, aural, and television), CARS, and fixed microwave services. Additionally, they affect manufacturers of equipment that supports the BAS.

Broadcast Auxiliary Service (BAS) involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the stations). The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: (1) For TV BAS, we will use the size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than $12.0 million;[13] (2) For Aural BAS, we will use the size standard for Radio Stations, which consists of all such companies having annual receipts of no more than $6 million;[14] (3) For Remote Pickup BAS we will use the small business size standard for Television Broadcasting when used by a TV station and that for Radio Stations when used by such a station.

61. According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total that operated for the entire year.[15] Of this total, 734 firms had annual receipts of $9,999,999.00 or less and an additional 71 had receipts of $10 million to $24,999,999.00.[16] Thus, under this standard, the majority of firms can be considered small.

62. According to Census Bureau data for 1997, there were 4,476 Radio Stations (firms), total, that operated for the entire year.[17] Of this total 4,265 had annual receipts of $4,999,999.00 or less, and an additional 103 firms had receipts of $5 million to $9,999,999.00.[18] Thus, under this standard, the great majority of firms can be considered small.

Cable Antenna Relay Service (CARS) includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and other Program Distribution, which consists of all such companies having annual receipts of no more than $12.5 million.[19] According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year.[20] Of this total, 1,180 firms had annual receipts of $9,999,999.00 or less, and an additional 52 firms had receipts of $10 million to $24,999,999.00.[21] Thus, under this standard, the majority of firms can be considered small.

Fixed Microwave Services (FS) includes common carrier, private-operational fixed, and broadcast auxiliary radio services. Presently there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The SBA has developed a small business size standard for Cellular and other Wireless Telecommunications, which consists of all such companies having 1,500 or fewer employees.[22] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[23] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 had employment of 1,000 employees or more.[24] Thus, under this standard, virtually all firms can be considered small.

(D) Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

63. Under the rules adopted in the *Report and Order,* there are changes to reporting, recordkeeping, and other compliance requirements. In many cases, these changes streamline the existing licensing process or provide additional flexibility to licensees and applicants. Many of the proposed changes are related to the use of the Universal Licensing System (ULS) by BAS applicants and licensees. Applicants for BAS stations must apply through the Wireless Telecommunications Bureau using the ULS, which was adopted by *Report and Order* in 1998. To comply with this system, our decisions in the *Report and Order* are consistent with the decisions reached in that *Report and Order.* Accordingly, we have eliminated requests made by letter if there is a standard application form that can be used instead, modified the rules defining major and minor changes to those used for fixed microwave systems, and eliminated the need to report transmitter output power and requiring that all stations comply with limits on effective isotropic radiated power. We also have changed the period of construction for a BAS station from the currently used three years to eighteen months, consistent with the period used for fixed microwave stations.

64. Additionally, we have conformed some of the rules that affect frequency bands that are shared among BAS licensees (part 74), CARS licensees (part 78), and fixed microwave licensees (part 101). Specifically, we have updated the rules that protect interference to geostationary satellites from receiving harmful interference from fixed stations to those currently listed in the ITU International Radio Regulations. The effect of this update is to expand the number of frequency bands to which these rules apply. We also have adopted for BAS equipment, emission limitations that are consistent with those already being used for fixed microwave stations. We also are generally requiring that all BAS applicants for fixed stations operating above 944 MHz comply with the same frequency coordination guidelines in place for fixed microwave stations.

65. Further changes entail providing technical guidelines for TV studio-to-transmitter links and TV relay stations that operate on UHF–TV channels. These guidelines have always been imposed, but never codified. Also, with respect to BAS Remote Pickup stations, we are altering their channel plan to be consistent with the same channel spacing requirements as are used for Private Land Mobile Radio stations in part 90 of our rules. Finally, as noted, we have allowed a new type of device to operate on certain VHF and UHF TV channels, wireless assist video devices. These devices will follow the existing

[12] *Id.*

[13] 13 CFR 121.201, NAICS code 513120.

[14] *Id.* at NAICS code 513112.

[15] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Receipts Size of Firms Subject to Federal Income Tax: 1997,'' Table 4, NAICS code 513120 (issued Oct. 2000).

[16] *Id.* The census data do not provide a more precise estimate.

[17] *Id.* At NAICS code 513112.

[18] *Id.* The census data do not provide a more precise estimate.

[19] *Id.* at NAICS code 513220.

[20] *Id.* at NAICS code 513220.

[21] *Id.* The census data do not provide a more precise estimate.

[22] 13 CFR 121.201, NAICS code 513322.

[23] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513310 (issued Oct. 2000).

[24] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

service rules for Low Power Auxiliary Stations, with minor exceptions.[25]

(E) Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

66. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[26]

67. We have reduced burdens wherever possible. Our rules regarding the BAS would reduce burdens on small entities. First, we have simplified and expanded the opportunity for aural and TV BAS licensees to use digital modulation techniques in all of their allocated frequency bands. Currently, they can use these techniques only in a few bands and must file waiver requests and requests for special temporary authority (STA) to transmit digital signals in other bands. Our rules eliminate the need for these waivers and STAs, thus saving businesses the time it takes to prepare these requests and their associated filing fees. Second, we have altered the equation used to determine the allowable EIRP for short path lengths. Under our new rules, there will no longer be a large drop-off in allowable EIRP when the path length of a fixed station is slightly shorter than the minimum necessary for maximum power. The effect of this is to provide more flexibility in the way small entities design their systems. Because they will be able to use fewer sites, this has the effect of a reduction in the cost of a system. Third, we have allowed automatic transmit power control (ATPC). ATPC benefits small entities by reducing outages to digital receivers and expanding battery life. Both of these effects benefit small businesses by making their systems more reliable.

68. Many of our rule amendments and their benefits stem from the use of the ULS for application filing. This system, by providing for electronic filing on standardized forms, benefits small entities in several ways. Applicants can submit applications to the Commission as soon as they have the necessary information on-hand, and they receive instant feedback as to the correctness of that application because ULS will not accept the application for filing unless it is correct. If there are errors, ULS provided error messages so that the application can be corrected and resubmitted. Also, the system makes extensive use of electronic processing, so that many of the tasks that were done by hand are now one by computer. The overall effect is that applications are processed faster and licenses are issued sooner, thus allowing small entities to begin providing service in a more timely manner.

69. We have also adopted rule amendments that conform rules for similar services that share spectrum. These are TV BAS, CARS, and the fixed microwave service. As a whole, these amendments reduce burdens to small entities because many of these entities have licenses in each of these rule parts, but must currently contend with different rules in each part. Thus, small entities will benefit because they will, in many instances, be able to comply with a common set of rules for their systems, which operate in any of the named services.

70. Additionally, we have adopted many other rule changes that will benefit small entities. We are requiring that fixed BAS systems prior coordinate their frequency use, which will ensure that systems operate in a manner that minimizes the potential of causing interference. This protects the new system from possibly being shut down due to causing interference and protects the existing system from suffering a service disruption from receiving interference. Both of these results will benefit small entities operating in the BAS service. Along with the frequency coordination requirement, we have extended the ability to operate under temporary conditional authority to all BAS frequency bands. This benefits small entities by allowing them to begin operating sooner. Further, we have extended the reach of the short-term operation rule to all entities eligible for a BAS license. This benefits small entities because many would not need to obtain additional licenses from the Commission to provide limited service a few times a year in areas in which they do not traditionally operate. Such a change saves small entities the time and money that they would otherwise expend obtaining a license. Another change entails the Commission establishing technical requirements for operating TV STLs or TV relay stations on UHF–TV channels. This change permits applicants to know the requirements they must meet before applying for a license, thereby reducing the number or applications that must be returned by the Commission. Thus, small entities will benefit by having to respond to returned applications less often. We have also altered the channel plan for Remote Pickup BAS to conform to the channel plan adopted for PLMR services. Unless the same technical criteria are used for both services, different radios must be developed. Thus, our rules change will benefit small entities by lowering equipment costs. Finally, we have permitted motion picture and television producers to operate new wireless assist video devices on certain unused VHF and UHF TV channels. This will benefit small entities by providing a more cost effective means for producers to monitor multiple camera angles when producing program material.

71. The regulatory burdens we have retained, such as filing applications on appropriate forms, are necessary to ensure that the public receives the benefits of new and existing services in a prompt and efficient manner. We also considered revising the burden of frequency coordination for fixed BAS systems, but found that this alternative would unnecessarily increase the potential of harmful interference. However, under our frequency coordination procedures, entities may self coordinate rather than paying a frequency coordinator. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing significant economic impact on small entities.

(F) Report to Congress

72. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act,[27] In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

73. Pursuant to sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4(i), 154(i), 302, 303(f) and (r), 332, 337, the *Report and Order* and the rules specified are Adopted. The rules set forth will become effective April 16, 2003.

[25] *See Report and Order,* paragraphs 153, 154 and 155, supra.

[26] 5 U.S.C. 603(c).

[27] *See* 5 U.S.C. 801(a)(1)(A).

74. Pursuant to 5 U.S.C. 553(d)(1) and 553(d)(3), the rules implementing digital modulation of BAS stations specified in the rules section, specifically §§ 74.535 and 74.637 of the Commission's Rules, 47 CFR 74.535 and 74.637, became effective on October 30, 2002, adoption date of the *Report and Order.*

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Radio, Television.

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 73

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 78

Cable television, Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 101

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 73, 74, 78 and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j) 155, 255, 303(r), 309 and 325(e).

2. Section 1.901 is revised to read as follows:

§ 1.901 Basis and purpose.

These rules are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.* The purpose of these rules is to establish the requirements and conditions under which entities may be licensed in the Wireless Radio Services as described in this part and in parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97 and 101 of this chapter.

3. Section 1.902 is revised to read as follows:

§ 1.902 Scope.

In case of any conflict between the rules set forth in this subpart and the rules set forth in Parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97, and 101 of title 47, chapter I of the Code of Federal Regulations, the rules in part 1 shall govern.

4. Section 1.929 is amended by revising the introductory text of paragraphs (c)(4) and (d) to read as follows:

§ 1.929 Classification of filings as major or minor.

* * * * *

(c) * * *

(4) In the Private Land Mobile Radio Services (PLMRS), the remote pickup broadcast auxiliary service, and GMRS systems licensed to non-individuals:

* * * * *

(d) In the microwave, aural broadcast auxiliary, and television broadcast auxiliary services:

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

5. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

6. Amend § 2.106 as follows:

a. Revise pages 25, 26, 37, 38 and 76 of the Table.

b. In the list of United States Footnotes, revise footnote US11 and remove footnote US291.

c. In the list of non-Federal government footnotes, revise footnotes NG53 and NG115 and add footnote NG175.

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

50-123.5875 (VHF) Page 25

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 47-68 MHz	50-54 AMATEUR 5.162A 5.166 5.167 5.168 5.170		50-73	50-54 AMATEUR	Amateur (97)
	54-68 BROADCASTING Fixed Mobile 5.172	54-68 FIXED MOBILE BROADCASTING 5.162A		54-72 BROADCASTING NG115 NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
68-74.8 FIXED MOBILE except aeronautical mobile	68-72 BROADCASTING Fixed Mobile 5.173	68-74.8 FIXED MOBILE			
	72-73 FIXED MOBILE			72-73 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
	73-74.6 RADIO ASTRONOMY 5.178		73-74.6 RADIO ASTRONOMY US74		
5.149 5.174 5.175 5.177 5.179	74.6-74.8 FIXED MOBILE	5.149 5.176 5.179	74.6-74.8 FIXED MOBILE US273		Private Land Mobile (90)
74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180 5.181			74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180		Aviation (87)
75.2-87.5 FIXED MOBILE except aeronautical mobile	75.2-75.4 FIXED MOBILE 5.179		75.2-75.4 FIXED MOBILE US273		Private Land Mobile (90)

	75.4-76 FIXED MOBILE	75.4-87 FIXED MOBILE 5.182 5.183 5.188	75.4-88	75.4-76 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
	76-88 BROADCASTING Fixed Mobile	87-100 FIXED MOBILE BROADCASTING		76-88 BROADCASTING NG115 NG128 NG129 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
5.175 5.179 5.184 5.187 87.5-100 BROADCASTING 5.190	5.185 88-100 BROADCASTING		88-108	88-108 BROADCASTING US93 NG2 NG128 NG129	Broadcast Radio (FM) (73) Auxiliary Broadcasting (74)
100-108 BROADCASTING 5.192 5.194					
108-117.975 AERONAUTICAL RADIONAVIGATION 5.197			108-117.975 AERONAUTICAL RADIONAVIGATION US93		Note: The NTIA Manual (footnote G126) states that differential GPS stations may be authorized in the 108-117.975 MHz band, but the FCC has not yet addressed this footnote.
117.975-137 AERONAUTICAL MOBILE (R)			117.975-121.9375 AERONAUTICAL MOBILE (R) 5.111 5.199 5.200 591 US26 US28		Aviation (87)
			121.9375-123.0875 591 US30 US31 US33 US80 US102 US213	121.9375-123.0875 AERONAUTICAL MOBILE 591 US30 US31 US33 US80 US102 US213	
			123.0875-123.5875 AERONAUTICAL MOBILE 5.200 591 US32 US33 US112		
5.111 5.198 5.199 5.200 5.201 5.202 5.203 5.203A 5.203B			See next page for 123.5875-137 MHz		See next page for 123.5875-137 MHz

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile 5.292 5.293	470-585 FIXED MOBILE BROADCASTING 5.291 5.298	470-608	470-512 BROADCASTING NG128 NG149 FIXED NG127 LAND MOBILE NG66 NG114 NG115	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
	512-608 BROADCASTING 5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION 5.149 5.305 5.306 5.307		512-608 BROADCASTING NG128 NG149 NG115	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)		608-614 RADIO ASTRONOMY US74 LAND MOBILE US350 US246		Personal (95)
	614-806 BROADCASTING Fixed Mobile	610-890 FIXED MOBILE 5.317A BROADCASTING	614-890	614-698 BROADCASTING NG128 NG149 NG115	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
				698-746 BROADCASTING NG128 FIXED MOBILE NG115 NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)

5.149 5.291A 5.294 5.296 5.300 5.302 5.304 5.306 5.311 5.312				746-764 BROADCASTING NG128 FIXED MOBILE NG115 NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcast. (74) Private Land Mobile (90)
790-862 FIXED BROADCASTING	5.293 5.309 5.311			764-776 FIXED MOBILE NG115 NG128 NG158 NG159	Auxiliary Broadcasting (74) Private Land Mobile (90)
				776-794 BROADCASTING NG128 FIXED MOBILE NG115 NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcast. (74) Private Land Mobile (90)
				794-806 FIXED MOBILE NG115 NG128 NG158 NG159	Auxiliary Broadcasting (74) Private Land Mobile (90)
	806-890 FIXED MOBILE5.317A BROADCASTING			806-821 FIXED LAND MOBILE NG30 NG31 NG43 NG63	Public Mobile (22) Private Land Mobile (90)
				821-824 LAND MOBILE NG30 NG43 NG63	Private Land Mobile (90)
5.312 5.314 5.315 5.316 5.319 5.321				824-849 FIXED LAND MOBILE NG30 NG43 NG63 NG151	Public Mobile (22)
See next page for 862-890 MHz	5.317 5.318	5.149 5.305 5.306 5.307 5.311 5.320		See next page for 849-894 MHz	See next page for 866-896 MHz

36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) 5.149	36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263 US342		
37-37.5 FIXED MOBILE SPACE RESEARCH (space-to-Earth) 5.547	37-38 FIXED MOBILE SPACE RESEARCH (space-to-Earth)	37-37.6 FIXED MOBILE	
37.5-38 FIXED FIXED-SATELLITE (space-to-Earth) 5.551AA MOBILE SPACE RESEARCH (space-to-Earth) Earth exploration-satellite (space-to-Earth) 5.547		37.6-38.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	Satellite Communications (25)
38-39.5 FIXED FIXED-SATELLITE (space-to-Earth) 5.551AA MOBILE Earth exploration-satellite (space-to-Earth) 5.547	38-38.6 FIXED MOBILE		
	38.6-39.5	38.6-39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE NG175	Fixed Microwave (101)
39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) 5.551AA MOBILE MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite (space-to-Earth) 5.547	39.5-40 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) G117	39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE NG175 MOBILE-SATELLITE (space-to-Earth)	

BILLING CODE 6712-01-C

* * * * *

United States (US) Footnotes

* * * * *

US11 The use of the frequencies 166.25 and 170.15 MHz may be authorized to non-Federal Government remote pickup broadcast base and land mobile stations and to non-Federal Government base, fixed and land mobile stations in the public safety radio services on the condition that harmful interference shall not be caused to present or future Federal Government stations in the band 162–174 MHz. Authorization on these frequencies shall be in the lower 48 contiguous States only, except within the area bounded on the west by the Mississippi River, on the north by the parallel of latitude 37°30′ N., and on the east and south by that are of the circle with center at Springfield, Illinois, and radius equal to the airline distance between Springfield, Illinois, and Montgomery, Alabama, subtended between the foregoing west and north boundaries. The use of these frequencies by remote pickup broadcast stations shall not be authorized for locations within 150 miles (241.4 km) of New York City; and use of these frequencies by the public safety radio services shall not be authorized except for locations within 150 miles of New York City.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG53 In the band 12.7–13.15 GHz, television pickup stations and CARS pickup stations shall be assigned channels on a co-equal basis and shall operate on a secondary basis to fixed stations operating in accordance with the Table of Frequency Allocations. In the band 13.15–13.20 GHz, television pickup stations and CARS pickup stations shall be assigned channels on a primary co-equal basis within 50 kilometers of the television markets defined in 47 CFR 76.53. In the band 13.20–13.2125 GHz, television pickup stations shall be assigned channels on a primary basis, and CARS fixed and pickup stations shall operate on a secondary basis to television broadcast auxiliary stations.

* * * * *

NG115 In the bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–608 MHz, and 614–806 MHz, wireless microphones and wireless assist video devices may be authorized on a non-interference basis, subject to the terms and conditions set forth in 47 CFR part 74, subpart H.

* * * * *

NG175 Television pickup stations in the mobile services authorized to use frequencies in the band 38.6–40.0 GHz on or before April 16, 2003, may continue to operate on a secondary basis to stations operating in accordance with the Table of Frequency Allocations.

* * * * *

PART 73—RADIO BROADCAST SERVICES

7. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 3334, and 336.

8. Section 73.3500 is amended by removing the entries for Forms 313 and 313–R from the table in paragraph (a) and adding entries for Forms 601 and 603 to read as follows:

§ 73.3500 Application and report forms.

(a) * * *

Form No.	Title
* * * * * * *	
601	FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.
603	FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control.

* * * * *

§ 75.3533 [Amended]

9. Section 73.3533 is amended by removing and reserving paragraph (a)(3).

§ 73.3536 [Amended]

10. Section 73.3536 is amended by removing and reserving paragraph (b)(3).

11. Section 73.3598 is amended by revising paragraph (a) to read as follows:

§ 73.3598 Period of construction.

(a) Each original construction permit for the construction of a new TV, AM, FM or International in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

12. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

13. Section 74.5 is amended by redesignating paragraphs (a)(4) through (a)(7) as paragraphs (a)(5) through (a)(8) and by adding new paragraphs (a)(4) and (f) to read as follows:

§ 74.5 Cross reference to rules in other parts.

* * * * *

(a) * * *

(4) Subpart F, ''Wireless Telecommunications Services Applications and Proceedings''. (§§ 1.901 to 1.981).

* * * * *

(f) Part 101, ''Fixed Microwave Services''.

14. Section 74.6 is added to read as follows:

§ 74.6 Licensing of broadcast auxiliary and low power auxiliary stations.

Applicants for and licensees of remote pickup broadcast stations, aural broadcast auxiliary stations, television broadcast auxiliary stations, and low power auxiliary stations authorized under subparts D, E, F, and H of this part are subject to the application and procedural rules for wireless telecommunications services contained in part 1, subpart F of this chapter. Applicants for these stations may file either manually or electronically as specified in §§ 1.913(b) and (d) of this chapter.

15. Section 74.15 is amended by revising paragraph (f) to read as follows:

§ 74.15 Station license period.

* * * * *

(f) Licenses held by broadcast network-entities under Subpart F will ordinarily be issued for a period of 8 years running concurrently with the

normal licensing period for broadcast stations located in the same area of operation. An application for renewal of license shall be filed in accordance with the provisions of § 1.949.

* * * * *

16. Section 74.24 is amended by revising the introductory text and paragraphs (a), (d), (f), (g), (i), (h)(1), and by removing the Note after paragraph (h)(1) to read as follows:

§ 74.24 Short term operation.

All classes of broadcast auxiliary stations provided for in subparts D, E, F and H of this part, except wireless video assist devices, may be operated on a short-term basis under the authority conveyed by a part 73 license or a broadcast auxiliary license without prior authorization from the FCC, subject to the following conditions:

(a) Licensees operating under this provision must be eligible to operate the particular class of broadcast auxiliary station.

* * * * *

(d) Short-term operation under this section shall not exceed 720 hours annually per frequency.

Note to Paragraph (d): Certain frequencies shared with other services which are normally available for permanent broadcast auxiliary station assignment may not be available for short-term operation. Refer to any note(s) which may be applicable to the use of a specific frequency prior to initiating operation.

* * * * *

(f) Stations operated pursuant to this section shall be identified by the transmission of the call sign of the associated part 73 broadcast station or broadcast auxiliary station, or, in the case of stations operated by broadcast network and cable network entities, by the network or cable entity's name and base of operations city.

(g) Prior to operating pursuant to the provisions of this section, licensees shall, for the intended location or area-of-operation, notify the appropriate frequency coordination committee or any licensee(s) assigned the use of the proposed operating frequency, concerning the particulars of the intended operation and shall provide the name and telephone number of a person who may be contacted in the event of interference. Except as provided herein, this notification provision shall not apply where an unanticipated need for immediate short-term mobile station operation would render compliance with the provisions of this paragraph impractical.

(1) A CARS licensee shall always be given advance notification prior to the commencement of short-term operation on or adjacent to an assigned frequency.

(2) The Commission may designate a frequency coordinator as the single point of contact under this section for advance coordination of major national and international events. Once designated, all short-term auxiliary broadcast use under this section must be coordinated in advance through the designated coordinator.

(i) Coordinators under this provision will not be designated unless the Commission receives an initial request, in writing, to designate a coordinator.

(ii) The Commission will issue a Public Notice with information regarding the designation of such a coordinator.

(iii) All coordination must be done on a non-discriminatory basis.

(iv) All licensees must abide by the decision of the coordinator. The Commission will be the final arbiter of any disputes.

(3) An unanticipated need will never be deemed to exist for a scheduled event, such as a convention, sporting event, etc.

(h) * * *

(1) Use of broadcast auxiliary service frequencies below 470 MHz is limited to areas of the United States south of Line A or west of Line C unless the effective radiated power of the station is 5 watts or less. *See* § 1.928(e) of this chapter for a definition of Line A and Line C.

* * * * *

(i) Short-term operation of a remote pickup broadcast base station, a remote pickup automatic relay station, an aural broadcast STL station, an aural broadcast intercity relay station, a TV STL station, a TV intercity relay station or a TV translator relay station in the National Radio Quiet Zone, the Table Mountain Radio Receiving Zone, or near FCC monitoring stations is subject to the same advance notification procedures applicable to regular applications as provided for in §§ 73.1030 and 74.12, except that inasmuch as short-term operation does not involve an application process, the provisions relating to agency objection procedures shall not apply. It shall simply be necessary for the licensee to contact the potentially affected agency and obtain advance approval for the proposed short-term operation. Where protection to FCC monitoring stations is concerned, approval for short-term operation may be given by the District Director of a Commission field facility.

* * * * *

17. Section 74.25 is added to read as follows:

§ 74.25 Temporary conditional operating authority.

An applicant for a new broadcast auxiliary radio service station or a modification of an existing station under subparts D, E, F, or H of this part may operate the proposed station during the pendency of its applications upon the filing of a properly completed formal application that complies with the rules for the particular class of station, provided that the conditions set forth are satisfied.

(a) Conditions applicable to all broadcast auxiliary stations.

(1) Stations operated pursuant to this section shall be identified by the transmission of the call sign of the associated part 73 of this chapter broadcast station, if one exists, or the prefix ''WT'' followed by the applicant's local business telephone number for broadcast or cable network entities.

(2) The antenna structure(s) has been previously studied by the Federal Aviation Administration and determined to pose no hazard to aviation safety as required by subpart B of part 17 of this chapter; or the antenna or tower structure does not exceed 6.1 meters above ground level or above an existing man-made structure (other than an antenna structure), if the antenna or tower has not been previously studied by the Federal Aviation Administration and cleared by the FCC;

(3) The grant of the application(s) does not require a waiver of the Commission's rules;

(4) The applicant has determined that the facility(ies) will not significantly affect the environment as defined in § 1.1307 of this chapter;

(5) The station site does not lie, within a radio ''Quiet Zone'' identified in § 1.924 of this chapter.

(b) Conditions applicable to remote pickup broadcast auxiliary stations.

(1) The auxiliary station must be located within 80 km (50 mi) of the broadcast studio or broadcast transmitter.

(2) The applicant must coordinate the operation with all affected co-channel and adjacent channel licensees in the area of operation. This requirement can be satisfied by coordination with the local frequency committee if one exists.

(3) Operation under this provision is not permitted between 152.87 MHz and 153.35 MHz.

(c) Conditions applicable to aural and television broadcast auxiliary stations.

(1) The applicable frequency coordination procedures have been successfully completed and the filed application is consistent with that coordination.

(2) The station site does not lie within an area requiring international coordination.

(3) If operated on frequencies in the 17.8–19.7 GHz band, the station site does not lie within any of the areas identified in § 1.924 of this chapter.

(d) Operation under this section shall be suspended immediately upon notification from the Commission or by the District Director of a Commission field facility, and shall not be resumed until specific authority is given by the Commission or District Director. When authorized by the District Director, short test operations may be made.

(e) Conditional authority ceases immediately if the application(s) is returned by the Commission because it is not acceptable for filing.

(f) Conditional authorization does not prejudice any action the Commission may take on the subject application(s). Conditional authority is accepted with the express understanding that such authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. An applicant operating pursuant to this conditional authority assumes all risks associated with such operation, the termination or modification of the conditional authority, or the subsequent dismissal or denial of its application(s).

18. Section 74.34 is added to read as follows:

§ 74.34 Period of construction; certification of completion of construction.

(a) Each aural and television broadcast auxiliary station authorized under subparts E and F of this part must be in operation within 18 months from the initial date of grant.

(b) Each remote pickup broadcast auxiliary station authorized under subpart D of this part must be in operation within 12 months from the initial date of grant.

(c) Failure to timely begin operation means the authorization terminates automatically.

(d) Requests for extension of time may be granted upon a showing of good cause pursuant to § 1.946(e) of this chapter.

(e) Construction of any authorized facility or frequency must be completed by the date specified in the license and the Commission must be notified pursuant to § 1.946 of this chapter.

19. Section 74.402 is revised to read as follows:

§ 74.402 Frequency assignment.

Operation on all channels listed in this section (except: frequencies 26.07 MHz, 26.11 MHz, and 26.45 MHz, and frequencies listed in paragraphs (a)(4) and (c)(1) of this section shall be in accordance with the ''priority of use'' provisions in § 74.403(b)). The channel will be assigned by its center frequency, channel bandwidth, and emission designator. In general, the frequencies listed in this section represent the center of the channel or channel segment. When an even number of channels are stacked in those sections stacking is permitted, channel assignments may be made for the frequency halfway between those listed.

(a) The following channels (except 1606, 1622, and 1646 kHz) may be assigned for use by broadcast remote pickup stations using any emission (other than single sideband or pulse) that will be in accordance with the provisions of § 74.462.

(1) MF Channels: 1606, 1622, and 1646 kHz. The channel 1606 kHz is subject to the condition listed in paragraph (e)(1) of this section.

(2) HF Channels: 25.87, 25.91, 25.95, 25.99, 26.03, 26.07, 26.09, 26.11, 26.13, 26.15, 26.17, 26.19, 26.21, 26.23, 26.25, 26.27, 26.29, 26.31, 26.33, 26.35, 26.37, 26.39, 26.41, 26.43, 26.45, and 26.47 MHz. The channels 25.87–26.09 MHz are subject to the condition listed in paragraph (e)(2) of this section.

(3) VHF Channels: 166.25 and 170.15 MHz. These channels are subject to the condition listed in paragraph (e)(8) of this section.

(4) UHF Channels: Up to two of the following 6.25 kHz segments may be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of § 74.462: 450.00625 MHz, 450.0125 MHz, 450.01875 MHz, 450.025 MHz, 450.98125 MHz, 450.9875 MHz, 450.99375 MHz, 455.00625 MHz, 455.0125 MHz, 455.01875 MHz, 455.025 MHz, 455.98125 MHz, 455.9875 MHz, and 455.99375 MHz. These channels are subject to the condition listed in paragraph (e)(9) of this section.

(b) Up to four of the following 7.5 kHz VHF segments and up to eight of the following 6.25 kHz UHF segments may be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of § 74.462.

(1) VHF segments: 152.8625, 152.870, 152.8775, 152.885, 152.8925, 152.900, 152.9075, 152.915, 152.9225, 152.930, 152.9375, 152.945, 152.9525, 152.960, 152.9675, 152.975, 152.9825, 152.990, 152.9975, 153.005, 153.0125, 153.020, 153.0275, 153.035, 153.0425, 153.050, 153.0575, 153.065, 153.0725, 153.080, 153.0875, 153.095, 153.1025, 153.110, 153.1175, 153.125, 153.1325, 153.140, 153.1475, 153.155, 153.1625, 153.170, 153.1775, 153.185, 153.1925, 153.200, 153.2075, 153.215, 153.2225, 153.230, 153.2375, 153.245, 153.2525, 153.260, 153.2675, 153.275, 153.2825, 153.290, 153.2975, 153.305, 153.3125, 153.320, 153.3275, 153.335, 153.3425, 153.350, and 153.3575. These channels are subject to the conditions listed in paragraphs (e)(3), (4), (5), and (10) of this section.

(2) VHF segments: 160.860, 160.8675, 160.875, 160.8825, 160.890, 160.8975, 160.905, 160.9125, 160.920, 160.9275, 160.935, 160.9425, 160.950, 160.9575, 160.965, 160.9725, 160.980, 160.9875, 160.995, 161.0025, 161.010, 161.0175, 161.025, 161.0325, 161.040, 161.0475, 161.055, 161.0625, 161.070, 161.0775, 161.085, 161.0925, 161.100, 161.1075, 161.115, 161.1225, 161.130, 161.1375, 161.145, 161.1525, 161.160, 161.1675, 161.175, 161.1825, 161.190, 161.1975, 161.205, 161.2125, 161.220, 161.2275, 161.235, 161.2425, 161.250, 161.2575, 161.265, 161.2725, 161.280, 161.2875, 161.295, 161.3025, 161.310, 161.3175, 161.325, 161.3325, 161.340, 161.3475, 161.355, 161.3625, 161.370, 161.3775, 161.385, 161.3925, 161.400. These channels are subject to the condition listed in paragraph (e)(6) and (10) of this section.

(3) VHF segments: 161.625, 161.6325, 161.640, 161.6475, 161.655, 161.6625, 161.670, 161.6775, 161.685, 161.6925, 161.700, 161.7075, 161.715, 161.7225, 161.730, 161.7375, 161.745, 161.7525, 161.760, 161.7675, 161.775. These channels are subject to the conditions listed in paragraphs (e)(4), (7), and (10) of this section.

(4) UHF segments: 450.03125, 450.0375, 450.04375, 450.050, 450.05625, 450.0625, 450.06875, 450.075, 450.08125, 450.0875, 450.09375, 450.100, 450.10625, 450.1125, 450.11875, 450.125, 450.13125, 450.1375, 450.14375, 450.150, 450.15625, 450.1625, 450.16875, 450.175, 450.18125, 450.1875, 450.19375, 450.200, 450.20625, 450.2125, 450.21875, 450.225, 450.23125, 450.2375, 450.24375, 450.250, 450.25625, 450.2625, 450.26875, 450.275, 450.28125, 450.2875, 450.29375, 450.300, 450.30625, 450.3125, 450.31875, 450.325, 450.33125, 450.3375, 450.34375, 450.350, 450.35625, 450.3625, 450.36875, 450.375, 450.38125, 450.3875, 450.39375, 450.400, 450.40625, 450.4125, 450.41875, 450.425, 450.43125, 450.4375, 450.44375, 450.450, 450.45625, 450.4625,

450.46875, 450.475, 450.48125, 450.4875, 450.49375, 450.500, 450.50625, 450.5125, 450.51875, 450.525, 450.53125, 450.5375, 450.54375, 450.550, 450.55625, 450.5625, 450.56875, 450.575, 450.58125, 450.5875, 450.59375, 450.600, 450.60625, 450.6125, 450.61875, 455.03125, 455.0375, 455.04375, 455.050, 455.05625, 455.0625, 455.06875, 455.075, 455.08125, 455.0875, 455.09375, 455.100, 455.10625, 455.1125, 455.11875, 455.125, 455.13125, 455.1375, 455.14375, 455.150, 455.15625, 455.1625, 455.16875, 455.175, 455.18125, 455.1875, 455.19375, 455.200, 455.20625, 455.2125, 455.21875, 455.225, 455.23125, 455.2375, 455.24375, 455.250, 455.25625, 455.2625, 455.26875, 455.275, 455.28125, 455.2875, 455.29375, 455.300, 455.30625, 455.3125, 455.31875, 455.325, 455.33125, 455.3375, 455.34375, 455.350, 455.35625, 455.3625, 455.36875, 455.375, 455.38125, 455.3875, 455.39375, 455.400, 455.40625, 455.4125, 455.41875, 455.425, 455.43125, 455.4375, 455.44375, 455.450, 455.45625, 455.4625, 455.46875, 455.475, 455.48125, 455.4875, 455.49375, 455.500, 455.50625, 455.5125, 455.51875, 455.525, 455.53125, 455.5375, 455.54375, 455.550, 455.55625, 455.5625, 455.56875, 455.575, 455.58125, 455.5875, 455.59375, 455.600, 455.60625, 455.6125, 455.61875.

(c) Up to two of the following 25 kHz segments may be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of § 74.462. Users committed to 50 kHz bandwidths and transmitting program material will have primary use of these channels.

(1) UHF segments: 450.6375, 450.6625, 450.6875, 450.7125, 450.7375, 450.7625, 450.7875, 450.8125, 450.8375, 450.8625, 455.6375, 455.6625, 455.6875, 455.7125, 455.7375, 455.7625, 455.7875, 455.8125, 455.8375, 455.8625 MHz.

(2) [Reserved]

(d) Up to two of the following 50 kHz segments may be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of § 74.462. Users committed to 100 kHz bandwidths and transmitting program material will have primary use of these channels.

(1) UHF segments: 450.900, 450.950, 455.900, and 455.950 MHz.

(2) [Reserved]

(e) Conditions on Broadcast Remote Pickup Service channel usage as referred to in paragraphs (a) through (d) of this section:

(1) Operation is subject to the condition that no harmful interference is caused to the reception of AM broadcast stations.

(2) Operation is subject to the condition that no harmful interference is caused to stations in the broadcast service.

(3) Operation is subject to the condition that no harmful interference is caused to stations operating in accordance with the Table of Frequency Allocations set forth in part 2 of this chapter. Applications for licenses to use frequencies in this band must include statements showing what procedures will be taken to ensure that interference will not be caused to stations in the Industrial/Business Pool (Part 90).

(4) These frequencies will not be licensed to network entities.

(5) These frequencies will not be authorized to new stations for use on board aircraft.

(6) These frequencies are allocated for assignment to broadcast remote pickup stations in Puerto Rico or the Virgin Islands only.

Note to Paragraph (e)(6): These frequencies are shared with Public Safety and Industrial/Business Pools (Part 90).

(7) These frequencies may not be used by broadcast remote pickup stations in Puerto Rico or the Virgin Islands. In other areas, certain existing stations in the Public Safety and Industrial/Business Pools (Part 90) have been permitted to continue operation on these frequencies on the condition that no harmful interference is caused to broadcast remote pickup stations.

(8) Operation on frequencies 166.25 MHz and 170.15 MHz is subject to the condition that harmful interference shall not be caused to present or future Government stations in the band 162–174 MHz and is also subject to the bandwidth and tolerance limitations and compliance deadlines listed in § 74.462 of this part. Authorization on these frequencies shall be in the lower 48 contiguous States only, except within the area bounded on the west by the Mississippi River, on the north by the parallel of latitude 37°30′ N., and on the east and south by that arc of the circle with center at Springfield, Illinois, and radius equal to the airline distance between Springfield, Illinois, and Montgomery, Alabama, subtended between the foregoing west and north boundaries, or within 150 miles (241.4 km) of New York City.

(9) The use of these frequencies is limited to operational communications, including tones for signaling and for remote control and automatic transmission system control and telemetry. Stations licensed or applied for before April 16, 2003, must comply with the channel plan by March 17, 2006, or may continue to operate on a secondary, non-interference basis.

(10) Stations licensed or applied for before April 16, 2003, must comply with the channel plan by March 17, 2006, or may continue to operate on a secondary, non-interference basis.

(f) License applicants shall request assignment of only those channels, both in number and bandwidth, necessary for satisfactory operation and for which the system is equipped to operate. However, it is not necessary that each transmitter within a system be equipped to operate on all frequencies authorized to that licensee.

(g) Remote pickup stations or systems will not be granted exclusive channel assignments. The same channel or channels may be assigned to other licensees in the same area. When such sharing is necessary, the provisions of § 74.403 shall apply.

20. Section 74.403 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 74.403 Frequency selection to avoid interference.

* * * * *

(b) The following order of priority of transmissions shall be observed on all frequencies except frequencies 26.07 MHz, 26.11 MHz, and 26.45 MHz, and frequencies listed in § 74.402(a)(4) and (c)(1):

* * * * *

21. Section 74.431 is amended by removing and reserving paragraph (g) and by revising paragraph (i) to read as follows:

§ 74.431 Special rules applicable to remote pickup stations.

* * * * *

(i) Remote pickup mobile or base stations may be used for activities associated with the Emergency Alert System (EAS) and similar emergency survival communications systems. Drills and test are also permitted on these stations, but the priority requirements of § 74.403(b) must be observed in such cases.

22. Section 74.432 is amended revising paragraphs (b), (g) and (k) to read as follows:

§ 74.432 Licensing requirements and procedures.

* * * * *

(b) Base stations may operate as automatic relay stations on the frequencies listed in § 74.402(b)(4) and (c)(1) under the provisions of § 74.436, however, one licensee may not operate such stations on more than two frequency pairs in a single area.

* * * * *

(g) An application for a remote pickup broadcast station or system shall specify the broadcasting station with which the remote pickup broadcast facility is to be principally used and the licensed area of operation for a system which includes mobile stations shall be the area considered to be served by the associated broadcasting station. Mobile stations may be operated outside the licensed area of operation pursuant to § 74.24 of this part. Where the applicant for remote pickup broadcast facilities is the licensee of more than one class of broadcasting station (AM, FM, TV), all licensed to the same community, designation of one such station as the associated broadcasting station will not preclude use of the remote pickup broadcast facilities with those broadcasting stations not included in the designation and such additional use shall be at the discretion of the licensee.

* * * * *

(k) In case of permanent discontinuance of operations of a station licensed under this subpart, the licensee shall cancel the station license using FCC Form 601. For purposes of this section, a station which is not operated for a period of one year is considered to have been permanently discontinued.

* * * * *

23. Section 74.433 is amended by revising paragraphs (b) and (c) to read as follows:

§ 74.433 Temporary authorizations.

* * * * *

(b) A request for special temporary authority for the operation of a remote pickup broadcast station must be made in accordance with the procedures of § 1.931(b) of this chapter.

(c) All requests for special temporary authority of a remote pickup broadcast station must include full particulars including: licensee's name and address, facility identification number of the associated broadcast station or stations, call letters of remote pickup station (if assigned), type and manufacturer of equipment, power output, emission, frequency or frequencies proposed to be used, commencement and termination date, location of operation and purpose for which request is made including any particular justification.

* * * * *

24. Section 74.451 is amended by revising paragraph (a) to read as follows:

§ 74.451 Certification of equipment.

(a) Applications for new remote pickup broadcast stations or systems or for changing transmitting equipment of an existing station will not be accepted unless the transmitters to be used have been certificated by the FCC pursuant to the provisions of this subpart, or have been certificated for licensing under part 90 of this chapter and do not exceed the output power limits specified in § 74.461(b).

* * * * *

25. Section 74.452 is revised to read as follows:

§ 74.452 Equipment changes.

(a) Modifications may be made to an existing authorization in accordance with §§ 1.929 and 1.947 of this chapter.

(b) All transmitters initially installed after November 30, 1977, must be certificated for use in this service or other service as specified in § 74.451(a).

26. Section 74.462 is amended by revising paragraph (a), the table in paragraph (b), and the introductory text to paragraph (c), and removing paragraphs (e), (f), and (g) to read as follows:

§ 74.462 Authorized bandwidth and emissions.

(a) Each authorization for a new remote pickup broadcast station or system shall require the use of certificated equipment and such equipment shall be operated in accordance with emission specifications included in the grant of certification and as prescribed in paragraphs (b), (c), and (d) of this section.

(b) * * *

Frequencies	Authorized bandwidth (kHz)	Maximum frequency deviation [1] (kHz)	Type of emission [2]
(kHz): 1606, 1622, and 1646	10	N/A	A3E.
MHz:			
25.87 to 26.03	40	10	Frequencies 25.87 to 153.3575 MHz: A3E, F1E, F3E, F9E.
26.07 to 26.47	20	5	
152.8625 to 153.3575 [3]	30/60	5/10	
160.860 to 161.400	60	10	
161.625 to 161.775	30	5	
166.25 and 170.15 [4]	12.5/25	5	
450.00625 to 450.025			Frequencies 160.860 to 455.950 MHz: A1A, A1B, A1D, A1E, A2A, A2B, A2D, A2E, A3E, F1A, F1B, F1D, F1E, F2A, F2B, F2D, F2E, F3E, F9E
450.98125 to 450.99375			
455.00625 to 455.025			
455.98125 to 455.99375	Up to 12.5	1.5	
450.03125 to 450.61875			
455.03125 to 455.61875	Up to 25	5	
450.6375 to 450.8625			
455.6375 to 455.8625	25–50	10	
450.900, 450.950			
455.900, 455.950	50–100	35	

[1] Applies where F1A, F1B, F1D, F1E, F2A, F2B, F2D, F2E, F3E, or F9E emissions are used.

[2] Stations operating above 450 MHz shall show a need for employing A1A, A1B, A1D, A1E, A2A, A2B, A2D, A2E, F1A, F1B, F1D, F1E, F2A, F2B, F2D, or F2E emission.

[3] New or modified licenses for use of the frequencies will not be granted to utilize transmitters on board aircraft, or to use a bandwidth in excess of 30 kHz and maximum deviation exceeding 5 kHz

[4] For stations licensed or applied for before April 16, 2003, the sum of the bandwidth of emission and tolerance on frequencies 166.25 MHz or 170.15 MHz shall not exceed 25 kHz, and such operation may continue until January 1, 2005. For new stations licensed or applied for on or after April 16, 2003, the sum of the bandwidth of emission and tolerance on these frequencies shall not exceed 12.5 kHz. For all remote pickup broadcast stations, the sum of the bandwidth of emission and tolerance on these frequencies shall not exceed 12.5 kHz on or after January 1, 2005.

(c) For emissions on frequencies above 25 MHz with authorized bandwidths up to 30 kHz, the emissions shall comply with the emission mask and transient frequency behavior requirements of §§ 90.210 and 90.214 of this chapter. For all other emissions, the mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

* * * * *

27. Section 74.464 is amended by revising the introductory text to the table to read as follows:

§ 74.464 Frequency tolerance.

For operations on frequencies above 25 MHz using authorized bandwidths up to 30 kHz, the licensee of a remote pickup broadcast station or system shall maintain the operating frequency of each station in compliance with the frequency tolerance requirements of § 90.213 of this chapter. For all other operations, the licensee of a remote pickup broadcast station or system shall maintain the operating frequency of each station in accordance with the following:

* * * * *

28. Section 74.482 is amended by revising paragraphs (a) and (e) to read as follows:

§ 74.482 Station identification.

(a) Each remote pickup broadcast station shall be identified by the transmission of the assigned station or system call sign, or by the call sign of the associated broadcast station. For systems, the licensee (including those operating pursuant to § 74.24 of this part) shall assign a unit designator to each station in the system. The call sign (and unit designator, where appropriate) shall be transmitted at the beginning and end of each period of operation. A period of operation may consist of a single continuous transmission, or a series of intermittent transmissions pertaining to a single event.

* * * * *

(e) For stations using F1E or G1E emissions, identification shall be transmitted in the unscrambled analog (F3E) mode or in International Morse Code pursuant to the provisions of paragraph (d) of this section at intervals not to exceed 15 minutes. For purposes of rule enforcement, all licensees using F1E or G1E emissions shall provide, upon request by the Commission, a full and complete description of the encoding methodology they currently use.

* * * * *

29. Section 74.502 is amended by revising paragraphs (b) introductory text, (c)(1)(ii), and (d) to read as follows:

§ 74.502 Frequency assignment.

* * * * *

(b) The frequency band 944–952 MHz is available for assignment to aural STL and ICR stations. One or more of the following 25 kHz segments may be stacked to form a channel which may be assigned with a maximum authorized bandwidth of 300 kHz except as noted in the following Table. The channel, will be assigned by its center frequency, channel bandwidth, and emission designator. The following frequencies are the centers of individual segments. When stacking an even number of segments, the center frequency specified will deviate from the following frequencies in that it should correspond to the actual center of stacked channels. When stacking an odd number of channels, the center frequency specified will correspond to one of the following frequencies.

* * * * *

(c) * * *

(1) * * *

(ii) Licensees may use either a two-way link or one frequency of a frequency pair for a one-way link.

* * * * *

(d) For the coordination of all frequency assignments for fixed stations above 944 MHz, for each frequency authorized under this part, the interference protection criteria in § 101.105(a), (b), and (c) of this chapter and the frequency usage coordination procedures of § 101.103(d) of this chapter will apply.

* * * * *

30. Section 74.532 is amended by removing the note following paragraph (d) and revising paragraph (f) to read as follows:

§ 74.532 Licensing requirements.

* * * * *

(f) In case of permanent discontinuance of operations of a station licensed under this subpart, the licensee shall cancel the station license using FCC Form 601. For purposes of this section, a station which is not operated for a period of one year is considered to have been permanently discontinued.

31. Section 74.534 is revised to read as follows:

§ 74.534 Power limitations.

(a) *Transmitter output power.* (1) Transmitter output power shall be limited to that necessary to accomplish the function of the system.

(2) In the 17,700 to 19,700 MHz band, transmitter output power shall not exceed 10 watts.

(b) In no event shall the average equivalent isotropically radiated power (EIRP), as referenced to an isotropic radiator, exceed the values specified in the following table. In cases of harmful interference, the Commission may, after notice and opportunity for hearing, order a change in the equivalent isotropically radiated power of this station.

Frequency band (MHz)	Maximum Allowable [1] EIRP (dBW)
944 to 952	+40
17,700 to 18,600	+55
18,600 to 19,700	+35

[1] Stations licensed based on an application filed before April 16, 2003, for EIRP values exceeding those specified above, may continue to operate indefinitely in accordance with the terms of their current authorizations, subject to periodic renewal.

(c) The EIRP of transmitters that use Automatic Transmitter Power Control (ATPC) shall not exceed the EIRP specified on the station authorization. The EIRP of non-ATPC transmitters shall be maintained as near as practicable to the EIRP specified on the station authorization.

32. Section 74.535 is amended by revising paragraphs (a), (b) and (d), removing paragraphs (e) and (f), and redesignating paragraph (g) as paragraph (e) to read as follows:

§ 74.535 Emission and bandwidth.

(a) The mean power of emissions shall be attenuated below the mean transmitter power (P_{MEAN}) in accordance with the following schedule:

(1) When using frequency modulation:

(i) On any frequency removed from the assigned (center) frequency by more than 50% up to and including 100% of the authorized bandwidth: At least 25 dB in any 100 kHz reference bandwidth (B_{REF});

(ii) On any frequency removed from the assigned (center) frequency by more than 100% up to and including 250% of the authorized bandwidth: At least 35 dB in any 100 kHz reference bandwidth;

(iii) On any frequency removed from the assigned (center) frequency by more than 250% of the authorized bandwidth: At least $43+10 \log_{10}$ (P_{MEAN} in watts) dB, or 80 dB, whichever is the lesser attenuation, in any 100 kHz reference bandwidth.

(2) When using transmissions employing digital modulation techniques:

(i) For operating frequencies below 15 GHz, in any 4 kHz reference bandwidth (B_{REF}), the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

$A = 35 + 0.8(G - 50) + 10 \text{ Log}_{10} B.$

(Attenuation greater than 80 decibels is not required.)

Where:

A = Attenuation (in decibels) below the mean output power level.
G = Percent removed from the carrier frequency.
B = Authorized bandwidth in megahertz.

(ii) For operating frequencies above 15 GHz, in any 1 MHz reference bandwidth (B_{REF}), the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 11 decibels:

$A = 11 + 0.4(G - 50) + 10 \text{ Log}_{10} B.$

(Attenuation greater than 56 decibels is not required.)

(iii) In any 4 kHz reference bandwidth (B_{REF}), the center frequency of which is removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43 +10 Log_{10} (P_{MEAN} in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(b) For all emissions not covered in paragraph (a) of this section, the peak power of emissions shall be attenuated below the peak envelope transmitter power (P_{PEAK}) in accordance with the following schedule:

(1) On any frequency 500 Hz inside the channel edge up to and including 2500 Hz outside the same edge, the following formula will apply:

$A = 29 \text{ Log}_{10} [(25/11)[(D + 2.5 - (W/2)]^2] \text{ dB}$

(Attenuation greater than 50 decibels is not required.)

Where:

A = Attenuation (in dB) below the peak envelope transmitter power.
D = the displacement frequency (kHz) from the center of the authorized bandwidth.
W = the channel bandwidth (kHz).

(2) On any frequency removed from the channel edge by more than 2500 Hz: At least 43+10 Log_{10} (P_{PEAK} in watts) dB.

* * * * *

(d) For purposes of compliance with the emission limitation requirements of this section:

(1) If the transmitter modulates a single carrier, digital modulation techniques are considered as being employed when digital modulation occupies 50 percent or more of the total peak frequency deviation of a transmitted radio frequency carrier. The total peak frequency deviation will be determined by adding the deviation produced by the digital modulation signal and the deviation produced by any frequency division multiplex (FDM) modulation used. The deviation (D) produced by the FDM signal must be determined in accordance with § 2.202(f) of this chapter.

(2) If the transmitter modulates two or more carriers, with at least one using digital modulation and one using frequency or other analog modulation, digital modulation techniques are considered as being employed when the necessary bandwidth of the digital signal(s) is 50 percent or more of the aggregate bandwidth of the system, comprising the digital necessary bandwidth(s), the analog necessary bandwidth(s), and any bandwidth(s) between the digital and analog necessary bandwidths. In this case, the aggregate bandwidth shall be used for the authorized bandwidth (B) in paragraph (a) of this section, and for purposes of compliance with the bandwidth limitations in § 74.502 of this subpart; and the sum of the powers of the analog and digital signals shall be used for mean transmitter power (P_{MEAN}) in paragraph (a) or the peak envelope transmitter power (P_{PEAK}) in paragraph (b) of this section, and for purposes of compliance with the power limitations in § 74.534 of this subpart.

(3) For demonstrating compliance with the attenuation requirements for frequency modulation and digital modulation in paragraph (a) of this section, the resolution bandwidth (B_{RES}) of the measuring equipment used for measurements removed from the center frequency by more than 250 percent of the authorized bandwidth shall be 100 kHz for operating frequencies below 1 GHz, and 1 MHz for operating frequencies above 1 GHz. The resolution bandwidth for frequencies removed from the center frequency by less than 250 percent of the authorized bandwidth shall be the reference bandwidth (B_{REF}) specified in the individual emission limitations, but may be reduced to not less than one percent of the authorized bandwidth (B), adjusted upward to the nearest greater resolution bandwidth available on the measuring equipment. In all cases, if B_{RES} and B_{REF} are not equal, then the attenuation requirement must be increased (or decreased) as determined by a factor of 10 $\log_{10}$ [(B_{REF} in megahertz)/(B_{RES} in megahertz)] decibels, where a positive factor indicates an increase in the attenuation requirement and a negative factor indicates a decrease in the attenuation requirement.

(4) Stations licensed pursuant to an application filed before March 17, 2005, using equipment not conforming with the emission limitations specified above, may continue to operate indefinitely in accordance with the terms of their current authorizations, subject to periodic renewal. Existing equipment and equipment of product lines in production before April 16, 2003, authorized via certification or verification before March 17, 2005, for equipment not conforming to the emission limitations requirements specified above, may continue to be manufactured and/or marketed, but may not be authorized for use under a station license except at stations licensed pursuant to an application filed before March 17, 2005. Any non-conforming equipment authorized under a station license, and replaced on or after March 17, 2005, must be replaced by conforming equipment.

* * * * *

§ 74.536 [Amended]

33. Section 74.536 is amended by removing the entry for 31.0 to 31.3 and footnotes 2 and 3 from the table in paragraph (c).

34. Section 74.537 is amended by revising paragraphs (b) and (c) to read as follows:

§ 74.537 Temporary authorizations.

* * * * *

(b) A request for special temporary authority for the operation of an aural broadcast STL or an intercity relay station must be made in accordance with the procedures of § 1.931(b) of this chapter.

(c) All requests for special temporary authority of an aural broadcast auxiliary stations must include full particulars including: licensee's name and address, facility identification number of the associated broadcast station(s), call letters of the aural broadcast STL or intercity relay station, if assigned, type and manufacturer of equipment, effective isotropic radiated power, emission, frequency or frequencies proposed for use, commencement and termination date and location of the proposed operation, and purpose for which request is made including any particular justification.

* * * * *

35. Section 74.551 is amended by revising paragraph (a) introductory text, removing paragraphs (b) and (c), and redesignating paragraph (d) as paragraph (b) to read as follows:

§ 74.551 Equipment changes.

(a) Modifications may be made to an existing authorization in accordance with §§ 1.929 and 1.947 of this chapter.

* * * * *

§ 74.561 [Amended]

36. Section 74.561 is amended by removing the entry for 31,000 to 31,300 from the table.

37. Section 74.602 is amended by revising paragraphs (a) introductory text, the channel boundaries for channel designation B03 in the table of paragraph (a), footnote 2 of the table of paragraph (a), paragraphs (d), (f), (h), and (i) introductory text, and by removing and revising paragraph (a)(2) to read as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available for assignment to television pickup, television STL, television relay and television translator relay stations. The band segments 17,700–18,580 and 19,260–19,700 MHz are available for broadcast auxiliary stations as described in paragraph (g) of this section. The band segment 6425–6525 MHz is available for broadcast auxiliary stations as described in paragraph (i) of this section. Broadcast network-entities may also use the 1990–2110, 6425–6525 and 6875–7125 MHz bands for mobile television pickup only.

Band A MHz	Band B MHz	Band D [1] GHz			
		Group A channels		Group B channels	
		Designation	Channel boundaries	Designation	Channel boundaries
*	*	*	*	*	*
				B03	12.7625–12.7875
*	*	*	*	*	*

[1] For fixed stations using Band D Channels, applicants are encouraged to use alternate A and B channels such that adjacent R.F. carriers are spaced 12.5 MHz. As an example, a fixed station, relaying several channels, would use A01, B01, A02, B02, A03, etc.

[2] The band 13.15—13.20 GHz is reserved for the assignment of CARS Pickup and Television Pickup stations on a primary co-equal basis within 50 kilometers of the television markets defined in § 76.53 of this chapter. The band 13.20—13.2125 GHz is reserved exclusively for the assignment of Television Pickup stations on a primary basis. Fixed stations licensed prior to April 16, 2003, may continue operation under their current status on channels in the 13.15—13.2125 GHz band, subject to periodic license renewals.

* * * * *

(d) Cable Television Relay Service stations may be assigned channels in Band D between 12,700 and 13,200 MHz subject to the condition that no harmful interference is caused to TV STL and TV relay stations authorized at the time of such grants. Similarly, new TV STL and TV relay stations must not cause harmful interference to cable television relay stations authorized at the time of such grants. The use of channels between 12,700 and 13,200 MHz by TV pickup stations is subject to the condition that no harmful interference is caused to Cable Television Relay Service stations, TV STL and TV relay stations, except as provided for in § 74.602(a) Note 2. Band D channels are also shared with certain Private Operational Fixed Stations, see § 74.638.

* * * * *

(f) TV auxiliary stations licensed to low power TV stations and translator relay stations will be assigned on a secondary basis, *i.e.*, subject to the condition that no harmful interference is caused to other TV auxiliary stations assigned to TV broadcast stations, or to cable television relay service stations (CARS) operating between 12,700 and 13,200 MHz. Auxiliary stations licensed to low power TV stations and translator relay stations must accept any interference caused by stations having primary use of TV auxiliary frequencies.

* * * * *

(h) TV STL, TV relay stations, and TV translator relay stations may be authorized to operate fixed point-to-point service on the UHF TV channels 14–69 on a secondary basis and subject to the provisions of subpart G of this part:

(1) Applications for authorization in accordance with this paragraph must comply with the following technical limits or be accompanied by an engineering analysis demonstrating why these limits must be exceeded:

(i) Maximum EIRP is limited to 35 dBW;

(ii) Transmitting antenna beamwidth is limited to 25 degrees (measured at the 3 dB points); and

(iii) Vertical polarization is used.

(2) These stations must not interfere with and must accept interference from current and future full-power UHF–TV stations, LPTV stations, and translator stations. They will also be secondary to land mobile stations in areas where land mobile sharing is currently permitted.

(3) TV STL and TV relay stations licensed for operation on UHF TV channels 52–69 based on applications filed before April 16, 2003, may continue to operate under the terms of their current authorizations until the end of transition to digital television in their market (DTV Transition), as set forth in §§ 73.622 through 73.625 of this chapter. Applications for TV STL and TV relay stations operating on UHF TV channels 52–69 will not be accepted for filing on or after April 16, 2003.

(4) TV translator relay stations licensed for operation on UHF TV channels 52–59 based on applications filed before the end of DTV transition may continue to operate under the terms of their current authorizations indefinitely. TV translator relay stations licensed for operation on UHF TV channels 60–69 based on applications filed before the end of DTV transition may continue to operate under the terms of their current authorizations until the end of DTV Transition. Applications for TV translator relay stations operating on UHF TV channels 52–69 will not be accepted for filing on or after the end of DTV Transition.

(i) *6425 to 6525 MHz—Mobile Only.* Paired and un-paired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted. This band is co-equally shared with mobile stations licensed pursuant to parts 78 and 101 of this chapter. The following channel plans apply.

* * * * *

§ 74.603 [Amended]

38. Section 74.603 is amended by removing and reserving paragraph (b).

§ 74.604 [Amended]

39. Section 74.604 is amended by removing and reserving paragraph (a).

40. Section 74.631 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 74.631 Permissible service.

(a) The licensee of a television pickup station authorizes the transmission of program material, orders concerning such program material, and related communications necessary to the accomplishment of such transmissions, from the scenes of events occurring in places other than a television studio, to its associated television broadcast station, to an associated television relay station, to such other stations as are broadcasting the same program material, or to the network or networks with which the television broadcast station is affiliated. * * *

* * * * *

41. Section 74.632 is amended by removing the last two sentences of paragraph (a) and the Note following paragraph (f), and revising paragraphs (c), (e) and (g).

§ 74.632 Licensing requirements.

* * * * *

(c) An application for a new TV pickup station shall designate the TV broadcast station with which it is to be operated and specify the area in which the proposed operation is intended. The maximum permissible area of operation will generally be that of a standard metropolitan area, unless a special showing is made that a larger area is necessary.

* * * * *

(e) A license for a TV translator relay station will be issued only to licensees of low power TV and TV translator stations. *However,* a television translator relay station license may be issued to a cooperative enterprise wholly owned by licensees of television broadcast translators or licensees of television broadcast translators and cable television owners or operators upon a showing that the applicant is qualified under the Communication Act of 1934, as amended.

* * * * *

(g) In case of permanent discontinuance of operations of a station licensed under this subpart, the licensee shall cancel the station license using FCC Form 601. For purposes of this section, a station which is not operated for a period of one year is considered to have been permanently discontinued.

42. Section 74.633 is amended by revising paragraphs (b) and (c) to read as follows:

§ 74.633 Temporary authorizations.

* * * * *

(b) A request for special temporary authority for the operation of a television broadcast auxiliary station must be made in accordance with the procedures of § 1.931(b) of this chapter.

(c) All requests for special temporary authority of a television broadcast auxiliary station must include full particulars including: licensee's name and address, facility identification number of the associated broadcast station(s) (if any), call letters of the television broadcast STL or intercity relay station (if assigned), type and manufacturer of equipment, effective isotropic radiated power, emission, frequency or frequencies proposed for use, commencement and termination date and location of the proposed operation, and purpose for which request is made including any particular justification.

* * * * *

43. Section 74.636 is revised to read as follows:

§ 74.636 Power limitations.

(a) On any authorized frequency, transmitter peak output power and the average power delivered to an antenna in this service must be the minimum amount of power necessary to carry out the communications desired and shall not exceed the values listed in the following table. Application of this principle includes, but is not to be limited to, requiring a licensee who replaces one or more of its antennas with larger antennas to reduce its antenna input power by an amount appropriate to compensate for the increased primary lobe gain of the replacement antenna(s). In no event shall the average equivalent isotropically radiated power (EIRP), as referenced to an isotropic radiator, exceed the values specified in the following table. In cases of harmful interference, the Commission may, after notice and opportunity for hearing, order a change in the effective radiated power of this station. The table follows:

Frequency band (MHz)	Maximum allowable transmitter power	Maximum allowable EIRP [2]	
	Mobile (W)	Fixed (dBW)	Mobile (dBW)
2,025 to 2,110	12.0	+45	+35
2,450 to 2,483.5	12.0	+45	+35
6,425 to 6,525	12.0	.....	+35
6,875 to 7,125	12.0	+55	+35
12,700 to 13,250	1.5	+55	+45
17,700 to 18,600	.....	+55	.....
18,600 to 18,800 [1]	.....	+35	.....
18,800 to 19,700	.....	+55	.....

[1] The power delivered to the antenna is limited to −3 dBW.

[2] Stations licensed based on an application filed before April 16, 2003, for EIRP values exceeding those specified above, may continue to operate indefinitely in accordance with the terms of their current authorizations, subject to periodic renewal.

(b) The EIRP of transmitters that use Automatic Transmitter Power Control (ATPC) shall not exceed the EIRP specified on the station authorization. The EIRP of non-ATPC transmitters shall be maintained as near as practicable to the EIRP specified on the station authorization.

44. Section 74.637 is amended by revising paragraphs (a), (b) and (c) and by removing the entries for 31,000 to 31,300 and 38,600 to 40,000 from the table in paragraph (g) to read as follows:

§ 74.637 Emissions and emission limitations.

(a) The mean power of emissions shall be attenuated below the mean transmitter power (P_{MEAN}) in accordance with the following schedule:

(1) When using frequency modulation:

(i) On any frequency removed from the assigned (center) frequency by more than 50% up to and including 100% of the authorized bandwidth: At least 25 dB in any 100 kHz reference bandwidth (B_{REF});

(ii) On any frequency removed from the assigned (center) frequency by more than 100% up to and including 250% of the authorized bandwidth: At least 35 dB in any 100 kHz reference bandwidth;

(iii) On any frequency removed from the assigned (center) frequency by more than 250% of the authorized bandwidth: At least 43+10 $\log_{10}$ (P_{MEAN} in watts) dB, or 80 dB, whichever is the lesser attenuation, in any 100 kHz reference bandwidth.

(2) When using transmissions employing digital modulation techniques:

(i) For operating frequencies below 15 GHz, in any 4 kHz reference bandwidth (B_{REF}), the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

$A = 35 + 0.8 (G - 50) + 10 \text{ Log}_{10} B.$

(Attenuation greater than 80 decibels is not required.)

Where:

A = Attenuation (in decibels) below the mean output power level.

G = Percent removed from the carrier frequency.

B = Authorized bandwidth in megahertz.

(ii) For operating frequencies above 15 GHz, in any 1 MHz reference bandwidth (B_{REF}), the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 11 decibels:

$A = 11 + 0.4 (G - 50) + 10 \text{ Log}_{10} B.$

(Attenuation greater than 56 decibels is not required.)

(iii) In any 4 kHz reference bandwidth (B_{REF}), the center frequency of which is removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43 +10 Log_{10} (P_{MEAN} in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(3) Amplitude Modulation. For vestigial sideband AM video: On any frequency removed from the center frequency of the authorized band by more than 50%: at least 50 dB below peak power of the emission.

(b) For all emissions not covered in paragraph (a) of this section, the peak power of emissions shall be attenuated below the peak envelope transmitter power (P_{PEAK}) in accordance with the following schedule:

(1) On any frequency 500 Hz inside the channel edge up to and including 2500 Hz outside the same edge, the following formula will apply:

$A = 29 \text{ Log}_{10} [(25/11)[(D + 2.5 - (W/2)]^2] \text{ dB}$

(Attenuation greater than 50 decibels is not required.)

Where:

A = Attenuation (in dB) below the peak envelope transmitter power.

D = The displacement frequency (kHz) from the center of the authorized bandwidth.

W = the channel bandwidth (kHz).

(2) On any frequency removed from the channel edge by more than 2500 Hz: At least 43 + 10 Log_{10} (P_{PEAK} in watts) dB.

(c) For purposes of compliance with the emission limitation requirements of this section:

(1) If the transmitter modulates a single carrier, digital modulation techniques are considered as being employed when digital modulation occupies 50 percent or more of the total peak frequency deviation of a transmitted radio frequency carrier. The total peak frequency deviation will be determined by adding the deviation produced by the digital modulation signal and the deviation produced by any frequency division multiplex (FDM) modulation used. The deviation (D) produced by the FDM signal must be determined in accordance with § 2.202(f) of this chapter.

(2) If the transmitter modulates two or more carriers, with at least one using digital modulation and one using frequency or other analog modulation, digital modulation techniques are considered as being employed when the necessary bandwidth of the digital signal(s) is 50 percent or more of the aggregate bandwidth of the system, comprising the digital necessary bandwidth(s), the analog necessary bandwidth(s), and any bandwidth(s) between the digital and analog necessary bandwidths. In this case, the aggregate bandwidth shall be used for the authorized bandwidth (B) in paragraph (a) of this section, and for purposes of compliance with the bandwidth limitations in paragraph (g) of this section and in § 74.602 of this subpart; and the sum of the powers of the analog and digital signals shall be used for mean transmitter power (P_{MEAN}) in paragraph (a) or the peak envelope transmitter power (P_{PEAK}) in paragraph (b) of this section, and for purposes of compliance with the power limitations in § 74.636 of this subpart.

(3) For demonstrating compliance with the attenuation requirements for frequency modulation and digital modulation in paragraph (a) of this section, the resolution bandwidth (B_{RES}) of the measuring equipment used for measurements removed from the center frequency by more than 250 percent of the authorized bandwidth shall be 100 kHz for operating frequencies below 1 GHz, and 1 MHz for operating frequencies above 1 GHz. The resolution bandwidth for frequencies removed from the center frequency by less than 250 percent of the authorized bandwidth shall be the reference bandwidth (B_{REF}) specified in the individual emission limitations, but may be reduced to not less than one percent of the authorized bandwidth (B), adjusted upward to the nearest greater resolution bandwidth available on the measuring equipment. In all cases, if B_{RES} and B_{REF} are not equal, then the attenuation requirement must be increased (or decreased) as determined by a factor of 10 $\log_{10}$ [(B_{REF} in megahertz)/(B_{RES} in megahertz)] decibels, where a positive factor indicates an increase in the attenuation requirement and a negative factor indicates a decrease in the attenuation requirement.

(4) Stations licensed pursuant to an application filed before March 17, 2005, using equipment not conforming with the emission limitations specified above, may continue to operate indefinitely in accordance with the terms of their current authorizations, subject to periodic renewal. Existing equipment and equipment of product lines in production before April 16, 2003, authorized via certification or verification before March 17, 2005, for equipment not conforming to the emission limitations requirements specified above, may continue to be manufactured and/or marketed, but may not be authorized for use under a station license except at stations licensed pursuant to an application filed before March 17, 2005. Any non-conforming equipment authorized under a station license, and replaced on or after March 17, 2005, must be replaced by conforming equipment.

* * * * *

45. Section 74.638 is revised to read as follows:

§ 74.638 Frequency coordination.

(a) Coordination of all frequency assignments for fixed stations in all

bands above 2110 MHz, and for mobile (temporary fixed) stations in the bands 6425–6525 MHz and 17.7–19.7 GHz, will be in accordance with the procedure established in paragraph (b) of this section, except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree. Coordination of all frequency assignments for all mobile (temporary fixed) stations in all bands above 2110 MHz, except the bands 6425–6525 MHz and 17.7–19.7 GHz, will be conducted in accordance with the procedure established in paragraph (b) of this section or with the procedure in paragraph (d) of this section. Coordination of all frequency assignments for all fixed stations in the band 1990–2110 MHz will be in accordance with the procedure established in paragraph (c) of this section. Coordination of all frequency assignments for all mobile (temporary fixed) stations in the band 1990–2110 MHz will be conducted in accordance with the procedure in paragraph (d) of this section.

(b) Frequency coordination for all fixed stations in all bands above 2110 MHz, and for all mobile (temporary fixed) stations in the bands 6425–6525 MHz and 17.7–19.7 GHz. For each frequency authorized under this part, the interference protection criteria in § 101.105(a), (b), and (c) of this chapter and the frequency usage coordination procedures in § 101.103(d) of this chapter will apply, except that only stations in the bands 6425–6525 MHz and 17.7–19.7 GHz are subject to the provision in § 101.103(d) requiring compliance with § 101.21(f) of this chapter in coordinating frequency usage with stations in the fixed satellite service.

(c) Frequency coordination for all fixed stations in the band 1990–2110 MHz. For each frequency authorized under this part, the following frequency usage coordination procedures will apply:

(1) *General requirements.* Applicants are responsible for selecting the frequency assignments that are least likely to result in mutual interference with other licensees in the same area. Applicants may consult local frequency coordination committees, where they exist, for information on frequencies available in the area. Proposed frequency usage must be coordinated with existing licensees and applicants in the area whose facilities could affect or be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth. Coordination must be completed prior to filing an application for regular authorization, for major amendment to a pending application, or for major modification to a license.

(2) To be acceptable for filing, all applications for regular authorization, or major amendment to a pending application, or major modification to a license, must include a certification attesting that all co-channel and adjacent-channel licensees and applicants potentially affected by the proposed fixed use of the frequency(ies) have been notified and are in agreement that the proposed facilities can be installed without causing harmful interference to those other licensees and applicants.

(d) Frequency coordination for all mobile (temporary fixed) stations in all bands above 1990 MHz, except the bands 6425–6525 MHz and 17.7–19.7 GHz. For each frequency authorized under this part, applicants are responsible for selecting the frequency assignments that are least likely to result in mutual interference with other licensees in the same area. Applicants may consult local frequency coordination committees, where they exist, for information on frequencies available in the area. In selecting frequencies, consideration should be given to the relative location of receive points, normal transmission paths, and the nature of the contemplated operation.

46. Section 74.641 is amended by revising the introductory text of paragraph (a), removing the entry for 31,000 to 31,300 and footnotes 2 and 3 from the table in paragraph (a)(1), revising paragraphs (a)(5), and the introductory text of paragraph (b) to read as follows:

§ 74.641 Antenna systems.

(a) For fixed stations operating above 2025 MHz, the following standards apply:

* * * * *

(5) Pickup stations are not subject to the performance standards herein stated.

(b) All fixed stations are to use antenna systems in conformance with the standards of this section. TV auxiliary broadcast stations are considered to be located in an area subject to frequency congestion and must employ a Category A antenna when:

* * * * *

47. Section 74.643 is revised to read as follows:

§ 74.643 Interference to geostationary-satellites.

Applicants and licensees must comply with § 101.145 of this chapter to minimize the potential of interference to geostationary-satellites.

48. Section 74.644 is amended by revising the table in paragraph (a) and paragraph (b) to read as follows:

§ 74.644 Minimum path lengths for fixed links.

(a) * * *

Frequency band (MHz)	Minimum path length (km)
Below 1,990	n/a
1,990–7,125	17
12,200–13,250	5
Above 17,700	n/a

(b) For paths shorter than those specified in the Table, the EIRP shall not exceed the value derived from the following equation.

EIRP = MAXEIRP − 40 log(A/B) dBW

Where:

EIRP = The new maximum EIRP (equivalent isotropically radiated power) in dBW.

MAXEIRP = Maximum EIRP as set forth in the Table in § 74.636 of this part.

A = Minimum path length from the Table above for the frequency band in kilometers.

B = The actual path length in kilometers.

Note 1 to Paragraph (b): For transmitters using Automatic Transmitter Power Control, EIRP corresponds to the maximum transmitter power available, not the coordinated transmit power or the nominal transmit power.

Note 2 to Paragraph (b): Stations licensed based on an application filed before April 16, 2003, in the 2450–2483.5 MHz band, for EIRP values exceeding those specified above, may continue to operate indefinitely in accordance with the terms of their current authorizations, subject to periodic renewal.

* * * * *

49. Section 74.651 is amended by revising paragraphs (a) and (b), removing paragraphs (c) and (d), and redesignating paragraph (e) as paragraph (c) to read as follows:

§ 74.651 Equipment changes.

(a) Modifications may be made to an existing authorization in accordance with §§ 1.929 and 1.947 of this chapter.

(b) Multiplexing equipment may be installed on any licensed TV broadcast STL, TV relay or translator relay station without authority from the Commission.

* * * * *

§ 74.655 [Amended]

50. Section 74.655 is amended by removing the last sentence of paragraph (a).

51. Section 74.661 is amended by revising the table to read as follows:

§ 74.661 Frequency tolerance.

* * * * *

Frequency band (MHz)	Frequency tolerance (%)
2,025 to 2,110	[1] 0.005
2,450 to 2,483.5	[2] 0.001
6,425 to 6,525	0.005
6,875 to 7,125	[1] 0.005
12,700 to 13,250	[1] 0.005
17,700 to 18,820	0.003
18,920 to 19,700	0.003

[1] Television translator relay stations shall maintain a frequency tolerance of 0.002%.

[2] Stations licensed pursuant to an application filed before March 17, 2005, for tolerance values exceeding those specified above, may continue to operate indefinitely in accordance with the terms of their current authorizations, subject to periodic renewal. Existing equipment and equipment of product lines in production before April 16, 2003, authorized via certification or verification before March 17, 2005, for tolerance values exceeding those specified above, may continue to be manufactured and/or marketed, but may not be authorized for use under station license except at stations licensed pursuant to an application filed before March 17, 2005. Any non-conforming equipment authorized under a station license, and replaced on or after March 17, 2005, must be replaced by conforming equipment.

52. Section 74.801 is amended by adding a definition for Wireless assist video device in alphabetical order to read as follows:

§ 74.801 Definitions.

* * * * *

Wireless assist video device. An auxiliary station authorized and operated by motion picture and television program producers pursuant to the provisions of this subpart. These stations are intended to transmit over distances of approximately 300 meters for use as an aid in composing camera shots on motion picture and television sets.

53. Section 74.802 is amended by revising paragraph (b)(3) to read as follows:

§ 74.802 Frequency assignment.

* * * * *

(b) * * *

(3) 470.000–608.000 MHz and 614.000–806.000 MHz.

All zones 113 km (70 miles)

* * * * *

54. Section 74.832 is amended by revising paragraphs (e), (g), and (i) to read as follows:

§ 74.832 Licensing requirements and procedures.

* * * * *

(e) An application for low power auxiliary stations or for a change in an existing authorization shall specify the broadcast station, or the network with which the low power broadcast auxiliary facilities are to be principally used as given in paragraph (h) of this section; or it shall specify the motion picture or television production company or the cable television operator with which the low power broadcast auxiliary facilities are to be solely used. A single application, filed on FCC Form 601 may be used in applying for the authority to operate one or more low power auxiliary units. The application must specify the frequency bands which will be used. Motion picture producers, television program producers, and cable television operators are required to attach a single sheet to their application form explaining in detail the manner in which the eligibility requirements given in paragraph (a) of this section are met.

* * * * *

(g) Low power auxiliary licensees shall specify the maximum number of units that will be operated.

* * * * *

(i) In case of permanent discontinuance of operations of a station licensed under this subpart, the licensee shall cancel the station license using FCC Form 601. For purposes of this section, a station which is not operated for a period of one year is considered to have been permanently discontinued.

* * * * *

55. Section 74.833 is amended by revising paragraphs (b) and (c) to read as follows:

§ 74.833 Temporary authorizations.

* * * * *

(b) A request for special temporary authority for the operation of a remote pickup broadcast station must be made in accordance with the procedures of § 1.931(b) of this chapter.

(c) All requests for special temporary authority of a low power auxiliary station must include full particulars including: licensees name and address, statement of eligibility, facility identification number of the associated broadcast station (if any), type and manufacturer of equipment, power output, emission, frequency or frequencies proposed to be used, commencement and termination date, location of proposed operation, and purpose for which request is made including any particular justification.

* * * * *

56. Section 74.870 is added to read as follows:

§ 74.870 Wireless video assist devices.

Television broadcast auxiliary licensees and motion picture and television producers, as defined in § 74.801 may operate wireless video assist devices on a non-interference basis on VHF and UHF television channels to assist with production activities.

(a) The use of wireless video assist devices must comply with all provisions of this subpart, except as indicated in paragraphs (b) through (i) of this section.

(b) Wireless video assist devices may only be used for scheduled productions. They may not be used to produce live events and may not be used for electronic news gathering purposes.

(c) Wireless video assist devices may operate with a bandwidth not to exceed 6 MHz on frequencies in the bands 180–210 MHz (TV channels 8–12) and 470–698 MHz (TV channels 14–51) subject to the following restrictions:

(1) The bandwidth may only occupy a single TV channel.

(2) Operation is prohibited within the 608–614 MHz (TV channel 37) band.

(3) Operation is prohibited within 129 km of a television broadcasting station, including Class A television stations, low power television stations and translator stations.

(4) For the area and frequency combinations listed in the table below, operation is prohibited within the distances indicated from the listed geographic coordinates.

Note to the following table: All coordinates are referenced to the North American Datum of 1983.

Area	North latitude	West longitude	Excluded frequencies (MHz)	Excluded channels		
				200 km	128 km	52 km
Boston, MA	42°21′24.4″	71°03′23.2″	470–476	14	.....	.....
			476–482	.....	15	.....
			482–488	16	.....	.....

Area	North latitude	West longitude	Excluded frequencies (MHz)	Excluded channels		
				200 km	128 km	52 km
			488–494	.....	17	.....
Chicago, IL	41°52′28.1″	87°38′ 22.2″	470–476	14	.....	.....
			476–482	15	.....	.....
			482–488	.....	16	.....
Cleveland, OH[1]	41°29′51.2″	81°41′49.5″	470–476	14	.....	.....
			476–482	.....	15	.....
			482–488	16	.....	.....
			488–494	.....	17	.....
Dallas/Fort Worth, TX	32°47′09.5″	96°47′38.0″	476–482	.....	15	.....
			482–488	16	.....	.....
			488–494	.....	17	.....
Detroit, MI [1]	42°19′48.1″	83°02′56.7″	470–476	.....	14	.....
			476–482	15	.....	.....
			482–488	.....	16	.....
			488–494	17	.....	.....
Gulf of Mexico			476–494	.....	.....	15, 16, 17
Hawaii			488–494	.....	.....	17
Houston, TX	29°45′26.8″	95°21′37.8″	482–488	.....	16	.....
			488–494	17	.....	.....
			494–500	.....	18	.....
Los Angeles, CA	34°03′15.0″	118°14′31.3″	470–476	14	.....	.....
			476–482	.....	15	.....
			482–488	16	.....	.....
			488–494	.....	17	.....
			500–506	.....	19	.....
			506–512	20	.....	.....
			512–518	.....	21	.....
Miami, Fl	25°46′38.4″	80°11′31.2″	470–476	14	.....	
			476–482	.....	15	.....
New York/N.E. New Jersey	40°45′06.4″	73°59′37.5″	470–476	14	.....	.....
			476–482	15	.....	.....
			482–488	16	.....	.....
			488–494	.....	17	.....
Philadelphia, PA	39°56′58.4″	75°09′19.6″	494–500	.....	18	.....
			500–506	19	.....	.....
			506–512	20	.....	.....
			512–518	.....	21	.....
Pittsburgh, PA	40°26′19.2″	79°59′59.2″	470–476	14	.....	.....
			476–482	.....	15	.....
			488–494	.....	17	.....
			494–500	18	.....	.....
			500–506	.....	19	.....
San Francisco/Oakland, CA	37°46′38.7″	122°24′43.9″	476–482	.....	15	.....
			482–488	16	.....	.....
			488–494	17	.....	.....
			494–500	.....	18	.....
Washington D.C./MD/VA	38°53′51.4″	77°00′31.9″	482–488	.....	16	.....
			488–494	17	.....	.....
			494–500	18	.....	.....
			500–506	.....	19	.....

[1] The distance separation requirements are not applicable in these cities until further order from the Commission.

(d) Wireless video assist devices are limited to a maximum of 250 milliwatts ERP and must limit power to that necessary to reliably receive a signal at a distance of 300 meters. Wireless video assist devices must comply with the emission limitations of § 74.637.

(e) The antenna of a wireless video assist device must be attached to the transmitter either permanently, or by means of a unique connector designed to allow replacement of authorized antennas but prevent the use of unauthorized antennas. When transmitting, the antenna must not be more that 10 meters above ground level.

(f)(1) A license for a wireless video assist device will authorize the license holder to use all frequencies available for wireless video assist devices, subject to the limitations specified in this section.

(2) Licensees may operate as many wireless video assist devices as necessary, subject to the notification procedures of this section.

(g) *Notification procedure.* Prior to the commencement of transmitting, licensees must notify the local broadcasting coordinator of their intent to transmit. If there is no local coordinator in the intended area of operation, licensees must notify all adjacent channel TV stations within 161 km (100 mi) of the proposed operating area.

(1) Notification must be made at least 10 working days prior to the date of intended transmission.

(2) Notifications must include:

(i) Frequency or frequencies.

(ii) Location.

(iii) Antenna height.

(iv) Emission type(s).

(v) Effective radiated power.

(vi) Intended dates of operation.

(vii) Licensee contact information.

(3)(i) Failure of a local coordinator to respond to a notification request prior to

the intended dates of operation indicated on the request will be considered as having the approval of the coordinator. In this case, licensees must in addition notify all co-channel and adjacent channel TV stations within 161 km (100 mi) of the proposed operating area. This notification is for information purposes only and will not enable TV stations to prevent a WAVD from operating, but is intended to help identify the source of interference if any is experienced after a WAVD begins operation.

(ii) If there is no local coordinator in the intended area of operation, failure of any adjacent channel TV station to respond to a notification request prior to the intended dates of operation indicated on the request will be considered as having the approval of the TV station.

(4) Licensees must operate in a manner consistent with the response of the local coordinator, or, if there is no local coordinator in the intended area of operation, the responses of the adjacent channel TV stations. Disagreements may be appealed to the Commission. However, in those instances, the licensee will bear the burden of proof and proceeding to overturn the recommendation of the local coordinator or the co-channel or adjacent channel TV station.

(h) Licenses for wireless video assist devices may not be transferred or assigned.

(i) The product literature that manufacturers include with a wireless assist video device must contain information regarding the requirement for users to obtain an FCC license, the requirement that stations must locate at least 129 kilometers away from a co-channel TV station, the limited class of users that may operate these devices, the authorized uses, the need for users to obtain a license, and the requirement that a local coordinator (or adjacent channel TV stations, if there is no local coordinator) must be notified prior to operation.

57. Section 74.882 is revised to read as follows:

§ 74.882 Station identification.

(a) For transmitters used for voice transmissions and having a transmitter output power exceeding 50 mW, an announcement shall be made at the beginning and end of each period of operation at a single location, over the transmitting unit being operated, identifying the transmitting unit's call sign or designator, its location, and the call sign of the broadcasting station or name of the licensee with which it is being used. A period of operation may consist of a continuous transmission or intermittent transmissions pertaining to a single event.

(b) Each wireless video assist device, when transmitting, must transmit station identification at the beginning and end of each period of operation. Identification may be made by transmitting the station call sign by visual or aural means or by automatic transmission in international Morse telegraphy.

(1) A period of operation is defined as a single uninterrupted transmission or a series of intermittent transmissions from a single location.

(2) Station identification shall be performed in a manner conducive to prompt association of the signal source with the responsible licensee. In exercising the discretion provide by this rule, licensees are expected too act in a responsible manner to assure that result.

PART 78—CABLE TELEVISION RELAY SERVICE

58. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

59. Section 78.18 is amended by revising paragraph (l) to read as follows:

§ 78.18 Frequency assignments.

* * * * *

(l) The band 13.15–13.20 GHz is reserved for the assignment of CARS Pickup and Television Pickup stations on a primary co-equal basis within 50 kilometers of the television markets defined in § 76.53 of this chapter. The band 13.20–13.2125 GHz is reserved exclusively for the assignment of Television Pickup stations on a primary basis. Fixed stations licensed prior to April 16, 2003, may continue operation under their current status on channels in the 13.15–13.2125 GHz band, subject to periodic license renewals.

* * * * *

60. Section 78.36 is revised to read as follows:

§ 78.36 Frequency coordination.

(a) Coordination of all frequency assignments for fixed stations in all bands above 2110 MHz, and for mobile (temporary fixed) stations in the bands 6425–6525 MHz and 17.7–19.7 GHz, will be in accordance with the procedure established in paragraph (b) of this section, except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree. Coordination of all frequency assignments for all mobile (temporary fixed) stations in all bands above 2110 MHz, except the bands 6425–6525 MHz and 17.7–19.7 GHz, will be conducted in accordance with the procedure established in paragraph (b) of this section or with the procedure in paragraph (d) of this section. Coordination of all frequency assignments for all fixed stations in the band 1990–2110 MHz will be in accordance with the procedure established in paragraph (c) of this section. Coordination of all frequency assignments for all mobile (temporary fixed) stations in the band 1990–2110 MHz will be conducted in accordance with the procedure in paragraph (d) of this section.

(b) Frequency coordination for all fixed stations in all bands above 2110 MHz, and for all mobile (temporary fixed) stations in the bands 6425–6525 MHz and 17.7–19.7 GHz. For each frequency authorized under this part, the interference protection criteria in § 101.105(a), (b), and (c) of this chapter and the following frequency usage coordination procedures will apply:

(1) *General requirements.* Proposed frequency usage must be prior coordinated with existing licensees, permittees, and applicants in the area, and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth. Coordination must be completed prior to filing an application for regular authorization, or a major amendment to a pending application, or any major modification to a license. In coordinating frequency usage with stations in the fixed satellite service, applicants for stations in the bands 6425–6525 MHz and 17.7–19.7 GHz must also comply with the requirements of § 101.21(f). In engineering a system or modification thereto, the applicant must, by appropriate studies and analyses, select sites, transmitters, antennas and frequencies that will avoid interference in excess of permissible levels to other users. All applicants and licensees must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the

growth of systems as prior coordinated. The applicant must identify in the application all entities with which the technical proposal was coordinated. In the event that technical problems are not resolved, an explanation must be submitted with the application. Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures be taken to reduce the likelihood of interference in excess of permissible levels (such as the use of artificial site shielding) or would result in a reduction of quality or capacity of either system, the details thereof may be contained in the application.

(2) Coordination procedure guidelines are as follows:

(i) Coordination involves two separate elements: Notification and response. Both or either may be oral or in written form. To be acceptable for filing, all applications and major technical amendments must certify that coordination, including response, has been completed. The names of the licensees, permittees and applicants with which coordination was accomplished must be specified. If such notice and/or response is oral, the party providing such notice or response must supply written documentation of the communication upon request;

(ii) Notification must include relevant technical details of the proposal. At minimum, this should include, as applicable, the following:

(A) Applicant's name and address,

(B) Transmitting station name,

(C) Transmitting station coordinates,

(D) Frequencies and polarizations to be added, changed or deleted,

(E) Transmitting equipment type, its stability, actual output power, emission designator, and type of modulation (loading),

(F) Transmitting antenna type(s), model, gain and, if required, a radiation pattern provided or certified by the manufacturer,

(G) Transmitting antenna center line height(s) above ground level and ground elevation above mean sea level,

(H) Receiving station name,

(I) Receiving station coordinates,

(J) Receiving antenna type(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer,

(K) Receiving antenna center line height(s) above ground level and ground elevation above mean sea level,

(L) Path azimuth and distance,

(M) Estimated transmitter transmission line loss expressed in dB,

(N) Estimated receiver transmission line loss expressed in dB,

(O) For a system utilizing ATPC, maximum transmit power, coordinated transmit power, and nominal transmit power.

Note to Paragraph (b)(2)(ii): The position location of antenna sites shall be determined to an accuracy of no less than ±1 second in the horizontal dimensions (latitude and longitude) and ±1 meter in the vertical dimension (ground elevation) with respect to the National Spacial Reference System.

(iii) For transmitters employing digital modulation techniques, the notification should clearly identify the type of modulation. Upon request, additional details of the operating characteristics of the equipment must also be furnished;

(iv) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Any response to notification indicating potential interference must specify the technical details and must be provided to the applicant, in writing, within the 30-day notification period. Every reasonable effort should be made by all applicants, permittees and licensees to eliminate all problems and conflicts. If no response to notification is received within 30 days, the applicant will be deemed to have made reasonable efforts to coordinate and may file its application without a response;

(v) The 30-day notification period is calculated from the date of receipt by the applicant, permittee, or licensee being notified. If notification is by mail, this date may be ascertained by:

(A) The return receipt on certified mail;

(B) The enclosure of a card to be dated and returned by the recipient; or

(C) A conservative estimate of the time required for the mail to reach its destination. In the last case, the estimated date when the 30-day period would expire should be stated in the notification.

(vi) An expedited prior coordination period (less than 30 days) may be requested when deemed necessary by a notifying party. The coordination notice should be identified as ''expedited'' and the requested response date should be clearly indicated. However, circumstances preventing a timely response from the receiving party should be accommodated accordingly. It is the responsibility of the notifying party to receive written concurrence (or verbal, with written to follow) from affected parties or their coordination representatives.

(vii) All technical problems that come to light during coordination must be resolved unless a statement is included with the application to the effect that the applicant is unable or unwilling to resolve the conflict and briefly the reason therefore;

(viii) Where a number of technical changes become necessary for a system during the course of coordination, an attempt should be made to minimize the number of separate notifications for these changes. Where the changes are incorporated into a completely revised notice, the items that were changed from the previous notice should be identified. When changes are not numerous or complex, the party receiving the changed notification should make an effort to respond in less than 30 days. When the notifying party believes a shorter response time is reasonable and appropriate, it may be helpful for that party to so indicate in the notice and perhaps suggest a response date;

(ix) If, after coordination is successfully completed, it is determined that a subsequent change could have no impact on some parties receiving the original notification, these parties must be notified of the change and of the coordinator's opinion that no response is required;

(x) Applicants, permittees and licensees should supply to all other applicants, permittees and licensees within their areas of operations, the name, address and telephone number of their coordination representatives. Upon request from coordinating applicants, permittees and licensees, data and information concerning existing or proposed facilities and future growth plans in the area of interest should be furnished unless such request is unreasonable or would impose a significant burden in compilation;

(xi) Parties should keep other parties with whom they are coordinating advised of changes in plans for facilities previously coordinated. If applications have not been filed 6 months after coordination was initiated, parties may assume that such frequency use is no longer desired unless a second notification has been received within 10 days of the end of the 6 month period. Renewal notifications are to be sent to all originally notified parties, even if coordination has not been successfully completed with those parties; and

(xii) Any frequency reserved by a licensee for future use in the bands subject to this part must be released for use by another licensee, permittee, or applicant upon a showing by the latter that it requires an additional frequency and cannot coordinate one that is not reserved for future use.

(c) Frequency coordination for all fixed stations in the band 1990–2110 MHz. For each frequency authorized under this part, the following frequency usage coordination procedures will apply:

(1) *General requirements.* Applicants are responsible for selecting the frequency assignments that are least likely to result in mutual interference with other licensees in the same area. Applicants may consult local frequency coordination committees, where they exist, for information on frequencies available in the area. Proposed frequency usage must be coordinated with existing licensees and applicants in the area whose facilities could affect or be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth. Coordination must be completed prior to filing an application for regular authorization, for major amendment to a pending application, or for major modification to a license.

(2) To be acceptable for filing, all applications for regular authorization, or major amendment to a pending application, or major modification to a license, must include a certification attesting that all co-channel and adjacent-channel licensees and applicants potentially affected by the proposed fixed use of the frequency(ies) have been notified and are in agreement that the proposed facilities can be installed without causing harmful interference to those other licensees and applicants.

(d) Frequency coordination for all mobile (temporary fixed) stations in all bands above 1990 MHz, except the bands 6425–6525 MHz and 17.7–19.7 GHz. For each frequency authorized under this part, applicants are responsible for selecting the frequency assignments that are least likely to result in mutual interference with other licensees in the same area. Applicants may consult local frequency coordination committees, where they exist, for information on frequencies available in the area. In selecting frequencies, consideration should be given to the relative location of receive points, normal transmission paths, and the nature of the contemplated operation.

61. Section 78.101 is amended by revising the table in paragraph (a) and adding paragraph (c) to read as follows:

§ 78.101 Power limitations.

(a) * * *

Frequency band (MHz)	Maximum allowable transmitter power—mobile (W)	Maximum allowable EIRP [1,2]	
		Fixed (dBW)	Mobile (dBW)
2,025 to 2,110	20.0	.....	+35
6,425 to 6,525	20.0	.....	+35
6,875 to 7,125	20.0	.....	+35
12,700 to 13,250	1.5	+55	+45
17,700 to 18,600	.....	+55	.....
18,600 to 18,800[1]	.....	+35	.....
18,800 to 19,700	.....	+55	.....

[1] The power delivered to the antenna is limited to −3 dBW.
[2] Stations licensed based on an application filed before April 16, 2003, for EIRP values exceeding those specified above, may continue to operate indefinitely in accordance with the terms of their current authorizations, subject to periodic renewal.

* * * * *

(c) The EIRP of transmitters that use Automatic Transmitter Power Control (ATPC) shall not exceed the EIRP specified on the station authorization. The EIRP of non-ATPC transmitters shall be maintained as near as practicable to the EIRP specified on the station authorization.

§ 78.103 [Amended]

62. Section 78.103 is amended by removing the entry for 31,000 to 31,300 from the table in paragraph (e).

63. Section 78.105 is amended by revising the introductory text for paragraph (a), removing the entries for 31,000 to 31,300 and 38,600 to 40,000 and footnotes 2 and 3 from the table in paragraph (a)(1) removing paragraph (a)(4) and by redesignating paragraph (a)(5) as paragraph (a)(4) to read as follows:

§ 78.105 Antenna systems.

(a) For fixed stations operating in the 12.7–13.2 GHz and 17.7–19.7 GHz bands, the following standards apply:

* * * * *

64. Section 78.106 is revised to read as follows:

§ 78.106 Interference to geostationary-satellites.

Applicants and licensees must comply with § 101.145 of this chapter to minimize the potential of interference to geostationary-satellites.

65. Section 78.108 is amended by revising paragraph (b) to read as follows:

§ 78.108 Minimum path lengths for fixed links.

* * * * *

(b) For paths shorter than those specified in the Table, the EIRP shall not exceed the value derived from the following equation.

EIRP = MAXEIRP − 40 log(A/B) dBW

Where:

EIRP = The new maximum EIRP (equivalent isotropically radiated power) in dBW.

MAXEIRP = Maximum EIRP as set forth in the Table in § 74.636 of this part.

A = Minimum path length from the Table above for the frequency band in kilometers.

B = The actual path length in kilometers.

Note to Paragraph (b): For transmitters using Automatic Transmitter Power Control, EIRP corresponds to the maximum transmitter power available, not the coordinated transmit power or the nominal transmit power.

* * * * *

§ 78.111 [Amended]

66. Section 78.111 is amended by removing the entry for 31,000 to 31,300 from the table.

PART 101—FIXED MICROWAVE SERVICES

67. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

68. Section 101.113 is amended by revising the column headings and the entry for the 12,700–13,250 and adding 13,200–13,250 MHz frequency band in the table in paragraph (a) to read as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

Frequency band (MHz)	Maximum allowable EIRP [1,2]	
	Fixed [1,2] (dBW)	Mobile (dBW)
* * *	*	*
12,700–13,200 [4]	+50	.....
13,200–13,250 [4]	+55	.....
* * *	*	*

[1] Per polarization.

[2] For multiples address operations, *see* § 101.147. Remote alarm units that are part of a multiple address central station protection system are authorized a maximum of 2 watts.

* * * * *

69. Section 101.145 is amended by revising the introductory text, and the first sentence of paragraphs (b) and (c) to read as follows:

§ 101.145 Interference to geostationary-satellites.

These limitations are necessary to minimize the probability of harmful interference to reception in the bands 2655–2690 MHz, 5925–7075 MHz, and 12.7–13.25 GHz on board geostationary-space stations in the fixed-satellite service.

* * * * *

(b) *2655 to 2690 MHz and 5925 to 7075 MHz.* * * *

(c) *12.7 to 13.25 GHz.* * * *

* * * * *

70. Section 101.803 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 101.803 Frequencies.

* * * * *

(b) Communications common carriers in the Local Television Transmission Service may be assigned frequencies listed in §§ 74.602(a), 78.18(a)(6), and 78.18(a)(7) of this chapter to provide service to television broadcast stations, television broadcast network-entities, cable system operators, and cable network-entities. * * *

* * * * *

71. Section 101.807 is revised to read as follows:

§ 101.807 Transmitter power.

Stations in this service will not be authorized to use transmitters having a rated power output in excess of the limits set forth in § 101.113(b) and a standby transmitter having a rated power output in excess of that of the main transmitter with which it is associated will not be authorized. As an exception, operations on frequencies listed in §§ 74.602(a), 78.18(a)(6), and 78.18(a)(7) of this chapter are subject to the power limitations of §§ 74.636 and 78.101(a).

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Part III

Securities and Exchange Commission

17 CFR Parts 200 and 240

Customer Protection—Reserves and Custody of Securities; Delegation of Authority to the Director of the Division of Market Regulation; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 34–47480; File No. S7–20–02]

RIN 3235–AI51

Customer Protection—Reserves and Custody of Securities; Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting an amendment to its broker-dealer customer protection rule. Currently, broker-dealers are required to provide cash, U.S. Treasury bills or notes, or irrevocable bank letters of credit as collateral when borrowing securities from customers. The amendment allows the Securities and Exchange Commission to expand the categories of permissible collateral by order. In addition, the Securities and Exchange Commission is adopting a rule amendment delegating authority to the Director of the Division of Market Regulation to issue such orders.

EFFECTIVE DATE: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942–0131; Thomas K. McGowan, Assistant Director, 202/942–4886; or Randall W. Roy, Special Counsel, 202/942–0798, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting amendments to rule 15c3–3 [1] under the Securities Exchange Act of 1934 (''Exchange Act'') and rule 30–3 [2] of its Rules of Organization and Program Management.

I. Discussion

A. Introduction

On June 10, 2002, the Securities and Exchange Commission (''Commission'') proposed amending its broker-dealer customer protection rule, rule 15c3–3, and one of its authority delegation rules, rule 30–3.[3] The proposed amendments would allow the Commission to expand the categories of collateral broker-dealers may pledge when borrowing customer securities.[4] Today, the Commission is adopting the amendments.

The amendment to rule 15c3–3 provides that broker-dealers may pledge such collateral as the Commission designates by order after giving consideration to the collateral's liquidity, volatility, market depth, and location, and the issuer's creditworthiness. This will give the Commission greater flexibility to impose conditions on the pledging of certain collateral to account for differences among collateral types. This flexibility will permit the establishment of safeguards designed to ensure that the rule's objective—the receipt of full collateral by customers—is not compromised. The amendment also will allow for a wider range of broker-dealer assets to be deemed permissible collateral, thereby adding liquidity to the securities lending markets and lowering borrowing costs for broker-dealers. The amendment to rule 30–3 will allow the Commission to react sooner to changes in the securities lending markets.

B. Background

The Commission adopted rule 15c3–3 in 1972 in response to a congressional directive to create rules regarding, among other things, the acceptance, custody, and use of customer securities.[5] The rule requires broker-dealers to take steps to protect the securities that customers leave in their custody. These steps include the requirement that broker-dealers promptly obtain and thereafter maintain possession or control of all ''fully paid'' [6] and ''excess-margin'' [7] securities carried for the accounts of customers [8] (''customer securities''). The possession or control requirement is designed to ensure that broker-dealers do not put customers at risk by borrowing their securities to expand or otherwise further the broker-dealer's proprietary activities.

Paragraph (b)(3) of rule 15c3–3 sets forth conditions under which broker-dealers may borrow fully paid or excess margin securities from customers for their own use without violating the rule's possession or control requirement. These conditions include the requirement that broker-dealers and their lending customers enter into written agreements that (1) set forth the basis of compensation for the loans as well as the rights and liabilities of the parties in the borrowed securities, (2) require the broker-dealers to provide the lenders with schedules of the securities actually borrowed, (3) require the broker-dealers to provide the lenders with, at least, 100% collateral consisting exclusively of cash, United States Treasury bills and notes, or an irrevocable letter of credit issued by a bank, and (4) contain a prominent notice that the provisions of the Securities Investor Protection Act of 1970 [9] may not protect the lenders with respect to the securities loan transactions.[10] Moreover, the loaned securities and pledged collateral must be marked to market daily, and additional collateral posted if necessary to maintain the 100% collateralization requirement.[11] These requirements are designed so that borrowings of customer securities remain fully collateralized for the term of the loan.

C. Proposing Release and Comments

In addition to the collateral types currently permitted, the amendment to rule 15c3–3 would allow broker-dealers to pledge such other collateral as the Commission designates by order after giving consideration to the collateral's liquidity, volatility, market depth and location, and the issuer's creditworthiness. The relative weight given these factors will vary on a case-by-case basis. The Commission's orders may impose limitations and conditions on the use of a particular type of collateral depending on its characteristics. This will further the rule's goal of providing customers with full collateral while their loans remain outstanding.

The Commission received three comment letters in response to the proposing release—one from a broker-dealer that engages in borrowings of customer securities,[12] one from a bank

[1] 17 CFR 240.15c3–3.

[2] 17 CFR 200.30–3.

[3] *See* Exchange Act Release No. 34–46019 (June 3, 2002), 67 FR 39642 (June 10, 2002).

[4] The Commission proposed amendments to rule 15c3–3 to add certain categories of collateral in 1989. *See* Exchange Act Release No. 26608 (March 8, 1989), 54 FR 10680 (March 15, 1989). The Commission did not adopt the proposed amendments.

[5] Exchange Act Release No. 9856 (Nov. 10, 1972).

[6] Subparagraph (a)(3) of rule 15c3–3 defines ''fully paid securities'' as securities carried in any type of account for which the customer has made a full payment.

[7] Subparagraph (a)(5) of rule 15c3–3 defines ''excess margin securities'' as securities having a market value in excess of 140% of the amount the customer owes the broker-dealer and which the broker-dealer has designated as not constituting margin securities.

[8] Subparagraph (a)(1) of rule 15c3–3 defines the term ''customer.'' Generally, a customer is any person from whom or on whose behalf the broker-dealer has received or acquired securities for such person's securities account. The definition does not include general partners, directors, or principals of the broker-dealer, or other broker-dealers to the extent of they have proprietary accounts at the broker-dealer.

[9] 15 U.S.C. 78aaa *et seq.*

[10] Rule 15c3–3(b)(3).

[11] Rule 15c3–3(b)(3)(iii).

[12] Letter from Morgan Stanley & Co., dated August 7, 2002 (''Morgan Stanley letter'').

that lends its clients' securities to broker-dealers,[13] and a joint letter from two trade associations, which collectively represent broker-dealers, mutual fund companies and banks.[14] All three expressed support for the proposed amendment.[15]

In the proposing release, the Commission requested comment on whether authority to issue orders should be delegated to the Division. Two commenters provided comments on this proposal. Both expressed support for such a delegation of authority.[16]

The Commission identified in the proposing release categories of collateral being considered for an order should the amendment to rule 15c3–3 become effective.[17] It also set forth certain conditions for the use of these collateral types. The Commission sought comment on whether the collateral and conditions were appropriate. All commenters supported the issuance of such an order.[18] The Commission intends to issue an order exempting these collateral types after the amendment becomes effective.

The Commission also sought comment on whether institutional lenders of securities should be allowed to negotiate collateral agreements other than those required by rule 15c3–3. Two of the commenters responded that the Commission should consider whether the minimum requirements are necessary for certain narrowly defined institutional customers. However, they also urged the Commission to act quickly on the amendment as proposed and not let such consideration delay its adoption.[19] They suggested that any changes to address institutional lenders be accomplished through separate orders or rulemakings. Due to the complexities of the issue and in order to act expeditiously on the proposed amendment, further consideration of any change to the collateral requirements for institutional lenders will be addressed by subsequent Commission action.

D. Final Rule

The Commission is adopting a final rule amendment substantially in the form proposed in the proposing release.[20] The amendment adds language to paragraph (b)(3) of rule 15c3–3 providing that broker-dealers may pledge ''such other collateral as the Commission designates as permissible by order as necessary or appropriate in the public interest and consistent with the protection of investors after giving consideration to the collateral's liquidity, volatility, market depth and location, and the issuer's creditworthiness.'' This is in addition to the categories of collateral (cash, U.S. treasury bills and notes, and bank letters of credit) currently permitted.

II. Paperwork Reduction Act

The Commission stated in the proposing release that the amendment will not require a new collection of information. The amendment does not alter the range of collateral that a broker-dealer can pledge when borrowing customer securities, but instead amends the rule to establish criteria that the Commission will consider when issuing an order allowing additional collateral. The comment letters did not disagree with this assessment. In connection with rule 15c3–3, the Commission previously submitted to the Office of Management and Budget, pursuant to the Paperwork Reduction Act, a request for approval and received an OMB control number for the rule, OMB control number 3235–0078.

III. Costs and Benefits of the Rule Amendments

In the proposing release, the Commission requested comment on the costs and benefits of the amendment to rule 15c3–3. The Commission estimated that the primary benefits of the amendment would be lowered borrowing costs and increased liquidity in the securities lending markets. All three commenters concurred with this estimate.[21] Two commenters also pointed out that the amendment will increase their ability to compete in foreign securities markets.[22]

The Commission estimated that there would not be any direct costs associated with the amendment because of its deregulatory nature. The Commission did not receive any comments on this estimate.

A. Benefits

The primary benefits of the amendment should be lowered borrowing costs and increased liquidity in the securities lending markets, and greater opportunity for U.S. firms to compete abroad. The current collateral requirements in rule 15c3–3 make it more economical for broker-dealers to borrow securities from other broker-dealers (which are not customers) since customers must be provided with a limited range of collateral. In such a case, the broker-dealer would be limited to borrowing the securities from broker-dealers agreeable to accepting another type of collateral. Expanding the categories of collateral will increase the supply of eligible lenders, which should decrease costs as a consequence of greater competition.

On the other side, customers will have the opportunity to enter into more lending transactions with broker-dealers. This will allow them to earn the fees associated with such transactions and thereby realize greater returns on their securities portfolios. The increased opportunities to borrow and lend securities should add liquidity to the securities lending markets.

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[13] Letter from State Street Bank and Trust Company, dated July 31, 2002 (''State Street letter'').

[14] Letter from The Bond Market Association, and Securities Industry Association, dated July 25, 2002 (''Associations letter'').

[15] *See* Morgan Stanley letter (''We strongly support the proposed amendments to rule 15c3–3 and urge the Commission to adopt them without delay.''); State Street letter (''State Street strongly supports and welcomes the Proposed Amendment.''); Associations letter (''The Associations fully support the Commission's proposed amendment.'').

[16] *See* Morgan Stanley letter (''[Delegation] will enable the Commission to be more responsive to short-term market conditions—including liquidity crises and settlement failures—as well as longer-term developments, such as evolving approaches to risk management and tightening settlement periods.''); State Street letter (''State Street also supports and welcomes the delegation of the Commission's authority to the Division of Market Regulation.'').

[17] The categories of collateral identified in the proposing release were: ''Government securities'' as defined in sections 3(a)(42)(A) and (B) of the Exchange Act; certain ''government securities'' meeting the definition in section 3(a)(42)(C) of the Exchange Act; securities issued or guaranteed by certain Multilateral Development banks; ''mortgage related securities'' as defined in section 3(a)(41) of the Exchange Act; certain negotiable certificates of deposit and bankers acceptances; foreign sovereign debt securities; foreign currency; and certain corporate debt securities.

[18] *See* Morgan Stanley letter (''Morgan Stanley also supports prompt issuance of the Commission's proposed order. Permitting the assets described in the order to be used as collateral for securities borrowing transactions would not, in our view, undermine in any way the Commission's customer protection objectives.''). State Street letter; Associations letter (''[T]he conditions specified for each of the collateral types are appropriate to meet the goal of ensuring that borrowings of customer securities remain fully collateralized.'').

[19] *See* State Street letter; Associations letter.

[20] After the rule becomes effective, the Commission will consider whether to issue an order similar to the draft order included in the proposing release. *See* footnote 18 and accompanying text.

[21] *See* Morgan Stanley letter (''[T]he ability to use these new types of collateral will provide substantially greater flexibility and reduced borrowing costs for U.S. broker-dealers, as well as increased liquidity in the securities markets.''); State Street letter (''[T]he prompt issuance of the Final Rule and Collateral Orders will facilitate and promote efficient securities markets, decrease costs, increase competition and enhance the liquidity of securities markets.''); Associations letter (''The Associations believe that these collateral types would materially increase liquidity and decrease borrowing costs * * *'').

[22] *See* Morgan Stanley letter; Associations letter.

B. Costs

There should not be any direct costs associated with the amendment. It will have no impact on broker-dealers that do not borrow customer securities or customers that do not lend securities. For those who participate in such transactions, the amendment is not imposing any changes as to how they must be structured. As described above, it will provide greater opportunities; however, it also maintains the status quo, and therefore, broker-dealers and customers do not have to avail themselves of these new opportunities. Broker-dealers can continue to pledge the types of collateral currently allowed under the rule and, while new categories of collateral may have risk characteristics that differ from those applicable to currently permitted collateral, customers could choose not to accept new categories of collateral.

IV. Effects on Competition, Efficiency, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission to consider the impact on competition of any rule proposed under that Act. In addition, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in the furtherance of the purposes of the Exchange Act.

The Commission stated in the proposing release, and continues to believe, that the proposed amendment should improve efficiency, competition, and capital formation by adding liquidity to the securities lending markets, lowering the costs of borrowing securities, and providing investors with the opportunity to realize greater returns on their securities portfolios. All commenters agreed that the amendment would increase liquidity and lower borrowing costs.[23] In addition, the Commission stated that the amendment should have no anticompetitive effects not necessary or appropriate in furtherance of the purposes of the Act because it will apply equally to all broker-dealers. The Commission did not receive any comments on this assessment of the possibility of anticompetitive effects. Therefore, the Commission believes that the amendment should have no anticompetitive effects not necessary or appropriate in furtherance of the purposes of the Act.

V. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act[24] requires an agency to undertake an initial regulatory flexibility analysis of the effects of proposed rules and rule amendments on small entities, unless the agency certifies that the rules and rule amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.[25] The Chairman of the Commission has certified that the amendment to rule 15c3–3 would not have a significant economic impact on a substantial number of small entities.[26] The final amendment is identical to the proposed amendment. Accordingly, there have been no changes to the proposal that would alter the basis upon which the certification was made.

VI. Amendment to Rule 30–3

The Commission has adopted an amendment to rule 30–3 of its rules of Organization and Program Management governing delegations of authority to the Director of the Division of Market Regulation (''Director'').[27] The amendment divides paragraph (a)(10) of rule 30–3 into two paragraphs, (a)(10)(i) and (ii). Paragraph (a)(10)(i) now contains the previously existing delegation of authority in paragraph (a)(10), which authorizes the Director to find and designate certain broker-dealer accounts as control locations for the purposes of paragraph (c)(7) of rule 15c3–3.[28] Paragraph (a)(10)(ii) contains a new delegation authorizing the Director, under section 36(a) of the Exchange Act, to exempt types of collateral from certain requirements in paragraph (b)(3) of rule 15c3–3, provided the collateral exempted by the Division has similar characteristics to collateral previously exempted by the Commission.

Section 36(a) provides, in pertinent part, that the Commission may by rule, regulation or order exempt any classes of persons, securities or transactions from any rule or regulation under the Exchange Act, provided the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. The Commission is delegating to the Director its exemptive authority pursuant to section 36(a) for the limited purpose of exempting collateral types from certain requirements set forth in paragraph (b)(3) of rule 15c3–3.

The delegation of authority to the Director is intended to conserve Commission resources by permitting the staff to review and act on exemptive applications under section 36(a) when appropriate. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate. In addition, under section 4A(b) of the Exchange Act, the Commission retains discretionary authority to review, upon its own initiative or upon application by a party adversely affected, any exemption granted or denied by the Division pursuant to delegated authority. Information concerning the filing of exemptive relief applications can be found in Release No. 34–39624; rule 240.0–12, 17 CFR 240.0–12.

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this amendment to rule 30–3 relates solely to agency organization, procedure, or practice. Accordingly, notice and opportunity for public comment, as well as publication 30 days before its effective date are unnecessary. Because notice and comment are not required for this final rule, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act.

The amendment to rule 30–3 does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended. In addition, it will not impose any costs on the public.

VII. Statutory Authority

The amendments are made pursuant to authority conferred on the Commission by the Exchange Act, including sections 15(c)(3), 23(a) and 36.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (government agencies), Organization and functions (government agencies).

17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

In accordance with the foregoing, the Commission amends title 17, chapter II of the *Code of Federal Regulations* as follows:

[23] *Id.*

[24] 5 U.S.C. 603(a).

[25] 5 U.S.C. 605(b).

[26] *See* Proposing Release, 67 FR 39643, Appendix A.

[27] 17 CFR 200.30–3.

[28] 17 CFR 240.15c3–3.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority section for Part 200, subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

2. Section 200.30–3 is amended by revising paragraph (a)(10) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(10) (i) Pursuant to Rule 15c3–3 (§ 240.15c3–3 of this chapter) to find and designate as control locations for purposes of Rule 15c3–3(c)(7) (§ 240.15c3–3(c)(7) of this chapter) certain broker-dealer accounts which are adequate for the protection of customer securities.

(ii) Pursuant to section 36(a) of the Act (15 U.S.C. 78mm(a)) to review and, either unconditionally or on specified terms and conditions, grant or deny exemptions from the collateral requirements of paragraph (b)(3) of Rule 15c3–3 of the Act (§ 240.15c3–3 of this chapter) for a type of collateral after concluding that the characteristics of such collateral are substantially comparable to the characteristics of a type of collateral previously exempted by the Commission.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.15c3–3 is amended by removing the authority citation following § 240.15c3–3 and revising paragraph (b)(3)(iii) to read as follows:

§ 240.15c3–3 Customer protection—reserves and custody of securities.

* * * * *

(b) *Physical possession or control of securities.* * * *

(3) * * *

(iii) Specifies that the broker or dealer:

(A) Must provide to the lender, upon the execution of the agreement or by the close of the business day of the loan if the loan occurs subsequent to the execution of the agreement, collateral, which fully secures the loan of securities, consisting exclusively of cash or United States Treasury bills and Treasury notes or an irrevocable letter of credit issued by a bank as defined in section 3(a)(6)(A)–(C) of the Act (15 U.S.C. 78c(a)(6)(A)–(C)) or such other collateral as the Commission designates as permissible by order as necessary or appropriate in the public interest and consistent with the protection of investors after giving consideration to the collateral's liquidity, volatility, market depth and location, and the issuer's creditworthiness; and

(B) Must mark the loan to the market not less than daily and, in the event that the market value of all the outstanding securities loaned at the close of trading at the end of the business day exceeds 100 percent of the collateral then held by the lender, the borrowing broker or dealer must provide additional collateral of the type described in paragraph (b)(3)(iii)(A) of this section to the lender by the close of the next business day as necessary to equal, together with the collateral then held by the lender, not less than 100 percent of the market value of the securities loaned; and

* * * * *

By the Commission.

Dated: March 11, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6241 Filed 3–14–03; 8:45 am]

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Federal Register

Monday,
March 17, 2003

Part IV

Department of Housing and Urban Development

24 CFR Parts 25, 28, et al.
Inflation Adjustment of Civil Money Penalty Amounts; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 25, 28, 30, 81, 180, 3282, and 3500

[Docket No. FR–4787–F–01]

RIN 2501–AC91

Inflation Adjustment of Civil Money Penalty Amounts

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's civil money penalty regulations to make inflation adjustments to the civil money penalties imposed by HUD as required by statute. The applicable statute mandates the adjustments and the formula used to calculate them.

DATES: Effective Date: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Dane Narode, Deputy Chief Counsel for Administrative Proceedings, Departmental Enforcement Center, Department of Housing and Urban Development, 1250 Maryland Avenue, SW., Suite 200, Washington, DC 20024. Telephone (202) 708–2350 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. This Final Rule

The changes made by this rule will increase the amount of civil money penalties, consistent with statutory authority.

A. Inflation Adjustment to the Civil Money Penalties

The Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) (FCPIA Act), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701), requires each federal agency to make inflation adjustments to their maximum civil money penalties. This rule raises the maximum penalties that HUD may impose upon violators with respect to several HUD regulations found in 24 CFR parts 25, 28, 30, 81, 3282, and 3500. For several HUD regulations that address civil money penalties (*e.g.*, 24 CFR 4.28, 30.20, 30.25, 30.36, 30.65, 30.68, and 81.83(b)(2)), no amendment is necessary because application of the statute's formula results in no increase to the penalty. The FCPIA Act provides for a ''rounding-off,'' achieved by using multiples from $10 to $25,000, of the increase determined by use of the factor derived from calculating the periodic increase in the Consumer Price Index (CPI). (*See* 28 U.S.C. 2461(5)(a).) Consequently, in those instances in which the increased dollar amount is determined to be less than the applicable multiple, the existing penalty is unchanged. The following regulations are revised by this rule.

In § 28.10, the maximum penalty for making a false claim or written statement, as described in the regulation, is increased from $5,500 to $6,500.

In § 30.35(c), the maximum penalties that the Mortgagee Review Board may impose for a series of violations identified in the regulations are increased from $5,500 to $6,500 per violation, and from $1,100,000 to $1,250,000 for all violations committed during any one-year period.

In § 30.40, the maximum penalty that HUD may impose upon a mortgagee or a holder of a guarantee certificate who violates the statutory provisions concerning loan guarantees for Indian housing is increased from $5,000 to $6,000 per violation, and from $1,100,000 to a maximum of $1,250,000 for all violations committed during any one-year period.

In § 30.45(g), the maximum penalty that may be imposed upon a mortgagor of a multifamily property or on any person in a relationship with the mortgagor as described in the regulations at paragraph (c) of § 30.45 is increased to $32,500 per violation.

In § 30.50(c), the maximum penalty that may be imposed against a Government National Mortgage Association (GNMA) issuer or custodian for a violation of any provision of 12 U.S.C. 1723i(b) or other authorities cited in the regulations is increased from $5,500 to $6,500 per violation, and from $1,100,000 to $1,250,000 for all violations committed during any one-year period.

In § 30.55(c), the maximum penalty for each violation of any provision of the Interstate Land Sales Full Disclosure Act remains unchanged at $1,100, but the one-year maximum per person increases from $1,100,000 to $1,250,000.

In § 30.60(c), the maximum penalty that may be imposed upon any dealer or loan correspondent for, among other things, falsifying statements or making false representations in violation of section 2(b)(7) of the National Housing Act (12 U.S.C. 1703(b)(7)) is increased from $5,500 to $6,500 for each violation, and from $1,100,000 to a maximum of $1,250,000 during any one-year period.

In § 81.83(b)(1), the maximum penalty that the Secretary may impose upon a Government Sponsored Enterprise (GSE) is increased from $25,000 to $30,000 for each day an identified failure occurs.

In §§ 180.670(b)(3)(A)(2) and (3), the maximum penalty that the Administrative Law Judge (ALJ) may impose upon a respondent who is found to have engaged in a discriminatory housing practice is increased from $27,500 to $32,500, and from $55,000 to $60,000.

In §§ 180.671(a)(2) and (3), the maximum penalty that the ALJ may impose upon a respondent who is found to have engaged in a discriminatory housing practice is increased from $27,500 to $32,500, and from $55,000 to $60,000.

In § 3282.10, the maximum penalty for each violation of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 *et seq.*) remains unchanged at $1,100. The one-year maximum for any related series of violations occurring within one year from the date of the first violation is increased from $1,100,000 to $1,250,000.

In § 3500.17(m)(1), the penalty for a servicer's failure to submit to a borrower an initial or annual escrow account statement is increased from $55 to $65 for each such violation. The total of assessed penalties may not exceed $120,000 (from the existing total of $110,000) for violations that occur during any consecutive 12-month period.

B. Technical Correction to 24 CFR 25.12

In addition to revising HUD's civil money penalties to make inflation adjustments as required by statute, this rule makes a technical correction to 24 CFR 25.12. Section 25.12 provides that the Mortgagee Review Board is authorized to impose civil money penalties and refers the reader to 24 CFR 30.320 for a list of violations for which a civil money penalty may be imposed. HUD published a final rule on September 24, 1996 (61 FR 50208), that removed § 30.320 from 24 CFR part 30. In part 30, subpart B now contains a separate section identifying each category of user that is subject to civil money penalties (*e.g.*, Federal Housing Administration approved lenders and mortgagees, multifamily and part 202 mortgagors, GNMA issuers and custodians). This rule, therefore, removes the reference to § 30.320 in § 25.12 and replaces it with the appropriate reference to subpart B (Violations) of part 30.

II. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's

regulations on rulemaking at 24 CFR part 10. Part 10, however, provides in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary or contrary to the public interest.''

HUD finds that good cause exists to publish this rule for effect without soliciting public comment in that prior public procedure is ''unnecessary.'' This final rule merely follows the statutory directive in the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) to make periodic increases in HUD's civil money penalties by applying the adjustment formula established in the statute. Accordingly, because calculation of the increases is formula-driven, HUD has no discretion in updating the regulations to reflect the maximum allowable penalties derived from application of the formula. HUD emphasizes that this rule only addresses the matter of the calculation of the maximum civil money penalties for the respective violations described in the regulations. This rule does not address the issue of the Secretary's discretion to impose or not to impose a penalty, nor the procedures that HUD must follow in initiating a civil money penalty action.

III. Findings and Certifications

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The reason for HUD's determination is that all entities, small or large, will be subject to the same penalties as established by statute and implemented by this rule. There are not any unusual procedures that would need to be complied with by small entities.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c), this rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

List of Subjects

24 CFR Part 25

Administrative practice and procedure, Loan programs '' housing and community development, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

24 CFR Part 30

Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Mortgages, Penalties.

24 CFR Part 81

Accounting, mortgages, Reporting and recordkeeping requirements, Securities.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil Rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Mortgages, Reporting and recordkeeping requirements.

24 CFR Part 3500

Consumer protection, Housing, Mortgages, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 25, 28, 30, 81, 180, 3282, and 3500 to read as follows:

PART 25—MORTGAGEE REVIEW BOARD

1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 1708(c), 1708(d), 1709(s), 1715b and 1735(f)–14; 42 U.S.C 3535(d).

2. Revise § 25.12 to read as follows:

§ 25.12 Civil money penalties.

The Board is authorized pursuant to section 536 of the National Housing Act (12 U.S.C.1735(f)–14) to impose civil money penalties upon lenders and mortgagees, as set forth in 24 CFR part 30. The violations for which a civil money penalty may be imposed are listed in subpart B (Violations) of part 30. Hearings to challenge the imposition of civil money penalties shall be conducted according to the applicable rules of 24 CFR part 30.

PART 28—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

3. The authority citation for part 28 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801; 42 U.S.C. 3535(d).

4. Amend § 28.10 by revising the introductory text of paragraphs (a) and (b)(1) to read as follows:

§ 28.10 Basis for civil penalties and assessments.

(a) *Claims.* A civil penalty of not more than $6,500 may be imposed upon a person who makes a claim that the person knows or has reason to know:

* * * * *

(b) *Statements.* (1) A civil penalty of up to $6,500 may be imposed upon a person who makes a written statement that:

* * * * *

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

5. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

6. Amend § 30.35 by revising paragraph (c) to read as follows:

§ 30.35 Mortgagees and lenders.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $6,500 for each violation, up to a limit of $1,250,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

7. Amend § 30.40 by revising paragraph (c) to read as follows:

§ 30.40 Loan guarantees for Indian housing.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $6,000 for each violation, up to a limit of $1,250,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

8. Amend § 30.45 by revising paragraph (g) to read as follows:

§ 30.45 Multifamily and Section 202 or 811 mortgagors.

* * * * *

(g) *Maximum penalty.* The maximum penalty for each violation under paragraph (c) of this section is $32,500.

* * * * *

9. Amend § 30.50 by revising paragraph (c) to read as follows:

§ 30.50 GNMA issuers and custodians.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $6,500 for each violation, up to a limit of $1,250,000 during any one-year period. Each violation shall constitute a separate violation with respect to each pool of mortgages.

10. Amend § 30.55 by revising paragraph (c) to read as follows:

§ 30.55 Interstate Land Sales violations.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $1,100 for each violation, up to a limit for any particular person of $1,250,000 during any one-year period. Each violation shall constitute a separate violation as to each sale or lease or offer to sell or lease.

11. Amend § 30.60 by revising paragraph (c) to read as follows:

§ 30.60 Dealers or loan correspondents.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $6,500 for each violation, up to a limit for any particular person of $1,250,000 during any one-year period.

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

12. The authority citation for part 81 continues to read as follows:

Authority: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641: 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 3601–3619.

13. Amend § 81.83 by revising paragraph (b)(1) to read as follows:

§ 81.83 Civil money penalties.

* * * * *

(b) * * *

(1) For any failure described in paragraph (a)(1) of this section, $30,000 for each day that the failure occurs; and

* * * * *

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

14. The authority citation for part 180 continues to read as follows:

Authority: 29 U.S.C.794; 42 U.S.C. 2000d–1, 3535(d), 3601–3619, 5301–5320, and 6103.

15. Amend § 180.670 by revising paragraphs (b)(3)(iii)(A)(*2*) and (*3*) to read as follows:

§ 180.670 Initial decision of ALJ.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(A) * * *

(*2*) $32,500, if the respondent has been adjudged to have committed one other discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, state, or local government agency, and the adjudication was made during the five-year period preceding the date of filing of the charge.

(*3*) $60,000, if the respondent has been adjudged to have committed two or more discriminatory housing practices in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, and the adjudications were made during the seven-year period preceding the date of filing of the charge.

* * * * *

16. Amend § 180.671 by revising paragraphs (a)(2) and (3) to read as follows:

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) * * *

(1) * * *

(2) $32,500, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the five-year period preceding the date of filing of the charge.

(3) $60,000, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the seven-year period preceding the date of filing of the charge.

* * * * *

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

17. The authority citation for part 3282 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 42 U.S.C. 5424; and 42 U.S.C. 3535(d).

18. Revise § 3282.10 to read as follows:

§ 3282.10 Civil and criminal penalties.

Failure to comply with these regulations may subject the party in question to the civil and criminal penalties provided for in section 611 of the Act, 42 U.S.C. 5410. The maximum amount of penalties imposed under section 611 of the Act shall be $1,100 for each violation, up to a maximum of $1,250,000 for any related series of violations occurring within one year from the date of the first violation.

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

19. The authority citation for part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq;* 42 U.S.C. 3535(d).

20. Amend § 3500.17 by revising paragraph (m)(1) to read as follows:

§ 3500.17 Escrow accounts.

* * * * *

(m) *Penalties.* (1) A servicer's failure to submit to a borrower an initial or annual escrow account statement meeting the requirements of this part shall constitute a violation of section 10(d) of RESPA (12 U.S.C. 2609(d)) and this section. For each such violation, the Secretary shall assess a civil penalty of 65 dollars ($65), except that the total of the assessed penalties shall not exceed $120,000 for any one servicer for violations that occur during any consecutive 12-month period.

* * * * *

Dated: February 24, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–6320 Filed 3–14–03; 8:45 am]

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Federal Register

Monday,
March 17, 2003

Part V

Department of Housing and Urban Development

24 CFR Part 207
Mortgage Insurance Premiums in Multifamily Housing Programs; Final Rule

DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

24 CFR Part 207

[Docket No. FR–4679–F–03]

RIN 2502–AH64

Mortgage Insurance Premiums in Multifamily Housing Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, the prior interim rule published in the **Federal Register** on July 2, 2001, which revised Federal Housing Administration (FHA) regulations to permit the Secretary to set mortgage insurance premiums by program, within the full range of HUD's statutory authority, through notice. Premiums for Fiscal Year (FY) 2003 were announced in an August 30, 2002, **Federal Register** notice published.

DATES: Effective Date: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, at (202) 708–1142 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 2, 2001, HUD issued an interim rule revising the regulatory system for establishing mortgage insurance premiums. (See 66 FR 35072.) Rather than fixing a specific premium, expressed as a percentage of the outstanding principal balance on the mortgage loan, the interim rule authorizes HUD to set a premium anywhere within the range permitted by statute, that is, between .25 percent and 1 percent of the outstanding principal balance. Specific premium rates would be set by subsequent notice, which would provide a 30-day period for public comment. More detailed background information can be found in the preamble to the interim rule at 66 FR 35070–35072. The notice that followed the July 2, 2001, interim rule, and published on August 30, 2002 (67 FR 55859), set the actual premiums for FY 2002 and FY 2003.

II. This Final Rule

This final rule adopts the interim rule without change.

III. Public Comments

HUD received five public comments on the interim rule and the accompanying notice. Four comments were from housing and mortgage industry trade groups, and one was from a law firm. The commenters addressed both rulemaking concerns and substantive concerns regarding the new mortgage insurance premium rates and the method of establishing rates by notice.

A. Rulemaking Issues

1. Interim Rulemaking

Comment: Four commenters objected to the use of interim rulemaking in this case. Two commenters stated that this type of change is highly significant to program participants and requires HUD to have the benefit of public comment. One of these commenters further stated that the purpose of advance public notice is to ensure public participation in rules of substantial import, such as this one. Without the benefit of public comment, Congress and the public cannot be assured of fair consideration of all significant impacts of the interim rule.

This commenter also stated that this rule does not fall into any rulemaking exception in the Administrative Procedure Act (APA) or HUD's rulemaking regulations at 24 CFR part 10. The commenter stated that program shutdown does not constitute ''good cause'' to dispense with regular public rulemaking procedures because decreasing credit subsidy is not a new crisis. The commenter stated that this has happened in the past and is something with which program participants are familiar. The commenter stated that, in the past, similar situations have always been resolved by appropriate legislative action in Congress. In addition, the new fiscal year is only weeks away and new credit subsidy will be available.

HUD Response: Unlike prior fiscal years, the amount of credit subsidy that Congress appropriated for FY 2002 would not have sufficed to keep the programs requiring credit subsidy in operation for the duration of the fiscal year. Additionally, HUD believes this situation is likely to recur. Therefore, an immediate change in the credit subsidy structure was necessary, in order for FHA's major section 221(d)(4) and certain other programs to be able to operate without credit subsidy in future fiscal years. Notwithstanding the commenter's opinion that participants have become used to repeated program shutdowns, HUD does not believe that an environment of repeated shutdowns is an appropriate way to operate mortgage insurance programs, and that good cause existed to remedy this situation in the most expeditious manner possible, and indeed that it would have been contrary to the public interest not to do so.

Comment: Two commenters stated that the ''good cause'' exemption is not met because the lack of credit subsidy could have been addressed in another way, which is by taking advantage of an emergency credit subsidy allocation of $40 million, but the Department decided not to take this action. The commenters stated that issuance of the accompanying notice was based on the same faulty justification for interim rulemaking.

HUD Response: The Conference Report (H.R. Conf. Rep. 106–1033) that accompanied the FY 2001 Consolidated Appropriations Act (Pub. L. 106–554; approved December 21, 2000), was highly critical of HUD for being in the situation where the emergency appropriation might have to be used. (See House Report 106–1033, at 331–332.) In order to access the emergency appropriation, HUD would have had to request the President to transfer to Congress an official budget request including a designation of the amount as an emergency requirement. While HUD believes that it is important that there be sufficient credit subsidy for its housing programs, HUD does not believe that the shortfall rose to the level of an emergency, particularly as there are other solutions.

Furthermore, use of ''ad hoc'' appropriations will not solve the long-term credit subsidy problem. For example, Congress need not approve HUD's requests for such appropriations (as in the case of HUD's request for a non-emergency supplemental appropriation in FY 2001). Rather, the credit subsidy problem can best be solved by the approach of adjusting mortgage insurance premiums (MIP) through regulation so as to decrease the need for credit subsidy.

Comment: Two of the commenters stated that the use of abbreviated comment procedures for future MIP changes also would violate the APA. One commenter stated that by removing future premium changes from full notice and comment rulemaking, the rule would make them subject to the ''whim'' of the Department. The commenter stated that since changes in the premium can affect the viability of housing projects and the rents of the

tenants, there should be an opportunity to comment prior to changing the premium. Two commenters stated that a full notice and comment procedure would allow those affected to comment on both the credit subsidy analysis and the effect premium changes would have on the program and the families served.

HUD Response: A 30-day public comment period can be sufficient even for a proposed rule under the APA. The APA provides no specified minimum time period for public comments (although, for proposed rules, HUD's regulations at 24 CFR 10.1 state a general policy of a 60-day comment period, which may be abbreviated or extended for reasons provided by HUD). HUD finds that a 30-day period is sufficient time for comments to the MIP notices, and therefore, this time period is not altered by this final rule. HUD will give appropriate consideration to all comments received. HUD declines to adopt any change to the interim notice procedure as a result of this comment.

2. Regulatory Flexibility Act

Comment: Two commenters stated that the rule violated the Regulatory Flexibility Act (5 U.S.C. 605(b)). One commenter stated that the certification under the Act was insufficient because it was not sufficiently based on facts as required by the statute. Another commenter stated that HUD had available a course of action that would have been less burdensome to small entities, which was use of the $40 million emergency credit subsidy. The commenters stated that the accompanying notice was faulty for this same reason.

HUD Response: Section 605(b) of the Regulatory Flexibility Act requires that a certification that a proposed rule will not have a significant economic impact on a substantial number of small entities be accompanied by ''a statement providing the factual basis for such certification.'' HUD provided its factual basis in the preamble to the interim rule.

Furthermore, for reasons stated in HUD's response to an earlier comment on HUD's use of a good cause exception to proposed rulemaking (above), HUD does not believe use of the $40 million emergency appropriation was an appropriate alternative.

B. Substantive Issues

1. Program Continuity

Comment: One commenter stated that the rule does not meet the expressed purpose of ensuring program continuity. This commenter stated that now that HUD can change the mortgage insurance premium ''in a matter of days,'' the new rule actually would create more uncertainty about the program than when the rate was set by rule. The commenter stated that the only way to ensure program continuity is by calculating an adequate amount of credit subsidy. Another commenter agreed, stating that the authority to increase MIPs on 30 days' notice undermines confidence in the FHA as a stable financing vehicle. This commenter stated that projects can take months or years to plan, and it is important that there be enough time to re-evaluate and re-underwrite projects when MIP increases occur. This commenter stated that an increase in MIPs should occur no more often than annually, and be preceded by 180 days prior notice.

HUD Response: HUD recognizes that applicants for mortgage insurance need to know the mortgage insurance premium applicable to their proposed project as far in advance as possible. Mortgage insurance premium changes are typically included in the proposed HUD budget announced in February of each year. Therefore, the industry will have received notice through the annual budget process. Additionally, any increase in MIP will generally not be effective until October 1, of each year, the start of the federal government's fiscal year.

Any decrease in premium rates will be made as soon as possible consistent with regulatory and budgetary requirements. If increases and decreases in premiums are combined in one notice, HUD reserves the right to treat the increases and decreases under identical time frames.

2. Other Negative Effect on Programs

Comment: One commenter stated that the increase in premiums in the rule and accompanying notice would have a negative effect on the Section 221(d)(3) insurance program for cooperatives. The commenter stated that because of the high mortgage insurance premium, some low- and moderate-income families without Section 8 assistance will not be able to afford to buy into cooperatives. The commenter stated that, conversely, for Section 8 residents, the increase in premiums will result in higher Section 8 costs to the government, resulting in no net savings.

HUD Response: For FY 2002, Congress appropriated $15 million in credit subsidy. Of this amount, Congress allocated $6,919,000, for the Section 221(d)(3) program for nonprofit sponsors and cooperatives to construct or substantially rehabilitate multifamily housing. The increase in mortgage insurance premiums lowered the Section 221(d)(3) credit subsidy rate and allowed more mortgages to be insured. Cooperatives have the option of using Section 213, which does not require credit subsidy and has a 50 basis point premium.

Comment: The proposed increase would further depress the production of much-needed rental housing and negatively affect the quality of life of working families. This commenter stated that the FHA plays a ''unique role'' in increasing the willingness of developers to build in harder-to-serve areas. The timing of the MIP increase will have a negative effect during a ''national crisis'' in rental housing production. It will further depress the production of much-needed housing. The commenter stated that, according to HUD's FY 2002 budget, HUD predicted that $3 billion in FHA-insured 221(d)(4) commitments would have been issued in FY 2002. The 30 basis point increase in MIP will amount to increased costs of $105 million (present value of the increase over 40 years) on new multifamily projects. The increased costs will either result in fewer projects being built or will be absorbed by tenants through rent increases.

HUD Response: An increase in the MIP for Section 221(d)(4) was necessary to continue to operate the program without the need for credit subsidy. A large number of Section 221(d)(4) projects that could not obtain credit subsidy in FY 2001 received firm commitments in FY 2002 at the higher premium. HUD believes that providing more housing under its programs is a benefit that outweighs the slightly higher insurance premiums that participants have to pay.

Comment: Similarly, another commenter stated that the increase will ''significantly impair the capacity of the FHA multifamily mortgage insurance programs to address the nation's critical need for affordable rental housing.'' This commenter states that analysis shows that the premium increase will result in rent increases of 3% to 4%, which will undermine the ability of the programs to serve low- and moderate-income families. In some cases, projects will not be built at all, resulting in fewer affordable housing units.

HUD Response: Without the credit subsidy increase, HUD would not be able to operate the programs requiring credit subsidy in a satisfactory manner. Avoiding program shutdowns and approving more housing projects is a benefit that outweighs the slight increase in premiums in some programs.

3. Credit Subsidy Analysis

Comment: One commenter stated that its analysis of the credit subsidy model showed that FHA would earn excess income at the expense of multifamily projects and, ultimately, tenants. One reason for this, according to the commenter, is that the default rate under the Section 221(d)(4) program has, since 1990, been significantly less than the rate assumed in the model. This commenter stated that if HUD and OMB fairly evaluate the current default risk of the multifamily portfolio over the past 10 years, they will likely conclude that a 60% increase in insurance premiums is not necessary to create a revenue-neutral program. In the Section 221(d)(4) program, the default rate has been under 1% for loans originated after 1990. Using this figure would require a much lower MIP than implemented by this rule and accompanying notice.

HUD Response: Section 221(d)(4) insured loans typically have a term of 40 years. In looking at loan performance and claims, FHA has to consider a much longer period than 10 years to take into account varying economic conditions.

Comment: Another commenter objected to the notice of rate increases that accompanied the rule. The commenter believes that there are flaws in the current subsidy calculation process that should be remedied before any MIP increase is implemented. This commenter cited a study by Abt Associates of various multifamily programs from 1987–1998, which concluded that the Sections 221(d)(3) and 221(d)(4) programs result in positive cash flow to the federal government. According to this commenter, many of these programs can break even without an MIP increase.

HUD Response: As stated in the response above, FHA has to consider a longer period for 40-year loans than the 10–11 year ''snapshot'' reflected in the Abt study. Considered over the long term, there is not the positive cash flow to the government that the commenter claims.

Comment: The MIP increase is a function of two kinds of underwriting risk, one being the risk of poor underwriting and the other the economic risk that the area will deteriorate economically such that the owner will not be able to achieve the predicted rents. As to the first, HUD has made significant underwriting changes since 1991 that have proven to be very successful in reducing defaults. As to the second, if HUD were to lower its estimates for the Section 221(d)(4) program from 28.5% to 21%, which is still more than 12 times the actual default rate since 1992, there would be no need for an increase in the MIP beyond 50 basis points.

HUD Response: HUD did make changes in 1991 that tightened FHA's underwriting requirements. However, it is difficult to quantify whether the improved loan performance of Section 221(d)(4) loans originated since that time are due to improved underwriting or the robust economic conditions of the 1990s. Credit subsidy calculations have to consider longer historical periods with varying economic conditions in order to estimate future insurance claims.

Comment: The credit subsidy model is ''widely criticized'' and a review and analysis that the commenter understands HUD is currently conducting should be completed before any MIP increase is implemented. The flaws in the model include: (1) Too much emphasis is placed on high claims rates from the early 1980's, caused because of conditions that no longer exist; and (2) overly pessimistic assumptions about recovery from asset sales. If the model took these factors into account, the Section 221(d)(4) program would not require a premium increase.

HUD Response: The new MIP was necessary to keep the Section 221(d)(4) program operational in FY 2002 without the need for credit subsidy. For some time, the industry has questioned both the underlying data used in the credit subsidy calculations and the underlying assumptions. In response to concerns about the data and assumptions, Secretary Martinez committed to a comprehensive review of the credit subsidy calculations to determine the appropriate credit subsidy rate and MIP. HUD staff had several meetings with the industry and agreed to consider industry concerns regarding changes in the tax code and FHA underwriting. HUD examined the statistical techniques that were used to evaluate loan performance; updated and refined FHA's data; considered FHA underwriting changes; and incorporated the major tax law changes in the 1980s that affected the profitability of multifamily housing. As a result of the reanalysis of credit subsidy, HUD was able to make Section 221(d)(4) a self-sustaining program at a 57 basis point premium. HUD also lowered the premiums for Section 207 manufactured home parks and the Section 220 urban renewal/neighborhood revitalization areas and made them self-sustaining at 61 basis points. The credit subsidy rates for two programs still requiring credit subsidy, Section 221(d)(3) and Section 241(a), were substantially lowered. All of the new rates and MIP were reflected in the HUD budget for FY 2003. The new premiums are in effect as of October 2002.

4. Cooperative Housing Should Be Treated Differently

Comment: One commenter stated that for a variety of reasons, cooperative housing is a special case and should not be subject to an increased premium. First, cooperative mortgages have not been included in the accelerated mortgage processing program, which results in cost savings. Until cooperatives are included in the accelerated procedures, there should be no increase in their MIPs. Second, cooperatives are an integral part of affordable homeownership efforts, and raising the MIP for cooperatives will impede the goal of increased homeownership opportunities for low- and moderate-income families. Third, cooperatives statistically have been superior performers (in terms of lower default rates). For these reasons, if HUD decides to continue with this rulemaking rather than accessing the emergency credit subsidy appropriation, the MIP for cooperatives should not be increased.

HUD Response: As to the first point, HUD does not agree that there is any relationship between credit subsidy and whether or not cooperatives are processed under the accelerated mortgage processing program. Whether or not a program requires credit subsidy, which is the basis for the MIP calculation, is independent of any cost or time savings to the borrower that may be achieved by accelerated processing. HUD currently plans to add cooperatives to the Multifamily Accelerated Processing program in the future.

As to the second and third points, HUD supports affordable homeownership and cooperative housing. Cooperative housing under Section 213 of the National Housing Act does not require credit subsidy because of the excellent performance of the Cooperative Management Housing Insurance Fund. Because the mortgage insurance premium was not raised for Section 213, but remains at 50 basis points, cooperatives are encouraged to use that program rather than applying under Section 221(d)(3), which is also open to cooperatives but, because of past performance, has consistently required credit subsidy. Therefore, HUD, through Section 213, in fact recognizes the performance of cooperatives in its MIP calculation. No change to this rule is required as a result of this comment.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Regulations Division, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. While this rule and the related notice for FY 2002 raised mortgage insurance premiums in certain programs, the amount of increase remains in the limits of HUD's statutory authorization. Indeed, under some circumstances, this rule would allow MIP rates to decrease, as the MIP rate for the Section 221(d)(4) program will do in FY 2003. Furthermore, without the authorization for necessary changes in the MIP rate, it is likely that the effect on business entities will be much greater, as a number of HUD's mortgage insurance programs would have to cease operations completely, causing hardship and uncertainty to those who depend upon these programs to secure mortgages. Therefore, this rule acts to minimize adverse impacts on the business community.

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of HUD's regulations, this rule involves establishment of rate or cost determinations and related external administrative requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA), establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.134.

List of Subjects in 24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, the amendment to 24 CFR part 207, published in the **Federal Register** on July 2, 2001 (66 FR 35072), is adopted as final without change.

Dated: March 5, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal, Housing Commissioner.

[FR Doc. 03–6319 Filed 3–14–03; 8:45 am]

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Federal Register

Vol. 68, No. 51

Monday, March 17, 2003

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FEDERAL REGISTER PAGES AND DATE, MARCH

9851–10140 3
10141–10344 4
10345–10650 5
10651–10952 6
10953–11310 7
11311–11462 10
11463–11732 11
11733–11966 12
11967–12282 13
12283–12568 14
12569–12796 17

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
Memorandum of February 12, 2003 10141
Memorandum of March 11, 2003 12569
Memorandum of March 12, 2003 12281
Presidential Determinations:
No. 2003–15 of February 13, 2003 10651
Notices:
Notice of March 12, 2003 12563

Proclamations:
7648 10641
7649 10643
7650 10645
7651 10647
7652 10649

Executive Orders:
4601 (Amended by: 13286) 10619
10977 12567
10113 (Amended by: 13286) 10619
10163 (Amended by: 13286) 10619
10179 (Amended by: 13286) 10619
10271 (Amended by: 13286) 10619
10448 (Amended by: 13286) 10619
10499 (Amended by: 13286) 10619
10554 (Amended by: 13286) 10619
10631 (Amended by: 13286) 10619
10637 (Amended by: 13286) 10619
10694 (Amended by: 13286) 10619
10789 (Amended by: 13286) 10619
10977 (Amended by: 13286) 10619
11016 (Amended by: 13286) 10619
11046 (Amended by: 13286) 10619
11079 (Amended by: 13286) 10619
11139 (Amended by: 13286) 10619
11190 (Amended by: 13286) 10619
11231 (Amended by: 13286) 10619
11239 (Amended by: 13286) 10619
11366 (Amended by: 13286) 10619
11438 (Amended by: 13286) 10619
11446 (Amended by: 13286) 10619
11448 (Amended by: 13286) 10619
11623 (Amended by: 13286) 10619
11645 (Amended by: 13286) 10619
11800 (Amended by: 13286) 10619
11858 (Amended by: 13286) 10619
11926 (Amended by: 13286) 10619
11965 (Amended by: 13286) 10619
12002 (Amended by: 13286) 10619
12146 (Amended by: 13286) 10619
12148 (Amended by: 13286) 10619
12160 (Amended by: 13286) 10619
12188 (Amended by: 13286) 10619
12208 (Amended by: 13286) 10619
12341 (Amended by: 13286) 10619
12382 (Amended by: 13286) 10619
12472 (Amended by: 13286) 10619
12501 (Amended by: 13286) 10619
12555 (Amended by: 13286) 10619
12580 (Amended by: 13286) 10619
12656 (Amended by: 13286) 10619
12657 (Amended by: 13286) 10619
12699 (Amended by: 13286) 10619
12727 (Amended by: 13286) 10619
12728 (Amended by: 13286) 10619
12733 (Amended by: 13286) 10619
12742 (Amended by: 13286) 10619
12743 (Amended by: 13286) 10619
12752 (See

Memorandum of March 11, 2003).....12569
12777 (Amended by: 13286).....10619
12788 (Amended by: 13286).....10619
12789 (Amended by: 13286).....10619
12793 (Amended by: 13286).....10619
12807 (Amended by: 13286).....10619
12824 (Amended by: 13286).....10619
12830 (Amended by: 13286).....10619
12835 (Amended by: 13286).....10619
12870 (Amended by: 13286).....10619
12906 (Amended by: 13286).....10619
12919 (Amended by: 13286).....10619
12957.....12563
12959.....12563
12977 (Amended by: 13286).....10619
12978 (Amended by: 13286).....10619
12982 (Amended by: 13286).....10619
12985 (Amended by: 13286).....10619, 12567
12989 (Amended by: 13286).....10619
13011 (Amended by: 13286).....10619
13059.....12563
13076 (Amended by: 13286).....10619
13100 (Amended by: 13286).....10619
13112 (Amended by: 13286).....10619
13120 (Amended by: 13286).....10619
13130 (See: 13286).....10619
13133 (Amended by: 13286).....10619
13154 (Amended by: 13286).....10619
13165 (Amended by: 13286).....10619
13212 (Amended by: 13286).....10619
13223 (Amended by: 13286).....10619
13228 (Amended by: 13286).....10619
13231 (Amended by: 13286).....10619
13254 (Amended by: 13286).....10619
13257 (Amended by: 13286).....10619
13260 (Amended by: 13286; Revoked by: 13286, eff. 3/31/03).....10619
13271 (Amended by: 13286).....10619
13274 (Amended by: 13286).....10619
13276 (Amended by: 13286).....10619
13284 (See: 13286).....10619
13286.....10619
13287.....10619
13288.....11457
13289.....12567

5 CFR

Ch. XIV.....10953
110.....10666
2416.....10953
2424.....10953
2429.....10953
2471.....10953
2472.....10953

6 CFR

9.....10912
15.....10886
17.....10892
21.....10904

7 CFR

301.....11311
318.....11967
319.....9851
911.....10345
944.....10345
959.....11463
982.....11733
984.....10347

Proposed Rules:

340.....11337
770.....12309
930.....9944
932.....11340
985.....11751
1205.....12310
1218.....11756
1230.....11996
1405.....9944
1499.....9944

8 CFR

1.....10922
2.....10922
103.....10922
217.....10954
235.....10143
239.....10922
1001.....10349
1003.....10349
1101.....10349
1103.....10349
1205.....10349
1208.....10349
1209.....10349
1212.....10349
1216.....10349
1235.....10349
1236.....10349
1238.....10349
1239.....10349
1240.....10349
1241.....10349
1244.....10349
1245.....10349
1246.....10349
1249.....10349
1270.....10349
1274a.....10349
1292.....10349
1337.....10349

9 CFR

1.....12283
50.....10361
92.....10667

Proposed Rules:

94.....11998
317.....11008
327.....11008

10 CFR

40.....10362
50.....12571
150.....10362
430.....10957

Proposed Rules

40.....10411
150.....10411
430.....11009
490.....10320

11 CFR

111.....12572

12 CFR

Proposed Rules:

203.....11010
225.....12316

14 CFR

Ch. 1.....10145
25.....9854, 10365, 12581
39.....10147, 10149, 10152, 10154, 10156, 10583, 10653, 11467, 11469, 11967, 11971, 12285
47.....10316
71.....10367, 10369, 10654, 11736, 11738, 12582
91.....12542
97.....10962, 10963
121.....12542
135.....12542
145.....12542

Proposed Rules:

21.....11475, 11759
39.....9947, 9950, 9951, 9954, 10185, 10188, 10413, 10416, 11014, 11015, 11342, 11476, 11479, 11760, 11762, 11764, 11999, 12318, 12614, 12615, 12618
43.....11475, 11759
71.....12621
145.....11475, 11759
255.....12622
399.....12622

15 CFR

740.....10586
743.....10586
772.....10586
774.....10586

16 CFR

304.....9856

17 CFR

4.....12583
200.....12780
240.....12780

Proposed Rules:

1.....12319
4.....12001, 12622

18 CFR

375.....9857
388.....9857

19 CFR

Proposed Rules:

181.....12011

20 CFR

625.....10932

Proposed Rules:

404.....12639
416.....12639

21 CFR

165.....9873
201.....12584
610.....10157
1310.....11471

Proposed Rules:

1.....10668
111.....10418, 12158
112.....12158
165.....9955
201.....12500
310.....12406
312.....12406
314.....12406
320.....12406
600.....12406
601.....12406
606.....12406, 12500
610.....12500

22 CFR

Proposed Rules:

211.....9944

24 CFR

25.....12766
28.....12766
30.....12766
81.....12766
92.....10160
180.....12766
207.....12792
906.....11714
3282.....12766
3500.....12766

Proposed Rules:

203.....11730
3285.....11448
3286.....11452

26 CFR

1.....10161, 10655, 11313, 12287
20.....10161
25.....10161
31.....10161
53.....10161
54.....10161
56.....10161
301.....10161, 11739
602.....10161, 11739, 12287

Proposed Rules:

1.....10190, 12324

27 CFR

4.....10076
5.....10076
7.....10076

28 CFR

540.....10656

Proposed Rules:

28.....11481

29 CFR

1404.....10659

1910.....12301
4022.....12303
4044.....12303

30 CFR

18.....10965
948.....10178
Proposed Rules:
70.....10784, 12641
72.....10940, 12641
75 .....10784, 11770, 12641
90.....10784, 12641
206.....12643
950.....10193

31 CFR

1.....12584
103.....10965
560.....11741
575.....11741
Proposed Rules:
103.....12155

32 CFR

171.....11633
199.....11973

33 CFR

52.....9882
117.....9890
165.....12304
401.....11974
Proposed Rules:
402.....12644

36 CFR

704.....11974
Proposed Rules:
7.....11019
219.....10421, 12155

38 CFR

17.....11977

39 CFR

3001.....12588

40 CFR

52 .....9892, 10966, 10969, 11316, 11977, 12590
62 .....10659, 10661, 10663, 11472, 11978
63.....11745, 12590
70.....10969
82.....10370
122.....11325
180 .....10370, 10377, 10972, 10983, 11330
228.....12592
271.....11981
439.....12266
Proposed Rules:
Ch. I.....10675, 12013
51.....12014
52 .....11022, 11023, 12014
62 .....10680, 10681, 11483, 11484, 12015
63.....12645
70.....11023
136.....11770, 11791
228.....11488
271.....12015
439.....12776

41 CFR

300–2.....12602
Ch. 304.....12602

42 CFR

50.....12306
412.....10987
Proposed Rules:
83.....11924
412.....10421, 11234

43 CFR

Proposed Rules:
4100.....9964, 11345

44 CFR

61.....9895
64.....9897
152.....12544
206.....9899

45 CFR

162.....11445

47 CFR

0.....11747
1.....
2 .....10179, 11986, 12744
25.....11986
73 .....10388, 10664, 10665, 11335, 11993, 12610, 12744
74.....12744
78.....12744
90.....10179
95.....9900
101.....12744
Proposed Rules:
15.....12015
54.....10430, 12020
73 .....10681, 10682, 10683, 11345, 12023, 12024
74.....12652

48 CFR

1825.....11747

49 CFR

1.....10988
107.....11748
190.....11748
191.....11748
192.....11748
193.....11748
195.....11748
198.....11748
199.....11748
219.....10108
225.....10108
240.....10108
1540.....9902
Proposed Rules:
192.....9966

50 CFR

17.....10388, 12611
300.....10989
622.....10180, 11003
648 .....9905, 10181, 12612
660.....11182
679 .....9902, 9907, 9924, 9942, 11004, 11994
Proposed Rules:
17.....12326, 12336
21.....12653
229.....10195
600 .....9967, 11501, 11793
622.....11794
648 .....9968, 11023, 11346

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 17, 2003

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Haddock; published 3-17-03

COMMODITY FUTURES TRADING COMMISSION

Commodity pool operators and commodity trading advisors:

National Futures Association; disclosure documents filing; published 3-17-03

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Metal coil surface coasting; published 3-17-03

Air quality implementation plans; approval and promulgation; various States:

Florida; published 1-16-03

Maryland; published 1-15-03

Ohio; published 1-16-03

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; published 1-16-03

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Various States; published 2-19-03

FEDERAL DEPOSIT INSURANCE CORPORATION

State banks chartered as limited liability companies; insurance eligibility; published 2-13-03

FEDERAL LABOR RELATIONS AUTHORITY

Organization, functions, and authority delegations:

New addresses and telephone and fax numbers; published 3-7-03

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Risk-based capital:

Test methodology and specifications; published 2-13-03

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulfur operations:

Offshore cranes; American Petroleum Institute's Specification 2C; incorporated by reference; published 2-14-03

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Canada and Bermuda; visa and passport waiver removal for certain permanent residents; published 1-31-03

JUSTICE DEPARTMENT

Security risk assessments:

Aviation and Transportation Security Act—

Aliens and other designated individuals seekeing flight training; screening; published 2-13-03

LEGAL SERVICES CORPORATION

Freedom of Information Act; implementation; published 2-14-03

STATE DEPARTMENT

Visas; nonimmigrant documentation:

Canada and Bermuda; visa and passport waiver removal for certain permanent residents; published 1-31-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Agusta S.p.A.; published 2-28-03

Eurocopter France; published 2-28-03

McDonnell Douglas; published 2-28-03

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Statewide and metropolitan transportation planning

Correction; published 2-14-03

TREASURY DEPARTMENT

RULES GOING INTO EFFECT MARCH 17, 2003

Disclosure of records:

Legal proceedings; access to information and records; clarification; published 3-17-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Downer cattle and dead stock of cattle and other species; potential bovine spongiform encephalopathy pathways; risk reduction strategies; comments due by 3-24-03; published 1-21-03 [FR 03-01210]

Pork and pork products imported from regions affected with swine vesicular disease; pork-filled pasta; comments due by 3-24-03; published 1-21-03 [FR 03-01213]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Hawaiian and territorial quarantine notices; and plant-related quarantine, foreign:

Fruits and vegetables; movement and importation; comments due by 3-24-03; published 1-21-03 [FR 03-01211]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Blood and tissue collection at slaughtering establishments; comments due by 3-28-03; published 1-27-03 [FR 03-01752]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Exotic Newcastle disease; quarantine area designations—

Nevada; comments due by 3-25-03; published 1-24-03 [FR 03-01608]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Mexican fruit fly; comments due by 3-24-03; published 1-21-03 [FR 03-01214]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Mexican fruit fly; comments due by 3-25-03; published 1-24-03 [FR 03-01609]

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (Subsistence priority):

Fish and shellfish; subsistence taking; comments due by 3-28-03; published 2-12-03 [FR 03-02397]

National Forest System lands:

Special use authorizations; comments due by 3-24-03; published 1-22-03 [FR 03-01291]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat, poultry, and egg products inspection services; fee changes; comments due by 3-28-03; published 2-26-03 [FR 03-04393]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 3-27-03; published 3-12-03 [FR 03-05898]

Magnuson-Stevens Act provisions—

Domestic fisheries; exemption fishing permit applications; comments due by 3-27-03; published 3-12-03 [FR 03-05903]

Northeastern United States fisheries—

Monkfish; comments due by 3-24-03; published 3-7-03 [FR 03-05172]
Northeast multispecies; comments due by 3-27-03; published 2-25-03 [FR 03-04332]
Spiny dogfish; comments due by 3-25-03; published 3-10-03 [FR 03-05719]
Marine mammals:
Incidental taking—
Southern California; drift gillnet fishing prohibition; loggerhead sea turtles; comments due by 3-24-03; published 2-12-03 [FR 03-03494]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack; procurements of supplies or services; comments due by 3-28-03; published 1-27-03 [FR 03-01687]

ENVIRONMENTAL PROTECTION AGENCY
Acquisition regulations:
Background checks for EPA contractors performing services on-site; comments due by 3-24-03; published 1-22-03 [FR 03-01361]
Air pollution; standards of performance for new stationary sources:
Volatile organic liquid storage vessels (including those for petroleum); comments due by 3-26-03; published 2-24-03 [FR 03-04245]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 3-28-03; published 2-26-03 [FR 03-04382]
Kansas; comments due by 3-28-03; published 2-26-03 [FR 03-04627]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Michigan; comments due by 3-26-03; published 2-24-03 [FR 03-04260]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Michigan; comments due by 3-26-03; published 2-24-03 [FR 03-04261]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 3-27-03; published 2-25-03 [FR 03-04256]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 3-27-03; published 2-25-03 [FR 03-04255]
Endangered and threatened species; pesticide regulation; comments due by 3-25-03; published 3-13-03 [FR 03-06188]

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Arkansas and West Virginia; comments due by 3-24-03; published 2-19-03 [FR 03-03951]
Florida; comments due by 3-24-03; published 2-19-03 [FR 03-03950]
Oklahoma and California; comments due by 3-24-03; published 2-19-03 [FR 03-03953]
Texas; comments due by 3-24-03; published 2-19-03 [FR 03-03955]
Various States; comments due by 3-24-03; published 2-19-03 [FR 03-03952]
Television broadcasting:
Cable television systems—
Navigation devices; commercial availability; compatibility between cable systems and consumer electronics equipment; comments due by 3-28-03; published 1-16-03 [FR 03-00948]
Television stations; table of assignments:
Virgin Islands; comments due by 3-24-03; published 1-28-03 [FR 03-01837]

FEDERAL ELECTION COMMISSION
Bipartisan Campaign Reform Act; implementation:
Candidates opposing self-financed candidates; increased contribution and coordinated party expenditure limits; comments due by 3-28-03; published 1-27-03 [FR 03-01546]

GENERAL SERVICES ADMINISTRATION
Acquisition regulations:
Federal supply schedule contracts; State and local governments information technology acquisition; comments due by 3-24-03; published 1-23-03 [FR 03-01536]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack; procurements of supplies or services; comments due by 3-28-03; published 1-27-03 [FR 03-01687]

GOVERNMENT ETHICS OFFICE
Privacy Act; implementation; comments due by 3-24-03; published 1-22-03 [FR 03-01100]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Willamette River, Portland, OR; security zone; comments due by 3-24-03; published 1-22-03 [FR 03-01286]

HOMELAND SECURITY DEPARTMENT
Transportation Security Administration
Alien holders of and applicants for FAA certificates; threat assessments; comments due by 3-25-03; published 1-24-03 [FR 03-01683]
Citizens of United States who hold or apply for FAA certificates; threat assessments; comments due by 3-25-03; published 1-24-03 [FR 03-01682]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal Housing Enterprise Oversight Office
Safety and soundness:
Federal National Mortgage Association and Federal Home Loan Mortgage Corporation—
Financial and other information; public disclosure; comments due by 3-24-03; published 1-23-03 [FR 03-01298]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (Subsistence priority):
Fish and shellfish; subsistence taking; comments due by 3-28-03; published 2-12-03 [FR 03-02397]
Endangered and threatened species:
Critical habitat designations—
Vernal pool crustaceans and plants in California and Oregon; comments due by 3-28-03; published 3-14-03 [FR 03-06370]

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Immigration Examinations Fee Account; fee schedule adjustment; comments due by 3-25-03; published 1-24-03 [FR 03-01853]

JUSTICE DEPARTMENT
Privacy Act; implementation; comments due by 3-25-03; published 1-24-03 [FR 03-01575]

LABOR DEPARTMENT
Labor-Management Standards Office
Labor-management standards:
Labor organization annual financial reports; comments due by 3-27-03; published 2-25-03 [FR 03-04400]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
Belt entry use as intake air course to ventilate working sections and areas where mechanized equipment is being installed or removed; safety standards; comments due by 3-28-03; published 1-27-03 [FR 03-01307]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):

Defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack; procurements of supplies or services; comments due by 3-28-03; published 1-27-03 [FR 03-01687]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Involuntary liquidation regulation—

Swap agreements; treatment as qualified financial contracts in liquidation or conservatorship; comments due by 3-28-03; published 2-26-03 [FR 03-04444]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 3-24-03; published 2-21-03 [FR 03-04107]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 3-24-03; published 2-21-03 [FR 03-04108]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Enhanced flight vision systems; comments due by 3-27-03; published 2-10-03 [FR 03-03265]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airmen certification:

Ineligibility for airmen certificate based on security grounds; comments due by 3-25-03; published 1-24-03 [FR 03-01681]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Aerospatiale; comments due by 3-24-03; published 2-21-03 [FR 03-04168]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bell; comments due by 3-25-03; published 1-24-03 [FR 03-01304]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Eurocopter France; comments due by 3-24-03; published 1-21-03 [FR 03-01191]

Gulfstream Aerospace; comments due by 3-24-03; published 2-21-03 [FR 03-04166]

Israel Aircraft Industries, Ltd.; comments due by 3-24-03; published 2-21-03 [FR 03-04167]

Pilatus Aircraft Ltd.; comments due by 3-26-03; published 2-19-03 [FR 03-03871]

Rolls-Royce plc; comments due by 3-28-03; published 1-27-03 [FR 03-01676]

Class D and Class E airspace; comments due by 3-25-03; published 2-10-03 [FR 03-03267]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class D and Class E airspace; comments due by 3-25-03; published 2-10-03 [FR 03-03266]

Class E airspace; comments due by 3-25-03; published 2-19-03 [FR 03-03967]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Rearview mirrors—

Convex mirrors on commercial trucks and other vehicles; comments due by 3-24-03; published 1-22-03 [FR 03-01353]

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:

Alexandria Lakes, MN; comments due by 3-24-03; published 1-23-03 [FR 03-01527]

Alcoholic beverages:

Labeling and advertising; organic claims; comments due by 3-27-03; published 12-27-02 [FR 02-32614]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Controlled foreign partnerships; filing requirements; cross-reference; comments due by 3-24-03; published 12-23-02 [FR 02-32151]

Principal residence sale or exchange; reduced maximum exclusion of gain; cross-reference; comments due by 3-24-03; published 12-24-02 [FR 02-32279]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:

Bank Secrecy Act; implementation—

Suspicious transactions; mutual funds reporting requirements; comments due by 3-24-03; published 1-21-03 [FR 03-01174]

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.

H.R. 395/P.L. 108–10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

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3 (1997 Compilation and Parts 100 and 101)	(869–048–00002–0)	59.00	[1] Jan. 1, 2002
4	(869–050–00003–2)	9.50	Jan. 1, 2003
5 Parts:			
*1–699	(869–050–00004–1)	57.00	Jan. 1, 2003
700–1199	(869–050–00005–9)	46.00	Jan. 1, 2003
1200–End, 6 (6 Reserved)	(869–048–00006–2)	58.00	Jan. 1, 2002
7 Parts:			
1–26	(869–048–00001–1)	41.00	Jan. 1, 2002
27–52	(869–048–00008–9)	47.00	Jan. 1, 2002
53–209	(869–050–00009–1)	36.00	Jan. 1, 2003
210–299	(869–048–00010–1)	59.00	Jan. 1, 2002
*300–399	(869–050–00011–3)	43.00	Jan. 1, 2003
400–699	(869–050–00012–1)	39.00	Jan. 1, 2003
700–899	(869–048–00013–5)	54.00	Jan. 1, 2002
900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
1000–1199	(869–048–00015–1)	25.00	Jan. 1, 2002
1200–1599	(869–048–00016–0)	58.00	Jan. 1, 2002
*1600–1899	(869–050–00017–2)	61.00	Jan. 1, 2003
1900–1939	(869–048–00018–6)	29.00	Jan. 1, 2002
1940–1949	(869–048–00019–4)	53.00	Jan. 1, 2002
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
*2000–End	(869–050–00021–1)	46.00	Jan. 1, 2003
8	(869–048–00022–4)	58.00	Jan. 1, 2002
9 Parts:			
1–199	(869–048–00023–2)	58.00	Jan. 1, 2002
200–End	(869–048–00024–1)	56.00	Jan. 1, 2002
10 Parts:			
1–50	(869–048–00025–4)	58.00	Jan. 1, 2002
51–199	(869–048–00026–7)	56.00	Jan. 1, 2002
200–499	(869–048–00027–5)	44.00	Jan. 1, 2002
500–End	(869–048–00028–3)	58.00	Jan. 1, 2002
11	(869–048–00029–1)	34.00	Jan. 1, 2002
12 Parts:			
1–199	(869–050–00030–0)	30.00	Jan. 1, 2003
200–219	(869–048–00031–3)	36.00	Jan. 1, 2002
220–299	(869–048–00032–1)	58.00	Jan. 1, 2002
300–499	(869–050–00033–4)	43.00	Jan. 1, 2003
*500–599	(869–050–00034–2)	38.00	Jan. 1, 2003
*600–899	(869–050–00035–1)	54.00	Jan. 1, 2003
*900–End	(869–050–00036–9)	47.00	Jan. 1, 2003
***13**	(869–050–00037–7)	47.00	Jan. 1, 2003
14 Parts:			
1–59	(869–048–00037–2)	60.00	Jan. 1, 2002
60–139	(869–048–00038–1)	58.00	Jan. 1, 2002
140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
200–1199	(869–048–00040–2)	47.00	Jan. 1, 2002
*1200–End	(869–050–00042–3)	43.00	Jan. 1, 2003
15 Parts:			
0–299	(869–050–00043–1)	37.00	Jan. 1, 2003
300–799	(869–048–00043–7)	58.00	Jan. 1, 2002
800–End	(869–048–00044–5)	40.00	Jan. 1, 2002
16 Parts:			
*0–999	(869–050–00046–6)	47.00	Jan. 1, 2003
1000–End	(869–050–00047–4)	57.00	Jan. 1, 2003
17 Parts:			
1–199	(869–048–00048–8)	47.00	Apr. 1, 2002
200–239	(869–048–00049–6)	55.00	Apr. 1, 2002
240–End	(869–048–00050–0)	59.00	Apr. 1, 2002
18 Parts:			
1–399	(869–048–00051–8)	59.00	Apr. 1, 2002
400–End	(869–048–00052–6)	24.00	Apr. 1, 2002
19 Parts:			
1–140	(869–048–00053–4)	57.00	Apr. 1, 2002
141–199	(869–048–00054–2)	56.00	Apr. 1, 2002
200–End	(869–048–00055–1)	29.00	Apr. 1, 2002
20 Parts:			
1–399	(869–048–00056–9)	47.00	Apr. 1, 2002
400–499	(869–048–00057–7)	60.00	Apr. 1, 2002
500–End	(869–048–00058–5)	60.00	Apr. 1, 2002
21 Parts:			
1–99	(869–048–00059–3)	39.00	Apr. 1, 2002
100–169	(869–048–00060–7)	46.00	Apr. 1, 2002
170–199	(869–048–00061–5)	47.00	Apr. 1, 2002
200–299	(869–048–00062–3)	16.00	Apr. 1, 2002
300–499	(869–048–00063–1)	29.00	Apr. 1, 2002
500–599	(869–048–00064–0)	46.00	Apr. 1, 2002
600–799	(869–048–00065–8)	16.00	Apr. 1, 2002
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
1300–End	(869–048–00067–4)	22.00	Apr. 1, 2002
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
300–End	(869–048–00069–1)	43.00	Apr. 1, 2002
23	(869–048–00070–4)	40.00	Apr. 1, 2002
24 Parts:			
0–199	(869–048–00071–2)	57.00	Apr. 1, 2002
200–499	(869–048–00072–1)	47.00	Apr. 1, 2002
500–699	(869–048–00073–9)	29.00	Apr. 1, 2002
700–1699	(869–048–00074–7)	58.00	Apr. 1, 2002
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–048–00076–3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0-1–1.60	(869–048–00077–1)	45.00	Apr. 1, 2002
§§ 1.61–1.169	(869–048–00078–0)	58.00	Apr. 1, 2002
§§ 1.170–1.300	(869–048–00079–8)	55.00	Apr. 1, 2002
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
§§ 1.401–1.440	(869–048–00081–0)	60.00	Apr. 1, 2002
§§ 1.441-1.500	(869-048-00082-8)	47.00	Apr. 1, 2002
§§ 1.501–1.640	(869–048–00083–6)	44.00	[6]Apr. 1, 2002
§§ 1.641–1.850	(869–048–00084–4)	57.00	Apr. 1, 2002
§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–048–00086–1)	56.00	Apr. 1, 2002
§§ 1.1001–1.1400	(869–048–00087–9)	58.00	Apr. 1, 2002
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
2–29	(869–048–00089–5)	57.00	Apr. 1, 2002
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
500–599	(869–048–00094–1)	12.00	[5]Apr. 1, 2002
600–End	(869–048–00095–0)	16.00	Apr. 1, 2002
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0-42	(869–048–00098–4)	58.00	July 1, 2002
43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200-End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	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
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
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
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[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.

Contents

Federal Register

Vol. 68, No. 50

Friday, March 14, 2003

Agricultural Marketing Service
PROPOSED RULES
Cotton research and promotion order:
Cotton Board rules and regulations; amendments, 12310–12315

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Food Safety and Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Animal welfare:
Dogs intended for hunting, breeding, or security purposes; dealer licensing and inspection requirements, 12283–12285

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Medicare & Medicaid Services
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12356–12358

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12358–12361

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 12340

Coast Guard
RULES
Ports and waterways safety:
Long Island Sound and Captain of the Port Zone, NY; safety and security zones, 12304–12306

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

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 12339–12340

Commodity Futures Trading Commission
PROPOSED RULES
Commodity Exchange Act:
Eligible bunched customer orders; account identification, 12319–12324

Community Development Financial Institutions Fund
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12401–12402
Grants and cooperative agreements; availability, etc.:
Bank Enterprise Award Program; correction, 12402–12403

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Public Charter Schools Program, 12535–12540

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 12381–12382

Energy Department
See Energy Efficiency and Renewable Energy Office
See National Nuclear Security Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Renewable energy development on Tribal lands, 12345

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board, 12346

Environmental Protection Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12346–12348
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 12349
Weekly receipts, 12348–12349
Meetings:
State and tribal toxics action forum, 12349–12351
Reports and guidance documents; availability, etc.:
Clinch and Powell Valley Watershed Ecological Risk Assessment, 12351

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Farm Service Agency
PROPOSED RULES
Special programs:
Indian Tribal Land Acquisition Program; revision, 12309–12310

Federal Aviation Administration
RULES
Aircraft:
Repair stations, 12541–12542
Airworthiness directives:
Dornier, 12285–12287

PROPOSED RULES
Airworthiness directives:
Eurocopter France, 12318–12319

Federal Communications Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12351–12355

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 12355

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 12355

Federal Emergency Management Agency
RULES
Emergency Preparedness and Response Directorate:
Firefighters Assistance Grant Program, 12543–12552
NOTICES
Grants and cooperative agreements; availability, etc.:
Firefighters Assistance Program, 12552–12560

Federal Reserve System
PROPOSED RULES
Bank holding companies and change in bank control (Regulation Y):
Commodities underlying derivative contracts; title delivery, 12316–12318
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 12355–12356

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12403

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Desert yellowhead, 12326–12336
Vernal pool crustaceans and plants in California and Oregon, 12336–12337
NOTICES
Meetings:
Hanford Reach National Monument Federal Advisory Committee, 12363

Food and Drug Administration
PROPOSED RULES
Human drugs and biological products:
Bar code label requirements, 12499–12534
Pre- and postmarketing safety reporting requirements, 12405–12497

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Alimentarius Commission—
Food Labeling Committee, 12338–12339

Forest Service
NOTICES
Environmental statements; notice of intent:
Helena National Forest, MT, 12339

General Services Administration
NOTICES
Acquisition regulations:
Request for Authorization of Additional Classification and Rate (SF 1444); form revision, 12356

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Inspector General Office, Health and Human Services Department
RULES
Grants:
Sterilization of persons in federally assisted family planning projects, 12306–12308

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 12363

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 12361–12363

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Stock dispositions; suspension of losses, 12287–12300
PROPOSED RULES
Income taxes:
Stock dispositions; suspension of losses, 12324–12326

International Trade Administration
NOTICES
Overseas trade missions:
2003 trade missions—
Asian Infrastructure Trade Mission, Istanbul, Turkey, et al., 12341
Applications, hearings, determinations, etc.:
University of—
Chicago, 12340–12341
Missouri-Kansas City, 12341

International Trade Commission
NOTICES
Import investigations:
Generalized System of Preferences; possible modifications; 2002 review; correction, 12379
Steel; monitoring developments in domestic industry, 12380–12381

Labor Department
See Employment Standards Administration
See Occupational Safety and Health Administration
See Veterans Employment and Training Service

Land Management Bureau
NOTICES
Meetings:
California Desert District Advisory Council, 12363
Resource management plans, etc.:
Gunnison Gorge National Conservation Area, CO, 12363–12365

Management and Budget Office
NOTICES
Commercial activities performance (Circular A-76):
Federal pay raise assumptions and inflation factors (Transmittal Memorandum No. 25), 12388

Maritime Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12399–12400

National Labor Relations Board
NOTICES
Senior Executive Service:
Performance Review Boards; membership, 12382

National Nuclear Security Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Renewable energy efficiency and emissions performance; reduction in parasitic energy losses in Class 3-8 trucks, 12346

National Oceanic and Atmospheric Administration
NOTICES
Endangered and threatened species:
Anadromous fish take—
Pacific salmon and steelhead, 12342–12343
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; greater amberjack rebuilding plan, 12344–12345

National Park Service
NOTICES
Environmental statements; availability, etc.:
Canyon De Chelly National Monument, AZ, 12365–12366
Glacier Bay National Park and Preserve, AK, 12366
Petrified Forest National Park, AZ, 12366–12368
Rock Creek Park, Washington, DC, 12368
Tonto National Monument, AZ, 12368–12369
Meetings:
Cape Cod National Seashore Advisory Commission, 12369
Chalmette Battlefield Task Force Committee, 12369
Gates of Arctic National Park Subsistence Resource Commission, 12369–12370
National Register of Historic Places:
Pending nominations, 12370–12372
Native American human remains and associated funerary objects:
Denver Art Museum, CO—
Medicine cord, etc., 12372–12373
Justice Department, Federal Bureau of Investigation, Rapid City, SD—
Inventory from Crystal Cave Park, SD, 12374–12375
Justice Department, Marshals Service, Oklahoma City, OK—
Inventory from Greer County, OK, 12373–12374
Nevada State Museum, Reno, NV—
Inventory from Winnemucca Lake, Washoe County, NV, 12375
Oregon State Museum of Anthropology, Eugene, OR—
Inventory from Wasco County, OR, 12376
Peabody Museum of Archaeology and Ethnology, Harvard University, MA—
Inventory from varioius locations in Broome County, NY; correction, 12377
Inventory from various sites in New York; correction, 12376–12377
Springfield Science Museum, MA—
Shell beads from Shield's Mound Complex, FL, 12377–12378
UCLA Fowler Museum of Cultural History, Los Angeles, CA—
Inventory from Patterson, CA, 12378–12379

Nuclear Regulatory Commission
NOTICES
Environmental statements; notice of intent:
Exelon Generation Co., LLC, 12385–12387
Applications, hearings, determinations, etc.:
Tennessee Valley Authority, 12382–12384

Occupational Safety and Health Administration
RULES
Safety and health standards:
Grain handling facilities, 12301–12303

Office of Management and Budget
See Management and Budget Office

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing and paying benefits, 12303–12304
NOTICES
Multiemployer plans:
Interest rates and assumptions, 12388–12389
Privacy Act:
Systems of records, 12389–12391

Presidential Documents
EXECUTIVE ORDERS
Global War on Terrorism Medals; establishment, 12565–12568
ADMINISTRATIVE ORDERS
Iran; continuation of national emergency (Notice of March 12, 2003), 12561–12563

Public Debt Bureau
See Fiscal Service

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12391–12392
Meetings; Sunshine Act, 12392
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 12393–12395
Chicago Stock Exchange, Inc., 12396–12397
National Association of Securities Dealers, Inc., 12397–12398

Small Business Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12398–12399
Disaster loan areas:
Tennessee, 12399

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12379

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Tongue River Railroad Co., 12400

Transportation Department
See Federal Aviation Administration
See Maritime Administration
See Surface Transportation Board
See Transportation Statistics Bureau
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 12399

Transportation Statistics Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12400–12401

Treasury Department
See Community Development Financial Institutions Fund
See Fiscal Service
See Internal Revenue Service

Veterans Employment and Training Service
NOTICES
Meetings:
Veterans Employment and Training Advisory Committee, 12382

Separate Parts In This Issue

Part II
Health and Human Services Department, Food and Drug Administration, 12405–12497

Part III
Health and Human Services Department, Food and Drug Administration, 12499–12534

Part IV
Education Department, 12535–12540

Part V
Transportation Department, Federal Aviation Administration, 12541–12542

Part VI
Homeland Security Department, Federal Emergency Management Agency, 12543–12560

Part VII
Executive Office of the President, Presidential Documents, 12561–12563

Part VIII
Executive Office of the President, Presidential Documents, 12565–12568

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

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