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Title 3—

The President

Proclamation 7683 of May 30, 2003

National Child's Day, 2003

By the President of the United States of America

A Proclamation

On National Child's Day, we celebrate the future of our Nation and the promise of America's youth. As a Nation, as parents, and as community members, we have a responsibility to build a secure and nurturing society so that our children have the opportunity to grow, learn, work, and succeed.

Creating an environment that instills important values, builds strong character, and provides sound education for our children is a vital national priority. With a firm foundation, children will be better able to face the challenges of the future.

Parents are a child's first teachers, and they can be the most effective instructors. One of the most helpful activities parents can do with their children is read with them. Children who develop a love for reading expand their imaginations and cultivate a thirst for learning that lasts a lifetime. By talking, listening, and reading to our children, we can help them build the confidence they need to succeed in life. Parents' role as educators becomes even more important as schools across the country prepare for summer recess. Summertime is not only a time for children to relax and play, it is also a time for parents to strengthen their ties to their children by spending time with them and helping them to broaden their experiences.

To expand on the important work that parents do, my Administration has taken significant steps to help give our children greater opportunities to learn. By improving our education system and encouraging early reading and language skills, we give our children the tools they will need to succeed in the world they will inherit from us. Children also benefit from the immeasurable care and support of their teachers, and are inspired by the model they set.

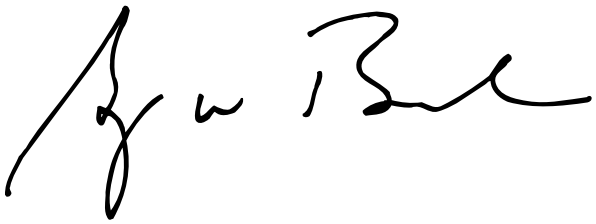
Outside the home and the classroom, there are many adults who touch children's lives. Family, mentors, neighbors, and friends can help mold America's next generation through their positive examples, showing children how to help those in need and encouraging them to set high standards for themselves. To help instill the value of volunteer service, the USA Freedom Corps, through the Students in Service to America initiative, is helping to create ways for young people to give back to their communities. By using their time, talents, and compassion to make a difference in the lives of others, America's children are learning to become responsible and engaged leaders in our democratic society.

On this special day, we celebrate the possibility of every boy and girl in America. In their faces, we see the hope of our Nation. America is dedicated to their welfare and the full development of their potential.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 1, 2003, as National Child's Day. I urge parents to spend more time with their children, read to them, listen to their concerns, offer guidance and love, and encourage their dreams. I also urge all Americans to set a positive example for our children and to assist parents in setting them on the path to success. And

I call upon citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



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Rules and Regulations

Federal Register

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

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1400

RIN 0560–AG86

Income Limits

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets forth at 7 CFR part 1400 the regulations to implement provisions of the Farm Security Act of 1985 (1985 Act) as amended by the Farm Security and Rural Investment Act of 2002 (2002 Act) regarding limits on the income of individuals and entities eligible for certain USDA commodity and conservation programs. These regulations set forth the criteria to determine whether income limits have been exceeded by an applicant for those benefits. The final rule, generally, provides that, for individuals, CCC will use the adjusted gross incomes reported in the prior three years to the United States Department of the Treasury, Internal Revenue Service (IRS), and a comparable measure for other entities such as corporations, limited partnerships, and charitable organizations. This rule also includes an addition to subpart C of this part concerning payment eligibility determinations for program participants who are reservist military personnel called to active duty as the result of Operation Iraqi Freedom, and other similar military operations. The rule is intended, as provided by the 1985 Act, to impose limits on the amount of average adjusted gross income that a program participant can have and still remain eligible for program benefits and also allow reservist military personnel called to active duty to remain eligible for payments in certain circumstances.

DATES: This rule is effective on June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Daniel McGlynn, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave. SW., Washington, DC 20250–0517. Telephone: (202) 720–3463. Electronic mail: *Dan_McGlynn@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act provides that the regulations needed to implement Title I of the 2002 Act, including those involved here, may be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Because the provisions of this rule are not effective until the 2003 crop, and due to the complexity of the issues presented in the rule, it was determined that it was in the public's interest to solicit comments on the proposed rule before it became effective.

Executive Order 12866

This final rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

This final rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture, Farm Service Agency and Natural Resources Conservation Service. Other assistance programs are also impacted.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An Environmental Evaluation was completed and the proposed action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

This rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it, however, this rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC was not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, this rule contains no mandates as defined in sections 202 and 205 of UMRA.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be done without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities

needed to administer the provisions authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The form that applicants will use to certify their income has been developed for on-line use. However, because of the nature of the other paperwork and documentation that may be needed to verify eligibility based on income, the use of electronic means of submission for those information collections is not feasible at this time.

Discussion of the Final Rule

Background

The 2002 Act authorized new programs and benefits, including direct payments and counter-cyclical payments for producers of certain covered commodities and for payments and other benefits under a number of new and revised conservation programs. Section 1604 of that Act amended the 1985 Act by adding a new section, 1001D, to provide that individuals or entities shall not be eligible to receive direct payments, counter-cyclical payments, marketing loan gains or a payment under any of the conservation programs authorized under title XII of the 1985 Act, nor a payment under the conservation programs of title II of the 2002 Act, if the three-year average of the adjusted gross income of the individual, or comparable measure for an entity, exceeds $2.5 million. An exemption, though, is provided where not less than 75 percent of the average adjusted gross income is derived from farming, ranching, or forestry operations. Section 1001D also requires a commensurate reduction in the shares of payments to an entity proportional to the interest held in the entity by parties whose adjusted gross income is more than $2.5 million.

CCC published a proposed rule as to its intentions for implementing income limits on October 28, 2002 at 67 FR 65738. The Agency received 72 timely filed letters containing 129 comments. Respondents included the following: 21 individuals, 15 corporations and similar entities, 8 commodity groups and similar organizations, 7 State and Federal agencies, 4 churches, colleges and universities, 2 Certified Public Accountants, 1 financial institution, 10 farm management companies, and 4 research and environmental organizations. Comments were received from respondents in the following States: California, Colorado, Florida, Georgia, Hawaii, Iowa, Indiana, Kansas, Louisiana, Missouri, Minnesota, Mississippi, North Dakota, Nebraska, New York, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Washington, and the District of Columbia.

Discussion of Comments and Changes

Specific comments received, addressed in the same sequence as the final rule, are as follows:

Section 1400.600 Applicability

Comments were received from 32 respondents who were concerned about the programs to which the income limits are applied. Some respondents commented that the income limitation will adversely affect participation in conservation and environmental programs. These respondents suggested that conservation and environmental program participants be exempted from income limits. The respondents asserted an exemption was appropriate because the rule may preclude large landowners participation in these programs and thus defeat the purposes of environmental projects and initiatives, both State and Federal. It was also argued that under certain programs, such as the Wetland Reserve Program, easement payments are for reimbursing landowners for rights foregone. As such, in their opinion, these payments should not be classified as benefits and, therefore, not subject to the adjusted gross income limitation. It was also commented that the income limitation would adversely impact compliance with highly erodible land conservation and wetland conservation provisions. Several respondents commented that other programs, not referenced in the proposed rule, which have a gross revenue restriction should use the average adjusted gross income limitation instead. It was also commented that private colleges and educational institutions should be exempt from the rule altogether, as are public institutions, since the missions of the institutions are the same.

The statute provides that the average adjusted gross income limitation applies to any program authorized by title XII of the 1985 Act or titles I or II of the 2002 Act. There are no exceptions for conservation and environmental programs and, in fact, they are specifically included. Section 1604 of the 2002 Act applies to all payments and covered benefits of the programs under the titles specified. Therefore, no exceptions are made in the final rule for payments and benefits authorized by these titles.

As to the comments concerning the application of this rule to other programs not referenced in the 2002 Act, it is true that a gross revenue restriction has been applied as a requirement for eligibility for other programs not included in the proposed rule. Although the gross revenue restriction and the average adjusted gross income limitation share a similar purpose, there are significant differences, different statutory schemes, and this rule is limited to application of the test provided for in the 2002 Act. For example, although the desire for one rule for all programs is understandable, the application of a qualifying gross revenue restriction per ''person'' to payments under the Noninsured Crop Disaster Assistance Program (NAP) is required by the statute authorizing NAP. However, for flexibility, provision is made to apply this subpart to other programs if so provided by statute or regulation in the future.

As to the program participants to be covered by these income limits, section 1001D(a)(1) of the 2002 Act provides that ''* * * the term 'average adjusted gross income,' with respect to an individual or entity (for purposes of this section as defined in section 1001(e)(2)(A)(ii)), means the three-year average of the adjusted gross income or comparable measure of the individual or entity over the preceding tax years, as determined by the Secretary.'' Section 1001 of the 1985 Act sets forth the statutory payment limitations applicable to certain commodity and conservation program benefits. Generally, these provisions have been the same since the enactment in 1987, and provide that the total amount of specified payments that a ''person'' may receive is limited to specified amounts per year.

Section 1001(e)(2)(A) defines the term ''person'' as follows:

* * * the term ''person'' means—

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity (as determined by the Secretary);

(ii) A corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity (as determined by the Secretary, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint

venture, a grantor or a revocable trust, or as a participant in a similar entity (as determined by the Secretary); and

(iii) A State, political subdivision, or agency thereof.

In determining who is a ''person'' for purposes of section 1001D, an ''entity'' is specifically defined to be the same as an ''entity'' as provided in section 1001(e)(2)(A)(ii) of the 1985 Act. Notably, section 1001D does not contain such a mandate to use the definitions in sections 1001(e)(2)(A)(i) and (iii). Accordingly, this final rule provides that the definition of an ''entity'' shall be the same for purposes of sections 1001 and 1001D of the 1985 Act. Further, in order to provide consistency in the application of both sections 1001 and 1001D, the final rule also provides that the definition of an ''individual'' will be the same for both purposes.

As to the respondents'' suggestion that private schools be exempted from income limits, the definition of ''entity'' in the 1985 Act does not include States, political subdivisions, and agencies thereof (which include a public school or university), but does include charitable organizations and other nonprofit organizations (including churches and private schools). Furthermore, the 2002 Act does not exempt any charitable or nonprofit organization from the average adjusted gross income limitation. Also, this final rule does not extend the average adjusted gross income limitation to States, counties, political subdivisions, agencies thereof, or recognized Indian tribes because Governmental organizations do not have ''income'' similar to the other listed individuals and entities. Although a private institution may indeed serve some of the same purposes as some public institution, there is no statutory authority to treat them the same within the context of this rule. Accordingly, this comment was not adopted and this provision of the proposed rule is not changed in the final rule. However, the final rule does recognize the special nature of some activities of such charitable organizations as was set out in the proposed rule.

A respondent commented that the disqualification should include all payment methods for certain benefits, including commodity certificates issued under marketing assistance loans. The respondent believed that the use of such certificates undermines the intent of Congress to limit program payments. Under the 2002 Act, the average adjusted gross income limitation applies to loan deficiency payments and marketing loan gains, but does not include certificate transactions or to other forms in which loan benefits might otherwise be obtained (such as loan forfeitures). Accordingly, the provisions of this rule cannot be extended to include such transactions.

Other comments on this section included: the $2.5 million level is too high; the adjusted gross income limitation will force landowners to switch from share leases to cash leases and thus place the operators at substantially greater risk; and the adjusted gross income limitation is not equitable in that a test based on the assets of the potential recipient would be a more equitable test for payment eligibility. The dollar amount of the average adjusted gross income limitation and the disqualifications are provided by statute. There is no discretion to modify the amount or impose an alternative requirement for payment eligibility. Therefore, the final rule makes no changes in this provision.

Section 1400.601 Determination of Average Adjusted Gross Income

Comments were received from 14 respondents on this section of the proposed rule. The comments dealt primarily with the manner in which average adjusted gross income is determined, either by tax information or comparable measure, and the definition of income from farming, ranching and forestry operations. It was commented that ''comparable measure'' needed to be better defined. Other concerns were that compliance with the average adjusted gross income limitation would be adversely affected if income from various sources that the respondents believed were agricultural or farm-related, but do not fit in certain taxing categories for Internal Revenue Service (IRS) purposes, would not be considered income from farming, ranching or forestry operations. One respondent commented that there are occasions when 2 or more corporations are allowed to file a single, consolidated tax return and suggested that a certification indicating the amount each entity would have paid if separate returns had been filed should be allowed to be submitted.

The term ''adjusted gross income,'' for IRS purposes, applies only to taxpayers who are ''individuals.'' As previewed in the proposed rule, this final rule provides, for individuals, that adjusted gross income be generally based on the IRS definition of that term and associated filings. Section 1001D(a)(1) of the 2002 Act takes into account the limited IRS use of this term by providing that the Secretary is to fashion a ''comparable measure'' for other entities. Here also, as indicated in the proposed rule, prior years' tax filings will be the starting point of reference. Due to the severe penalties associated with the filing of a false tax return, such information may be the most credible evidence available to make income determinations.

While this rule defines the adjusted gross income for the different types of program participants, it does not specify the line item on tax returns for participants from which critical information will be gathered since such references may likely change from year-to-year. However, the CCC forms that will be used to make these determinations will specify the specific lines from various IRS forms that will be used to the extent practicable. Also to the extent practicable, for information from the entity that is needed which cannot be ascertained solely from the IRS forms, CCC will specify in its forms what other information is needed.

For individuals, the adjusted gross income would generally be the amount so specified on the individual's final (including amendments) income tax return for the applicable year. Where there is a joint return filed, the adjusted gross income specified on the joint return will be used unless a certified public accountant or attorney provides a certified statement delineating the distribution of income and expenses of the individual seeking payments had such individual filed a separate return. Accordingly, it is possible that one tax return will be used by more than one individual for purpose of this rule.

For corporations, including a ''sub-chapter S corporation,'' the adjusted gross income will be the final taxable income plus charitable contributions. Charitable contributions are included in order to provide equitable treatment vis-a-vis individuals. For an individual, charitable deductions are deducted from adjusted gross income, along with a variety of other items, to determine the individual's taxable income. Generally, the other items deducted from an individual's adjusted gross income, such as personal exemptions and child care credits, do not have a corresponding relevancy on a corporate return.

No change is made in the final rule to response to the comment about the treatment of corporations filing a single, consolidated tax return. Certifications of average adjusted gross income are required from a payment entity and all individuals and entities with an interest in the payment entity. If one corporation is a subsidiary of another corporation, the average adjusted gross income of the parent corporation would include the average adjusted gross income of the

subsidiary corporation. If the consolidated tax returns indicate the average adjusted gross income of the parent company exceeds the limitation, all subsidiaries of the parent company would also be ineligible according to this subpart.

For charitable or nonprofit organizations with income that is not subject to Federal income taxation, the comparable measure of adjusted gross income is defined in this rule to be the ''unrelated business taxable income'' of the entity as reported to the Internal Revenue Service less any other income CCC determines to be from non-commercial activities. Currently, that amount is specified on line 34 of Internal Revenue Service Form 990–T. Generally, this excludes receipts that are gifts, grants and contributions that are tax deductible by the donor. Effectively, the adjusted gross income for these entities is the net income from only their commercial activities.

For a limited liability company, limited partnership, limited liability partnership or similar organization, the adjusted gross income is the sum of the income from trade or business activities plus the guaranteed payments to the members as reported for the applicable tax year. Charitable contributions will be dealt with in the same manner as with other entities.

For an estate or trust, the adjusted gross income is the sum of the adjusted total income plus the charitable deductions as reported for the applicable tax year.

As indicated, individuals and entities who have average adjusted gross income in excess of $2.5 million may still be eligible for covered benefits where their average adjusted gross income from farming, ranching, and forestry is not less than 75 percent of the total. Generally, the average adjusted gross income (AGI) of the individual or entity derived from farming, ranching or forestry will be, under the rule, determined based on the amounts as reported to IRS. The amount reported on applicable forms, currently IRS form 4835 and Schedule F, represent the net income from the farming operation after deductions for the cost of production. Income derived from forestry operations, to the extent it is not reported on these forms, will be the subject of a separate certification by the individual or entity as will be the case with other special income allowed to be counted toward the 75 percent level by the provisions of this rule.

Several respondents were concerned whether income from certain sources would be considered income from farming, ranching and forestry operations. Of particular concern was the consideration of gains from the sale of assets used in the enterprise; income from the leasing of farmland; income from commercial hunting operations on the farm; proceeds from the sale of water rights; income from contract operations; and, whether income from participation in the Conservation Reserve Program, Wetlands Reserve Program, Environmental Quality Incentives Program and similar programs would be considered farm income.

By denying program benefits to those individuals and entities who have exceeded the $2.5 million threshold, Congress intended that those individuals and entities who are dependent upon farming, ranching and forestry should be accorded deferential treatment. However, taking that into account and in response to the concerns expressed by respondents, the following clarifications and revisions are made:

(1) Income of a landowner generated by selling the landowner's land (including the sale of easements and development rights) used by the landowner or others for farming, ranching, or forestry operations will be considered to be income derived from farming, ranching or forestry operations;

(2) Income generated by selling farm water rights will be considered to be income derived from farming, ranching or forestry operations;

(3) Income from sales by a retail dealership of implements used in farming, ranching or forestry will not be considered to be income derived from farming, ranching or forestry operations, but income derived from the sale of a farm's agricultural equipment otherwise subject to depreciation expense on the IRS Form 4835 or Schedule F will be considered to be such income;

(4) Income from the rental of land used for farming, ranching or forestry operations will be considered to be income derived from farming, ranching or forestry operations, regardless of whether the rental arrangement is on a cash or crop share basis;

(5) Income from agricultural or conservation program payments will be considered to be income from farming, ranching or forestry operations;

(6) Income from commercial hunting operations on farmland will be considered to be income derived from farming, ranching, or forestry operations;

(7) Income from sales at a market will only be considered to be income derived from farming, ranching or forestry operations if the commodity being sold was produced by the individual or entity or a joint operation in which the individual or entity had an interest;

(8) Income from sales as a commission broker, auctioneer or warehouse operator or similar enterprise will not be considered to be income derived from farming, ranching or forestry operations; and

(9) In integrated operations, undifferentiated income (for example, income from a forestry operation that could not be differentiated between income from the production of the tree and from the sale of a finished product) will not be considered to be income derived from farming, ranching or forestry operations.

The proposed rule provided that, for the purpose of applying the average adjusted gross income limitation and calculating the three-year average, the average shall be the adjusted gross income for the three tax years immediately preceding the applicable crop, program, or fiscal year, as determined by CCC, excluding any year in which the individual or entity did not have income or had adjusted gross income considered to be zero. Several respondents suggested the exclusion of any year an individual or entity is not required to file a tax return, rather than excluding any year the individual or entity did not have income or the adjusted gross income was zero. The proposed rule was drafted to provide that a producer would not be allowed to average a loss year with a profitable year. Based on the suggestions, the wording of the final rule has been revised to allow for averaging loss years and no-income years with others, but for ongoing operations only. In some cases, the income of new entities will be averaged with those they replace in order to assure proper application of the average. Relief can be provided from that combination to the extent it would work unfairly in a particular instance.

Section 1400.602 Compliance

A total of 18 respondents provided comments on this section of the proposed rule. Some comments suggested that in addition to allowing the certification of compliance by a CPA or an attorney as provided in the proposed rule, certification from other professionals, such as farm management firms, should be allowed. One respondent commented that it would be a burdensome task for an entity with a large number of stockholders to obtain certifications of compliance with the average AGI limitation from stockholders. It was suggested that an exemption be made for corporations with more than 500 stockholders, and that the average AGI limitation be

applied to the corporation, but not to the individual stockholders. There were also concerns expressed as to whether the business information provided to the local FSA offices would remain confidential. In other words, there were concerns about what safeguards and confidentiality measures would be implemented to ensure this information would remain private and not made public in some manner.

The statute requires that to comply with the average AGI limitation, an individual or entity shall provide either: (1) A certification from a ''* * * certified public accountant or another third party that is acceptable to the Secretary;'' or (2) information and documentation regarding the average adjusted gross income of the individual or entity through other procedures established by the Secretary. The proposed rule indicated that, in addition to a certification from a CPA, the only other acceptable certification from a third party would be from an attorney. Although others may have knowledge of the average adjusted gross income of an individual or entity, the Agency believes that limiting third party certifications to a CPA or an attorney is unlikely to create any hardship on participants and will provide a convenient and proper way of guaranteeing some expertise and training in the particular matter at issue. As to the comment about the application of the average AGI limitation to stockholders of a corporation, the statute requires a reduction in payments to an entity, general partnership or joint venture commensurate with the interest held by each individual who has an average adjusted gross income in excess of the limitation. There is no authority provided in the statute for any exemption to the requirement for a commensurate reduction when an individual who holds an interest in an entity has an average adjusted gross income in excess of the limitation. Therefore, the final rule makes no changes regarding the certification of compliance with this subpart.

With respect to confidentiality, the provisions of the final rule avoid conflict with existing regulations and procedures. All information submitted with respect to AGI matters will be treated with regard to confidentiality concerns in accordance with existing rules. Those rules take into account concerns like those expressed in the comments.

Section 1400.603 Commensurate Reduction

Comments were received from 4 respondents on this section of the proposed rule. It was commented that the number of levels should be lessened to 2 or 3 rather than 5 before a commensurate reduction is applied. However, it was also commented that no level of restriction for the commensurate reduction should be established.

Based upon the agency's experience in administering section 1001 relating to the maximum payments a ''person'' may receive, CCC has determined that business enterprises comprised of layered ownership are often established simply to maximize the receipt of government payments. The rule should allow sufficient layering to accomplish legitimate business need while affording what otherwise would be a dodge of a statutory test or endless tracing of corporate interests back to individuals. Accordingly, no changes were made in the final rule to this section on commensurate reduction.

Miscellaneous

Miscellaneous comments were received suggesting editorial and grammatical corrections and such. A few editorial changes are made from the text and structure of the proposed rule for clarity and for ease of administration. This rule also includes an addition to the ''actively engaged in farming'' provisions subpart C of part 1400 to address eligibility issues relating to reservist military personnel called to active duty.

Cost Benefit Assessment

The average adjusted gross income limitation not only applies to payments under the commodity and price support programs, but to all payments and benefits under the conservation and related programs. It includes, but is not limited to, direct and counter-cyclical payments, conservation reserve and environmental quality incentive program payments, loan deficiency payments and marketing loan gains.

For the 2003 through 2007 crop, program or fiscal years, individuals and entities are not eligible for payments or benefits from the above-mentioned programs if their average adjusted gross income exceeds $2.5 million for the three tax years immediately preceding the applicable crop, program or fiscal year. This requirement applies unless 75 percent or more of that average adjusted gross income amount was derived from farming, ranching or forestry operations.

The determinations necessary for compliance with the average adjusted gross income limitation will be generally based on Internal Revenue Service concepts and information included on final tax filings. Comparable measures for adjusted gross income have been developed for entities, partnerships and for organizations that do not have such a line item on tax filings, and that are non-profit, or are not required to file tax information.

By statute, under the average adjusted gross income provisions, there is a required commensurate reduction of program payments in the situations where an owner of an entity applying for benefits fails the test. Accordingly, any program payment or benefit issued to an entity, general partnership, or joint venture shall be reduced by an amount commensurate with the direct or indirect interest held by that individual or entity that is determined to have an average adjusted gross income that exceeds the limitation.

Note that those ineligible for marketing loan gains and loan deficiency payments because of the adjusted gross income restriction may still be eligible to participate to a degree in the marketing assistance loan programs. Loans may be obtained and forfeited when commodity prices decrease. An individual or entity that fails the test will still be able to use commodity certificates to repay those loans at a rate lower than the original loan rate. Benefits they realize from the reduced payment rate, essentially the same as marketing loan gains, are not subject to payment limits or the adjusted gross income restrictions.

The 2002 Act mandates that the adjusted gross income limitation apply to the 2003 through 2007 crop years. In May 2002, the Congressional Budget Office estimated that savings from the average adjusted gross income limitation will total $22 million in fiscal years 2002 through 2006.

The Cost/Benefit Assessment of the adjusted gross income limitation is available from James Baxa, Production, Emergencies, and Compliance Division, United States Department of Agriculture (USDA), 1400 Independence Ave, SW., Washington, DC 20250. Phone: (202) 720–4189. E-mail: *James Baxa@wdc.usda.gov.*

List of Subjects in 7 CFR Part 1400

Agriculture, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, 7 CFR part 1400 is amended as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

■ 1. The authority section for part 1400 is revised to read as follows:

Authority: 7 U.S.C. 1308 *et seq.*

Subpart A—General Provisions

■ 2. Section 1400.1 is revised to add a new paragraph (h), to read as follows:

§ 1400.1 Applicability.

* * * * *

(h) As provided in Subpart G of this part, additional requirements are applicable to certain of the payments specified in paragraph (g) of this section.

Subpart C—Actively Engaged in Farming Determinations

■ 3. Section 1400.213 is added to read as follows:

§ 1400.213 Military personnel.

If an individual is called to active duty in the military because of Operation Iraqi Freedom, or any other similar military operation, before a determination is made that the individual is actively engaged in farming, the individual may be considered to be actively engaged in farming if the determining authority determines that such individual did make a conscious effort to, and would have been determined to be, actively engaged in farming if the individual would not have been called to active duty. If the individual is called to active duty after being determined to be actively engaged in farming, such determination shall remain in effect for the program year.

■ 4. Subpart G is added to read as follows:

Subpart G—Average Adjusted Gross Income Limitation

Sec.

1400.600 Applicability.
1400.601 Determination of average adjusted gross income.
1400.602 Compliance.
1400.603 Commensurate reduction.

Subpart G—Average Adjusted Gross Income Limitation

§ 1400.600 Applicability.

(a) For the 2003 through 2007 crop years, program years, or fiscal years, an individual or entity is not eligible for any payment or benefit identified in § 1400.1 as being subject to this part if the individual's or entity's average adjusted gross income exceeds $2.5 million for the three tax years immediately preceding the applicable crop, program or fiscal year. Payments may also be reduced under the commensurate share rules set out in § 1400.603.

(b) Notwithstanding paragraph (a) of this section, the individual or entity may be considered to meet the requirements of this subpart if not less than 75 percent of the individual's or entity's average adjusted gross income for the three tax years immediately preceding the applicable crop, program or fiscal year, is derived from farming, ranching, or forestry operations.

(c) In addition to payments or benefits identified under § 1400.1, this subpart applies to benefits provided to participants under contracts or agreements entered into for the 2003 through 2007 crop, program or fiscal years for the following programs:

(1) The program authorized by part 1466 of this chapter or its successor regulations;

(2) The program authorized by part 1467 of this chapter or its successor regulations;

(3) The program authorized by part 636 of this chapter or its successor regulations;

(4) Any other program authorized by Title XII of the 1985 Act, as amended, or Title II of the 2002 Act.

(5) Any other program to which this subpart is made applicable by statute or regulation.

(d) Determinations made under this subpart with regard to the programs described in paragraphs (c)(1) through (c)(5) of this section will be based on the year for which the contract or agreement is approved and that determination will apply for the entire term of the subject agreement or contract.

(e) Vendors that receive payment for technical services or assistance provided in conjunction with programs under Title II of the 2002 Act and Title XII of the 1985 Act, but who are not beneficiaries of the program, are not subject to this subpart for services that are of the type that are also performed by the Federal Government in connection with such programs.

(f) Payments to an escrow agent or other of similar capacity in which the recipient is maintaining temporary custody of the funds for eventual disbursement to an eligible program participant are not subject to this subpart so long as the party ultimately receiving the payment is eligible under this subpart.

(g) Payments to States, counties, political subdivisions and agencies thereof, and Indian tribes are not subject to this subpart.

§ 1400.601 Determination of average adjusted gross income.

(a) For purposes of this subpart, *income from farming, ranching or forestry operations* means income of an individual or entity derived from:

(1) Producing crops, livestock or unfinished raw forestry products;

(2) Selling (including the sale of easements and development rights) their own farm, ranch or forestry land or water rights;

(3) Selling, but not as a dealer, equipment purchased to conduct farm, ranch or forestry operations when the equipment is otherwise subject to depreciation expense on the IRS Form 4835 or Schedule F;

(4) Renting land used for farming, ranching or forestry operations; and

(5) Payments made under any program authorized under chapters VI, VII or XIV of this title.

(b) For purposes of this subpart, except as otherwise provided in this subpart, *adjusted gross income* means:

(1) For an individual filing a separate tax return, the amount reported as ''adjusted gross income'' on the final federal income tax return for the individual for the applicable tax year;

(2) For an individual filing a joint tax return, the amount reported as ''adjusted gross income'' on the final federal income tax return for the applicable tax year unless a certified statement is provided by a certified public accountant or attorney specifying the manner in which such income would have been declared and reported if the individuals had filed two separate returns and that this calculation is consistent with the information actually supporting the filed joint return;

(3) For a corporation, including a subchapter S corporation, the total reported ''taxable income'' as reported to the Internal Revenue Service plus the amount of the charitable contributions as reported on the final federal income tax return for the applicable tax year;

(4) For a tax exempt entity, the ''unrelated business taxable income'' of the entity as reported to the Internal Revenue Service on the final federal income tax return, less any other income CCC determines to be from non-commercial activities;

(5) For a limited liability company, limited partnership, limited liability partnership or similar type of organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year; and

(6) For an estate or trust, the adjusted total income plus charitable deductions

as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year, or the amount of net increase in the estate's or trust's value resulting from its business or investment interests.

(c) For purposes of applying this subpart and calculating the three-year average referenced in § 1400.600, that average shall be for the adjusted gross income for the three tax years immediately preceding the applicable crop, program or fiscal year, as determined by CCC. For an entity that is not required to file a federal income tax return, or an individual or entity that did not have taxable income in one or more tax years, the average shall be the adjusted gross income, including losses, averaged for the three tax years immediately preceding the applicable crop, program or fiscal year, as determined by CCC. However, a new entity will have its adjusted gross income averaged only for those years of the base period for which it was in business, but a new entity shall not be considered ''new'' to the extent it takes over a existing operation and has any elements of common ownership or interests with the preceding entity, or with individuals or entities with an interest in the ''old'' entity. When there is such commonality, income of the ''old'' entity will be averaged with that of the ''new'' entity for the base period.

§ 1400.602 Compliance.

(a) To comply with the average adjusted gross income limitation, an individual or entity, including all interest holders in an entity, general partnership or joint venture, shall provide the following as required by CCC:

(1) A certification in the manner prescribed by CCC from a certified public accountant or attorney that the average adjusted gross income of the individual or entity does not exceed this limitation;

(2) A certification in the manner prescribed by CCC from the individual or entity that the average adjusted gross income of the individual or entity does not exceed this limitation; or

(3) Submission to CCC of the relevant Internal Revenue Service documents and supporting financial data as requested by CCC. Supporting financial data may include State income tax returns, financial statements, balance sheets, reports prepared for or provided to another Government agency, information prepared for a private lender, and other credible information relating to the amount and source of the individual's or entity's income.

(b) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit income tax returns may be requested and if requested must be supplied. Relevant income tax returns and documentation must be retained a minimum of two years after the end of the calendar year corresponding to the year for which payments or benefits are requested. If an individual or entity has submitted information to CCC, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such individual or entity shall provide to CCC a copy of any amended form filed with the Internal Revenue Service within 30 days of the filing.

(c) The individual or entity shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in paragraph (a)(2) of this section. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.

(d) All information provided to CCC for the purposes of determining compliance with this subpart will remain confidential and not be subject to any request submitted under the Freedom of Information Act.

§ 1400.603 Commensurate reduction.

(a) Any program payment or benefit subject to this subpart provided to an entity, general partnership or joint venture shall be reduced by an amount commensurate with the direct and indirect ownership interest in the entity, general partnership, or joint venture of each individual or entity determined to have an average adjusted gross income in excess of the limitation under the standards provided elsewhere in this subpart for the direct recipient of such payments.

(b) Ownership interest in an entity shall be reviewed to the fifth level of ownership to determine whether a commensurate reduction is applicable and the extent of such reduction. If an ownership interest is not held by an individual in the fifth level of ownership in an entity, no payment or benefit shall be made with respect to such interest.

Signed in Washington, DC, on May 28, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC14

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy—ABS and MBS Investments; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published an interim final rule with request for comments under part 615 on March 28, 2003 (68 FR 15045). This interim final rule amends our regulatory capital standards to allow Farm Credit System institutions to use a lower risk weighting for highly rated investments in non-agency asset-backed securities (ABS) and mortgage-backed securities (MBS) that have reduced exposure to credit risk. We are adopting this rule so that the capital requirements for risk weighting of highly rated non-agency ABS and MBS investments will more closely reflect an institution's relative exposure to credit risk and help achieve a more consistent regulatory capital treatment with the other financial regulatory agencies. In accordance with 12 U.S.C. 2252, the effective date of the interim final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 13, 2003.

EFFECTIVE DATE: The regulation amending 12 CFR part 615 published on March 28, 2003 (68 FR 15045) is effective May 13, 2003.

FOR FURTHER INFORMATION CONTACT: Laurie A. Rea, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Jennifer A. Cohn, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 30, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–14029 Filed 6–3–03; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE89

Small Business Size Standards; Forest Fire Suppression and Fuels Management Services

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting a size standard of $15 million in average annual receipts for the activities of ''Forest Fire Suppression and Fuels Management Service'' classified within the ''Support Activities for Forestry'' industry (North American Industry Classification System (NAICS) 115310). This action will better define the size of businesses in these activities that the SBA believes should be eligible for Federal small business assistance programs. The size standard for the remainder of activities in this industry remains at $6 million.

DATES: This rule is effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Program Analyst, Office of Size Standards, at (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: On July 19, 2002, the SBA published a proposed rule in the **Federal Register** (67 FR 47480) to establish a $15 million size standard for forest fire suppression and fuels management services under NAICS code 115310, the Support Activities for Forestry industry. The SBA proposed to establish a size standard for these activities after reviewing requests from firms in the forestry industry. These firms believe that this action is warranted in light of the increased emphasis by the Federal Government on removing biomass fuels from the Nation's forest, the dramatic increase in funding for this effort, and the Federal Government's growing reliance upon the private sector to perform fuels management tasks and to suppress forest fires.

Based on these concerns, the SBA conducted a review of this industry's size standard. In addition to reviewing patterns of Federal procurement in this industry, it collected and evaluated data on the industry's structure. This review involved comparisons of average firm size, the size distribution of firms, measures of start-up costs, and the degree of concentration of economic activity among very large firms in the industry. Based on its review of each of these evaluation factors, and the nature and patterns of Federal contracting for forest fire suppression and fuels management services, the SBA concluded that the data supported a size standard for forest fire suppression and fuels management services industry activities of $15 million in average annual receipts. The SBA did not propose a change to the $6 million size standard for all the other remaining forestry activities within the industry. (For more information on the reasons for the proposed establishment of a $15 million size standard, see the July 19, 2002, proposed rule.) After careful consideration of the comments received on the proposed rule, the SBA has decided to adopt its proposed size standard of $15 million.

Discussion of Comments on the Proposed Rule

The SBA received 19 comments on the proposed size standard from eight environmental and economic associations, five firms, three Federal agencies, two individuals, and one trade association. In summary, eight commenters supported the proposed size standard and 11 commenters opposed that change. Below is a summary of the major issues raised by the comments received on the proposed rule and the SBA's response.

Comments Supporting a Higher Size Standard

One organization supported the proposed increase in the size standard, but claimed that the increase could be greater than $15 million due to the 2002 fire season. This commenter did not provide any supporting statistics or documentation.

The SBA does not adopt this comment. In the proposed rule, the SBA discussed the reasons for proposing the size standard at $15 million. Even though the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) expended record contract dollars for the 2002 fire season, the SBA found that the firms impacted the most were those whose revenues were below $6 million before the 2002 season. Several of these firms now exceed the current size standard. The increased revenues from this past fire season support the SBA's reasons for establishing a size standard above the current $6 million level for forest fire suppression and fuels management services activities. The SBA believes that a $15 million size standard is sufficient to allow these companies to grow to a size to meet the capital requirements of forest fire suppression and fuels management services contracts. The SBA is reluctant to adopt a higher size standard than it proposed without more information on the structure of the industry that demonstrates a stronger basis for a higher size standard.

Three commenters supported the proposed size standard because of the importance it has on firms engaged in forest fire suppression and fuels management services. One commenter pointed out that the firms performing these tasks have been developed primarily for Federal Government work. The commenter contends ''it is a logical extension of the effort that Federal agencies have pursued to allow companies that have been developed for Federal work to continue this work * * * The higher standard allows continued growth as well as expansion of the small business pool through subcontracting.'' Another commenter added that the Federal Government's reliance on the private sector is expected to significantly increase due to the emphasis on contract use under the National Fire Plan and the effort to outsource commercial work that can be done by private concerns.

One Federal agency expressed concern about the shift in the forestry industries away from logging and into forest fire suppression and fuels management services. The commenter stated that if a firm exceeds the size standard, there is no commercial market for these types of firms, as ''The Government is in the only game in town.'' These firms make up a significant portion of one of its contracting offices' fire fighting resources. It also pointed out that normally small business set-aside programs are designed to help small businesses graduate and go onto bigger and more lucrative commercial contracts. In this industry, the Federal Government far exceeds the amount of work done by private landowners, or even by the states and counties.

The SBA agrees with these comments. As stated in the preamble to the proposed rule, over the last several years the Federal Government has placed greater reliance upon contractors to perform these services, resulting in a dramatic increase in contract funding for forest fire suppression and fuels management activities. This is especially true in the western part of the country where the Federal Government

owns vast amounts of land. This development has significantly changed the size structure of firms engaged in these activities, and supports the need to establish a higher size standard.

Two commenters cited increased contractor costs as a basis for increasing the size standard. One commenter identified the increasing prevailing wages mandated by the U.S. Department of Labor; the increases in fuels costs for mechanical equipment, chain saws, and drip torches for igniting prescribed fires; and the use of specialty personal protective clothing and equipment as factors leading to the increased costs. Another commenter applauded the SBA's acknowledgment of the increased capital costs placed upon companies due to the Federal Government's reliance upon these firms.

The SBA agrees with these comments. As stated in the proposed rule, because of the shift in forest fire fighting and fuels management services policies by the Federal Government, many firms have had to make capital investments in equipment and specialized clothing. In addition, the SBA obtained from the National Interagency Fire Center (NIFC) information on the average fire crew labor costs for fiscal year 2002. This information shows that the Federal Government's labor costs contracted for fire crews range between $23 and $35 per hour, with an average being $30 per hour. The level of labor costs and capital investments supports the SBA's proposal for a higher size standard.

One Federal agency commented that the increase will benefit the Government by increasing the number of viable small businesses eligible for small business set-aside awards for forest fire suppression and fuels management services. This agency noted that it has witnessed a decreasing number of business bidding on fuels reduction road maintenance contracts. Many of the firms no longer qualify under the $6 million size standard. Many of these firms qualify under the higher size standard of their primary industry (*e.g.*, Other Waste Collection (which includes brush removal) with a $10.5 million size standard and Site Preparation Contractors with a $12 million size standard). In addition, the agency is aware of one contractor who is already hiring fewer crews and refusing fire assignments in order to stay under the size standard.

The agency also expressed concern that it may receive little or no competition for small business set-aside projects because of the number of firms doing fire suppression work and who have also qualified to do prescribed burns are at or above the current size standard. The commenter pointed out that substantial costs are incurred in the acquisition and maintenance of equipment as well as the training and retention of quality employees. In addition, the agency has several contractors who are now running crews under State contracts, and ''with the number of fire emergencies in the 2 years, these firms are near or at the current size standard.''

The agency's comments support the SBA's findings discussed in the proposed rule that due to the increased funding for fuels management services and the severe fire seasons, many firms who perform these services for the Federal Government have had a significant increase in their revenues. Without an increase to the size standard, the Federal Government may help small business to develop their abilities in forest fire suppression and fuels management services only to have them either restrict their growth or force the agency to find and develop a new group of inexperienced firms. This, coupled with the earlier comment that the Federal Government is the primary source of revenues for the industry, strongly supports increasing the current size standard.

Comments Opposing a Size Standard Increase

Four commenters opposed an increase to the current size standard because they believe that there are ample small businesses to perform fuels management services. One of these commenters provided calendar year 2000 data on the number of employees in the Support Activities for Forestry industry for the State of Oregon from the U.S. Bureau of Census' County Business Patterns statistical database. These data show that firms with 99 or less employees comprise 97% of the firms in Oregon, while 60% of the firms have four employees or less. This commenter also stated that in fiscal year 2001, using the BLM and the USFS databases for contracts awarded to firms in the States of Oregon and Washington, $87 million was expended for forestry services. The average income per contractor was $156,000, with the largest contractor capturing $7.2 million. Only 16 firms captured more than $1 million in work, while 396 captured contracts totaling $100,000.

The SBA does not agree with the comment that a size standard increase is unnecessary. The information presented by one of the commenters does not accurately reflect all firms, nationwide, that are involved in forest fire suppression and fuels management services. When developing size standards, the SBA looks at industry statistics on a national level, as its size standards affect all industry firms and Federal programs. One commenter relied on a Census Bureau report for the State of Oregon that presented information only on the number of employees in the Support Activities for Forestry industry. This report did not give data on industry receipts, which is a more accurate representation of the size distribution of firms in this industry because of its seasonal nature. The SBA's reasons for using receipts instead of employees were discussed in the proposed rule. In addition, the information presented by these commenters was for the entire Support Activities for Forest industry in Oregon, which includes firms that estimate timber, provide forest pest control services, consultant on wood attributes and reforestation, plant trees, and provide land treatment services. As explained in the proposed rule, the SBA could not use the Census Bureau data it usually relies upon to evaluate industry structure. Although that database (a special tabulation of the 1997 Economic Census) provides national industry data on firms by receipts size, it does not provide firm data on specific activities within the industry. Moreover, the significant increase in spending for forest fire suppression and fuels management services occurred after the 1997 Economic Census, and thus, the data do not reflect the impact of this increased spending on the size distribution of firms in the industry.

This commenter also presented Federal contract awards limited to firms in the States of Oregon and Washington for all forestry support services. As stated in the proposed rule, the SBA obtained information from the Federal Data Procurement Center on forest fire suppression and fuels management services contract awards from fiscal years 1998—2000, which showed that the contract awards to firms increased from $29 million in fiscal year 1998 to $173 million in fiscal year 2000. During that period the percentage of Federal contract award dollars to small business for forest fire suppression decreased from 76% to 51%. During the period of 1998 through the first two quarters of fiscal year 2002, the percentage of Federal contract award dollars to small business for fuels management decreased from 100% to 75%. The SBA believes that these trends reflect the changing composition of businesses in forest fire suppression and fuels management services and the need to establish a new size standard.

Two commenters stated that the SBA's approximation for forest fire

suppression firm size is unrealistically large. These commenters stated that the SBA's estimate of 20 fire crews (one crew has 20 members) for 90 days is overestimated. They pointed out that the largest firms in the Pacific Northwest have 10 crews, and that 60 days is more of a realistic fire season. One of these commenters also used a labor cost of $20.25 per hour.

The SBA does not agree with this comment. In the proposed rule, the SBA stated that it had received a request from an organization, representing forest fire suppression firms, to increase the size standard for forest fire suppression and fuels management services to 500 employees or $27.5 million. This organization justified its recommendations, in part, by stating that 20 fire crews for 90 days could generate $10.8 million.

The SBA obtained information on fire crew lists and labor and engine rates on the national fire fighting contract from NIFC for the 2002 season. The national average labor rate for fire crews was $30 per hour and the average rate for a fire engine was $1,500 per day. The average number of fire crews was four and the average number of engines was three. In addition, the 2002 fire season was unusually long, starting in April and ending in October, a 150–180 day season. Using this information the SBA calculated the potential revenues of firms engaged in forest fire suppression. With the extended fire season, the SBA recognized that the crews would not work everyday, and used a 120 estimate of days crews worked. The table below estimates the potential revenues by the number of crews.

TABLE 1.—POTENTIAL REVENUES BY NUMBER OF CREWS

Average hourly rate	12 hour work day	Average days worked	# of 20 person crews	Total # of employees	Potential 2002 revenues
$30	12	120	4	80	$3.5M
$30	12	120	9	180	$7.8M
$30	12	120	15	300	$12.9M

Using these estimates, the average firm with four crews would have the potential to generate $3.5 million in revenues just from forest fire suppression activities. Add in the cost of three fire engines at $1,500 per engine, $4,500 per day, for the 120 days, $540,000, and the average firm's 2002 revenues for just fire suppression is greater than $4 million. Given that many of the firms that fight forest fires are in other industries, these firms potentially will have revenues in excess of $6 million. The SBA believes that the size standard must be set at a level above $6 million to properly take into account these higher cost activities.

Two commenters stated that increasing the size standard will cause greater market concentration in the fuels management services. Two other commenters stated that an increase would allow for ''dominant industries'' to out-compete small businesses.

The SBA disagrees with these comments. Federal procurement statistics show that there has been a dramatic drop in the percentage of award dollars going to small business in fuels management services. In 1998, 100% went to small businesses. However, in the first two quarters of fiscal year 2002 small business captured only 75% of the award dollars. The percentage of contract dollars going to small business will continue to decrease because of the dramatic increase in fire suppression dollars in 2002, the growth in Federal monies for fuels reduction, and because many of the fuels management firms also are forest fire suppression contractors. As discussed in the proposed rule, the SBA believes that increasing the size standard will increase competition in the industry, thereby increasing opportunities for small business.

Seven commenters stated that the problem of size growth stems from the way the Federal Government is issuing contracts, *i.e.*, the size of each requirement, the use of Request for Proposals and Indefinite Delivery Indefinite Quantity (IDIQ) type contracts, and the bundling of requirements. Two of these commenters recommended that Federal land management agencies issue smaller contracts that would be accessible to smaller businesses. Both claimed that the rapid growth of the largest firms in the industry is a result of the Federal Government offering increasing large contracts.

The SBA does not agree with this comment. The SBA reviewed the fiscal year 2003 procurement forecasts for the BLM and USFS and found that these agencies were structuring their requirements for specific areas and not offering large bundled contracts. All but two of the BLM's fiscal year 2003 projected solicitations and three of the USFS fiscal year 2003 projected solicitations have estimated values not to exceed $250,000. Also, this issue is not relevant to adopting or rejecting the proposed size standard. Additionally, issues concerning contract bundling relate to the structuring of individual procurements and therefore are separate from the SBA's determination of the appropriate small business size standard for a particular industry. For more information about the SBA's efforts to address the impact of contract bundling on small businesses, see its recently proposed rule on this issue (68 FR 5134, dated January 31, 2003).

One commenter stated that $15 million was not a small business. In fact, this commenter stated that $1 million is larger than any small business operation existing in her area. The commenter claimed that a $15 million business would not be a local forestry small business.

The SBA does not agree with this recommendation. Firms with revenues below $1 million are not representative of all small businesses that perform forest fire suppression and fuels management contracts. Data the SBA analyzed on firms engaged in forest fire suppression and fuels management services clearly support a size standard above the current $6 million size standard.

Separate Forest Fire Suppression and Fuels Management Services Categories

The SBA received five comments recommending that forest fire suppression be separated from fuels management services. All five commenters claimed that many of the small firms were well below the current size standard and are capable of doing fuels management services. Three of these commenters acknowledge that the forest fire suppression activity may have higher capital costs, start up costs, and training costs. These firms stated that the capital costs, start up costs, and training needs may be more limited for fuels management services. Two commenters claimed that combining

these two activities into one industry activity may inaccurately merge businesses of two different types together. Two different commenters stated that fuels management firms are more like firms in other forestry services than they are like forest fire suppression firms. The equipment and skill levels for mechanical thinning are unrelated to fire suppression equipment.

The SBA acknowledges that some misinterpretation may have been caused by combining forest fire suppression and fuels management services into a single sub-industry description. Both are separate activities under the Support Activities for Forestry industry. Instead of listing one exemption for both forest fire suppression and fuels management services, the SBA will modify its table of small business size standards by listing two separate exceptions under Support Activities for Forestry—one for forest fire suppression and one for fuels management services.

The SBA does not agree with the comments regarding mechanical thinning, capital costs, training, and skill levels. Mechanical thinning is only one aspect of fuels management services. As stated in the definition of fuels management services in the proposed rule, this activity also involves prescribed fire, establishment of fuel breaks, as well as thinning, pruning, and piling. In addition, contracts for these services include the removal and/or disposal of biomass. The use of prescribed fire for these services requires firms experienced in controlling forest fires. Firms who perform this portion of fuels management have expended capital on fire retardant clothing, fire fighting equipment, and training. These firms also pay higher insurance premiums because of the danger in working with controlled fire. These firms, along with their fire engines, are also certified for controlling fires by the USFS. Firms that establish fuel breaks as part of their fuel management services, require capital investment in heavy equipment such as yarders, and earth moving equipment. Many times, these firms are also involved as excavation contractors and heavy equipment contractors (site preparation contractors have a $12 million size standard and heavy equipment contractors have a $28.5 million size standard). In addition, fuels management contracts may include the removal and/or disposal of the biomass (brush removal contractors have a size standard of $10.5 million size standard). Fuels management services is not limited to mechanical thinning, as suggested by some commenters. The costs, training, and equipment for various fuels management contractors may be just as high as for forest fire suppression contractors.

Periodic Reviews and Adjustments Aside From Inflationary Adjustments

One commenter recommended that the SBA perform periodic reviews on the Forestry industry aside from inflationary adjustments. The SBA agrees with this comment. As stated in the proposed rule, the SBA would continue to monitor this activity in the future to determine if another increase is warranted. If the review shows that another change in the size standard is needed, the SBA will issue a proposed rule, outlining the reasons for the change.

Use of Receipts Over Number of Employees

One commenter, a contracting officer, supported the SBA's decision to establish this size standard by receipts instead of number of employees because of the great fluctuation in employment which rises and falls throughout the year due to the fire suppression season. During a severe fire season, like 2002, some firms may operate 25 20-person crews for a period of weeks or a few months. The number of employees then drops to the amount needed to conduct fuels management.

As discussed in the proposed rule, the SBA believes that using a number of employees size standard is not appropriate for forest fire suppression and fuels management services, as most firms performing these activities have fluctuating numbers of employees because of the seasonal nature of forest fire suppression. A receipts-based size standard is a more appropriate measure of a firm's operations in these activities.

Contrary to National Fire Plan

Three commenters stated that the SBA's actions would be contrary to the National Fire Plan, which was developed to reduce forest fire hazards and increase preparedness for fire suppression. All three emphasized that Congress' approach was not to create larger businesses but to build new capacity in rural communities near national forests and other public lands, and that they provided authority to direct work to small and micro businesses.

The SBA does not agree with this comment. The SBA believes its actions are aligned with Congress' intent for the National Fire Plan. Because of the devastating fire seasons during the past 5 years, and the establishment of National Fire Plan, funding to firms in forest fire suppression and fuels management services has dramatically increased. With this rule and because of the National Fire Plan, the SBA is recognizing the effect this dramatic increase in funding has had, and will continue to have, on firms in this industry.

Workers' Health and Safety in Jeopardy

One commenter claimed that increasing the size standard would ''allow firms to grow beyond the point where contractors can ensure adequate attention to worker health and safety.'' This issue does not pertain to factors related to establishing a size standard. Health and safety issues are the function of the administrative contracting officer as they monitor the compliance with the clauses in the contract that regulate these issues.

Negative Environmental Outcome

One commenter stated that the SBA actions would ''open the doors to the potentially damaging new industry of removing unsustainable quantities of biomass fuel from the nation's forest.'' This comment deals with environmental issues and does not relate to the size of a firm in the forest fire suppression and fuels management services.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that the proposed rule is a significant regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements. Below is a regulatory impact analysis of this size standard change.

Regulatory Impact Analysis

1. Is There a Need for the Regulatory Action?

The SBA is chartered to aid and assist small businesses through a variety of

financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach the SBA follows when analyzing a size standard for a particular industry. Based on that analysis, the SBA believes that a size standard for forest fire suppression and fuels management services is needed to better define small businesses engaged in these industry activities.

2. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, approximately 50 to 60 additional firms will obtain small business status and become eligible for these programs. These programs include the SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), and small businesses located in Historically Underutilized Business Zones (HUBZone), including the application of a HUBZone or SDB price evaluation preference or adjustment for contracts awarded through full and open competition. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use the SBA size standards for a variety of regulatory and program purposes. In situations where the SBA's size standard is not appropriate for an agency's program, the agency may establish its own size standards with the approval of the SBA Administrator (*see* 13 CFR 121.902).

The benefits of a size standard increase to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards; and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's financial programs, in particular its 7(a) Guaranteed Loan program. Under this program the SBA estimates that $100,000 in new Federal loan guarantees could be made to the newly defined small businesses. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus, increasing the size standard to include 50 to 60 additional businesses will likely result in only one or two small business guaranteed loans to businesses in this industry.

The newly defined small businesses would also benefit from the SBA's Economic Injury Disaster Loan (EIDL) program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected. During fiscal years 2001–02, however, no loans were made to firms in the Support Activities for Forestry industry.

Awards to small businesses for forest fire suppression and fuels management services have decreased 27% over the last three fiscal years. Small business award dollars to firms in the forestry services activities, most of which were for forest fire suppression and fuels management services, amounted to $185 million. If this rule becomes final, small business status would be restored to several firms that have lost small business status because of the rapid growth in Federal funding and contracting in this industry. The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $50 million per year ($185 million × 27%) under the small business set-aside program, the 8(a) and HUBZone programs, or unrestricted contracts.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A large base of small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. Federal contractors with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that approximately 50 to 60 additional firms could become active in Federal Government programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional firms seeking the SBA guaranteed lending programs, and additional firms eligible for enrollment in the SBA's PRO-Net database program. Among businesses in this group seeking the SBA assistance, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts as a result of this rule. With greater numbers of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. However, the additional costs associated with fewer bidders are likely to be minor since procurements may be set aside for small businesses or under the 8(a), and HUBZone programs only if awards are expected to be made at fair and reasonable prices.

The new size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or SDB businesses instead of large businesses since those two categories of small businesses are eligible for price evaluation preferences for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased

competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The potential transfer of contracts away from large and currently defined small businesses would be limited by the newly defined and expanding small businesses that were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers cannot be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The revision to the current size standard for forest fire suppression and fuels management services is consistent with the SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administrator's objectives. One of the SBA's goals in support of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. The SBA estimates that an additional 50 to 60 businesses may obtain small business status as a result of this rule. Also, small businesses may obtain an additional $50 million in Federal contracts.

The size standard may also affect small businesses participating in programs of other agencies that use the SBA size standards. As a practical matter, however, the SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA size standard is not appropriate, the Small Business Act and the SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with the SBA's Office of Advocacy when developing different size standards for their programs (13 CFR 121.902(b)(4)).

Immediately below, the SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the need for and objective of the rule; a description and estimate of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives to the final rule considered by the SBA that minimize the impact on small businesses.

(1) What Is the Need for and Objective of the Rule?

The SBA's objective of this rule is to establish an appropriate small business definition of businesses engaged in forest fire suppression and fuels management services, and therefore, eligible for Federal small business assistance programs. The significant increase in Federal funding and the Federal Government's increased use of contractors to perform these services has altered the structure of the industry and support the need for a new size standard for these activities.

(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Act (IRFA)?

The SBA received no comments in response to the IRFA of the proposed rule.

(3) What Is the SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

The SBA estimates that 200 to 300 businesses are engaged in forest fire suppression and fuels management services. These businesses come from industries in the Forestry and Logging Subsector (NAICS codes 113110, 113210, 113310, and 115310). As this is an emerging industry, the SBA developed its estimate from discussions with, and information provided by the USFS, the BLM, and industry groups. From these discussions, the SBA estimates that approximately 50% of these firms are small businesses, many of which may be currently at or just below the $6 million threshold. With the adoption of this rule, 50 to 60 additional businesses will gain small business status. Although this may not represent a substantial number of small businesses, the SBA is preparing an FRFA to ensure that the impact on small businesses of higher size standards are known and have been considered. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements.

Based on the relative size of these firms and the SBA's knowledge of contracting in these areas, the SBA estimates that small business coverage will increase by 12% of total revenues in this activity. These revenue estimates were calculated from the size distributions of the parent industries in which forest fire suppression and fuels management service firms are presently classified.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping Requirements on Small Businesses?

A new size standard does not impose any additional reporting, record keeping or other compliance requirements on small entities for the SBA programs. A change in a size standard would not create additional costs on a business to determine whether or not it qualifies as a small business. A business needs to only examine existing information to determine its size, such as Federal tax returns, payroll records, and accounting records. Size standards determines ''voluntary'' access to the SBA and other Federal programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

(5) What Are the Steps the SBA Has Taken To Minimize the Significant Economic Impact on Small Businesses?

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that will obtain small business status as a result of this final rule are (1) eligibility for the Federal Government's procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and businesses located in Historically Underutilized Business Zones (HUBZone); and (2) eligibility for the SBA's financial assistance programs such as 7(a) business loans, 504 business loans, and EIDL assistance. The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $50 million per year under the small business set-aside program, the 8(a) program, the HUBZone program, or unrestricted contracts. This represents approximately 27% of the $185 million

in total Federal expenditures for forest fire suppression and fuels management.

(6) Alternatives

(a) What Are the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?

As stated in the Small Business Act, 15 U.S.C. 632, and 13 CFR part 121, the SBA establishes size standards based on industry characteristics and for non-manufacturing concerns on the basis of gross receipts of a business concern over a period of 3 years. The increased emphasis by the Federal Government on removing biomass fuels from the Nation's forests, the dramatic increase in funding for this effort, and the Government's growing reliance upon the private sector to perform fuels management tasks and to suppress forest fires supports establishing a separate size standard of $15 million.

(b) What Alternatives Did the SBA Reject?

One commenter recommended a $1 million size standard, stating that $15 million was not a small business. In fact, this commenter stated that $1 million is larger than any small business operation existing in the commenter's area and that a $15 million business would not be a local forestry small business.

The SBA does not consider this alternative realistic. Firms with revenues below $1 million are not representative of all small businesses that perform forest fire suppression and fuels management services. A $1 million size standard is well below the $6 million size standard for all forestry industries, including Support Activities for Forestry. In addition, a $1 million size standard is below the base size standard for non-manufacturing industries.

By adopting the size standard at $15 million, the SBA will minimize the impact on the small businesses in these emerging activities. Increased Federal funding and requirements, the Federal Government's growing reliance on the private sector for these services, and the severe fire seasons over the last several years have caused many firms to outgrow the $6 million size standard, thus reducing small business competition for these services. The $15 million size standard will allow firms in these activities to grow to an appropriate level without losing their small business status, but not to a level where a few firms would be able to control a significant portion of Federal contracts at the expense of other small businesses.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Small businesses.

■ For the reasons stated in the preamble, amend part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

■ 2. Amend § 121.201 as follows:

■ a. In the table ''Small Business Size Standards by NAICS Industry'' under the heading ''Subsector 115—Support Activities for Agriculture and Forestry,'' revise the entry for 115310 to read as follows; and

■ b. Add footnote 17 at the end of the table to read as follows:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * *	* * *	*	*
	Subsector 115—Support Activities for Agriculture and Forestry		
* * *	* * *	*	*
115310	Support Activities for Forestry	$6.0	
EXCEPT	Forest Fire Suppression [17]	[17] 15.0	
EXCEPT	Fuels Management Services [17]	[17] 15.0	
* * *	* * *	*	*

Footnotes

* * * * * * *

[17] *NAICS code 115310 (Support Activities for Forestry)*—Forest Fire Suppression and Fuels Management Services are two components of Support Activities for Forestry. Forest Fire Suppression includes establishments which provide services to fight forest fires. These firms usually have fire-fighting crews and equipment. Fuels Management Services firms provide services to clear land of hazardous materials that would fuel forest fires. The treatments used by these firms may include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling.

Dated: April 25, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–14037 Filed 6–3–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–125–AD; Amendment 39–13174; AD 2003–11–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model MD–90–30 airplanes, that requires replacing the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications. This action is necessary to ensure that the lanyards on the pressure relief door have adequate strength. Lanyards of inadequate strength could allow the pressure relief door to detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the detached door striking and damaging the horizontal stabilizer, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 9, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 9, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024); and Rohr, Inc., 850 Lagoon Drive, Chula Vista, California 91910–2098. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on February 27, 2003 (68 FR 9034). That action proposed to require replacing the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications.

Comments

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

Conclusion

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

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided at no cost to the operator. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $10,080, or $480 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–11–15 McDonnell Douglas: Amendment 39–13174. Docket 2001–NM–125–AD.

Applicability: All Model MD–90–30 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 ensure that the lanyards on the pressure relief door for the thrust reverser have adequate strength so that the door will not detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the door striking and damaging the horizontal stabilizer, accomplish the following:

Replacement of Lanyards on the Thrust Reverser Pressure Relief Door

(a) Within 18 months after the effective date of the AD, replace the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and accomplish associated modifications, per the Accomplishment Instructions of Boeing Service Bulletin MD90–78–048, dated February 15, 2001. The associated modifications include removing the pressure relief door, modifying the pressure relief door (including replacing existing brackets with new brackets and reidentifying the door with a new part number), modifying the lower track beam (including removing terminals, replacing the aft quick-release pin with a new pin, and reidentifying the beam with a new part number), modifying the heat shield on the lanyard assembly attach lugs, and re-installing the pressure relief door.

Note 2: Boeing Service Bulletin MD90–78–048, dated February 15, 2001, refers to International Aero Engines Service Bulletin V2500–NAC–78–0184, dated February 16, 2001, for instructions on replacing the lanyards on the pressure relief door for the thrust reverser.

Spares

(b) After the effective date of this AD, no person may install a lanyard having part number (01–250) or (01–255) on the pressure relief door for the thrust reverser 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 sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Service Bulletin MD90–78–048, dated February 15, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024); and Rohr, Inc., 850 Lagoon Drive, Chula Vista, California 91910–2098. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on July 9, 2003.

Issued in Renton, Washington, on May 27, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13648 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–23–AD; Amendment 39–13173; AD 2003–11–14]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–34–200T, PA–34–220T, PA–44–180, and PA–44–180T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The New Piper Aircraft, Inc. (Piper) Models PA–34–200T, PA–34–220T, PA–44–180, and PA–44–180T airplanes that have a model 91E92–1 or model 91E93–1 combustion heater fuel pump installed. This AD requires you to accomplish a one-time inspection of the combustion heater fuel pumps for fuel leakage. If leakage is found, repair or replace the fuel pump. This AD is the result of recent reports of fuel leakage. The actions specified by this AD are intended to correct quality control problems with the heater fuel pump, which could result in failure of the heater fuel pump. Such failure could lead to fire or explosion in the cockpit.

DATES: This AD becomes effective on June 20, 2003.

The Director of the Federal Register approves the incorporation by reference of certain publications listed in the regulation as of June 20, 2003.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before August 8, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–23–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–23–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–23–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Hector Hernandez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6069; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received several reports of fuel leakage from the combustion heater fuel pumps installed on Piper Models PA–34–200T, PA–34–220T, PA–44–180, and PA–44–180T airplanes.

Improper torque was applied to the mounting screws of the fuel pump filter cover. This condition was found during a quality control inspection.

Improper torquing of the mounting screws may result in sealing surface abnormalities such as nicks, gouges, or warping.

What Are the Consequences If the Condition Is Not Corrected?

This condition, if not corrected, could result in failure of the combustion heater fuel pump and lead to fire or explosion in the cockpit.

Is There Service Information That Applies to This Subject?

Piper has issued Service Bulletin No. 1127, dated February 26, 2003. This Piper service bulletin includes Kelly Aerospace Service Information Letter Bulletin No. A–110A, dated March 6, 2003.

What Are the Provisions of This Service Information?

These service bulletins include procedures for:

—Inspecting the combustion heater fuel pump for leaks; and

—Inspecting the sealing surface of the fuel pump.

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

What Has FAA Decided?

The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Piper Models PA–34–200T, PA–34–220T, PA–44–180, and PA–44–180T airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to incorporate the actions in the previously-referenced service bulletin.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We have included, in the rulemaking docket, a discussion of information that may have influenced this action.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in fire or explosion in the cockpit, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

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

Are There Any Specific Portions of the AD I Should Pay Attention to?

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

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003–CE–23–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2003–11–14 The New Piper Aircraft, Inc.: Amendment 39–13173; Docket No. 2003–CE–23–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models and serial numbers that are certificated in any category, equipped with a model 91E92–1 or model 91E93–1 aircraft heater fuel pump:

Model	Serial Nos.
PA–34–200T	34–7570002 through 34–8170092.
PA–34–220T	34–8133002 through 3449278.
PA–44–180	44–7995001 through 4496168.
PA–44–180T	44–8107001 through 44–8207020.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct quality control problems with the heater fuel pump, which could result in failure of the heater fuel pump. Such failure could lead to fire or explosion in the cockpit.

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

Actions	Compliance	Procedures
(1) Visually inspect any aircraft heater fuel pump (mode A–91E92–1 or model 91E93–1) for leakage.	Within the next 10 hours time-in-service (TIS) after June 20, 2003 (the effective date of this AD), unless already accomplished.	In accordance with The New Piper Aircraft, Inc. Service Bulletin No. installed 1127, dated February 26, 2003; Kelly Aerospace Power Systems Service Information Letter Bulletin No. 110A, dated March 6, 2003; and the applicable airplane maintenance instructions.
(2) If any leak is found, inspect the pump sealing surface for abnormalities (for example, nicks, gouges, or warping). Correct any abnormality found. If any abnormality cannot be corrected, replace the heater fuel pump.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with The New Piper Aircraft, Inc. Service Bulletin No. 1127, dated February 26, 2003; Kelly Aerospace Power Systems Service Information Letter Bulletin No. A–110A, dated March 6, 2003; and the applicable airplane maintenance instructions.
(3) Do not install any heater fuel pump (model 91E92–1 or model 91E93–1) unless you have visually inspected the pump for leakage.	As of June 20, 2003 (the effective date of this AD).	In accordance with The New Piper Aircraft, Inc. Service Bulletin No. 1127, dated February 26, 2003; Kelly Aerospace Power Systems Service Information Letter Bulletin No. A–110A, dated March 6, 2003; and the applicable airplane maintenance instructions.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Atlanta Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Hector Hernandez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6069; facsimile: (770) 703–6097.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with The New Piper Aircraft, Inc. Service Bulletin No. 1127, dated February 26, 2003, and Kelly Aerospace Power Systems Service Information Letter Bulletin No. A–110A, dated March 6, 2003.The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on June 20, 2003.

Issued in Kansas City, Missouri, on May 27, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13650 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–12–AD; Amendment 39–13182; AD 2003–10–03R1]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Model RB211 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD) that is applicable to Rolls-Royce plc (RR) model RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines. The existing AD will become effective on June 20, 2003, and requires removal from service of certain high pressure (HP) turbine discs before they reach newly established life limits. This amendment requires the same actions, but removes the model RB211–535E4–37 turbofan engine from the applicability. This revision to the existing AD is prompted by further data gathering by the FAA that demonstrates that the model RB211–535E4–37 turbofan engine is not affected by machining-induced cracking within the currently published life of the HP turbine disc. The actions specified in this AD are intended to prevent machining-induced cracking of the HP turbine disc which could cause an uncontained HP turbine disc failure and damage to the airplane.

DATES: Effective June 20, 2003.

Comments for inclusion in the Rules Docket must be received on or before August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30

p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

Information regarding this action may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On May 9, 2003, the FAA issued AD 2003–10–03, Amendment 39–13148 (68 FR 26481, May 16, 2003), to require removal from service of certain HP turbine discs in RR model RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, before the discs reach newly established life limits. That action was prompted by the manufacturer's inspections and analysis of HP turbine discs that have accumulated high cycles. That AD will become effective on June 20, 2003.

The FAA is revising this amendment to remove the model RB211–535E4–37 turbofan engine from the applicability. The FAA has received additional details of the engineering analysis based on field inspection data from the Civil Aviation Authority (CAA), which is the aviation authority for the U.K., and has determined that the model RB211–535E4–37 turbofan engine is not affected by machining-induced cracking within the currently published life of the HP turbine disc. This revised AD will be effective on June 20, 2003, in order to reduce the burden on operators.

Bilateral Airworthiness Agreement

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

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other RR model RB211–535E4–B–37 and RB211–535E4–B–75 turbofan engines of the same type design, this AD is being issued to prevent machining-induced cracking of the HP turbine disc which could cause an uncontained HP turbine disc failure and damage to the airplane. This AD requires removal from service of certain HP turbine discs before they reach newly established life limits.

Immediate Adoption of This AD

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–12–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–13148 (68 FR 26481, May 16, 2003) and by adding a new airworthiness directive, Amendment 39–13182, to read as follows:

2003–10–03R1 Rolls-Royce plc: Amendment 39–13182. Docket No. 2002–NE–12–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc (RR) model RB211–535E4–B–37 and RB211–535E4–B–75 turbofan engines with high

pressure (HP) turbine disc, P/N UL10323, UL27680, and UL27681, installed. These engines are installed on, but not limited to Boeing 757 and Tupolev Tu204 airplanes.

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

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

To prevent machining-induced cracking of the HP turbine disc, which could cause an uncontained HP turbine disc failure and damage to the airplane, do the following:

(a) Remove HP turbine discs P/Ns UL27680 and UL27681 from service before accumulating 15,000 cycles-since-new (CSN).

(b) Remove HP turbine discs P/N UL10323 from service before accumulating 14,800 CSN.

(c) After the effective date of this AD, do not install any HP turbine disc P/N UL27680 or UL27681 that exceeds 15,000 CSN, or any HP turbine disc P/N UL10323 that exceeds 14,800 CSN.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(f) This amendment becomes effective on June 20, 2003.

Issued in Burlington, Massachusetts, on May 29, 2003.

Francis A. Favara,

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

[FR Doc. 03–13973 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14847; Airspace Docket No. 03–ACE–32]

Modification of Class E Airspace; Eureka, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Eureka, KS.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 17, 2003 (68 FR 18857) [FR Doc. 03–9508]. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 19, 2003.

Donald F. Hensley,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–14067 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14707; Airspace Docket No. 03–ASO–3]

Establishment of Class E2 Airspace, Amendment of Class E5 Airspace; Waycross, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E2 airspace and amends Class E5 airspace at Waycross, GA. The Ware County Airport Authority has requested Class E2 surface area airspace at Waycross-Ware County Airport to provide airport operations within controlled airspace. Jacksonville Air Route Traffic Control Center (ARTCC) will provide air traffic services at the airport and a federally commissioned automated weather observing system is in operation. In order to conduct these operations, Class E2 surface area must be established. This action will establish Class E2 surface area airspace within a 4.1-mile radius of the airport.

As a result of an evaluation, it has been determined a modification should be made to the Waycross, GA, Class E5 airspace area to contain the Nondirectional Radio Beacon (NDB) Runway (RWY) 18 Standard Instrument Approach Procedure (SIAP) to Waycross-Ware County Airport. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP. Additionally, the 7-mile radius of the Waycross-Ware County Airport will be reduced to a 6.6-mile radius.

DATES: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On April 15, 2003, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E2 airspace and amending Class E5 airspace at Waycross, GA, (68 FR 18173). This action provides adequate Class E2 and Class E5 airspace for IFR operations at Waycross-Ware County Airport. Designations for Class E are published in FAA Order 7400.9K, dated August

30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E2 airspace and amends Class E5 airspace at Waycross, GA.

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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO GA E2 Waycross, GA [New]

Waycross-Ware County Airport, GA
(Lat. 31°14′57″ N, long. 82°23′43″ W)
Waycross VORTAC
(Lat. 31°16′10″ N, long. 82°33′23″ W)

Within a 4.1-mile radius of the Waycross-Ware County Airport, within 1.2 miles each side of the 099° radial from the Waycross VORTAC, extending from the 4.1-mile radius to 4.7 miles west of the airport.

* * * * *

ASO GA E5 Waycross [Revised]

Waycross-Ware County Airport, GA
(Lat. 31°14′57″ N, long. 82°23′43″ W)
WIKET NDB
(Lat. 31°19′32″ N, long. 82°23′53″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Waycross-Ware County Airport, and within 4 miles west and 8 miles east of the 003° bearing from the WIKET NDB extending from the 6.6-mile radius to 16 miles north of the WIKET NDB; excluding that airspace within the Alma, GA, Class E airspace area.

* * * * *

Issued in College Park, Georgia on May 27, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–14068 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14673; Airspace Docket No. 03–ASO–2]

Establishment of Class E2 Airspace; Elizabeth City, NC; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final rule (FAA–2003–14673; 03–ASO–2), which was published in the **Federal Register** on May 23, 2003 (68 FR 28128), establishing Class E2 airspace at Elizabeth City, NC. This action corrects an error in the legal description for the Class E2 airspace at Elizabeth City CGAS/Regional Airport, NC.

EFFECTIVE DATE: Effective 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 03–12816, Docket No. FAA–2003–14673; Airspace Docket 03–ASO–2, published on May 23, 2003, (68 FR 28128), establishes Class E2 airspace at Elizabeth City CGAS/Regional Airport, NC. An error was discovered in the legal description, describing the Class E2 airspace area. The name of the airport should be changed from Elizabeth City CGAS/Municipal Airport to Elizabeth City CGAS/Regional Airport. This action corrects the error.

Designations for Class E airspace areas designated as surface areas are published in Paragraph 6002 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 will be published subsequently in the Order.

Need for Correction

As published, the final rule contains an error which incorrectly identifies the name of the airport. Accordingly, pursuant to the authority delegated to me, the legal description for the Class E2 airspace area at Elizabeth City, NC, incorporated by reference at § 71.1, 14 CFR 71.1, and published in the **Federal Register** on May 23, 2003, (68 FR 28128), is corrected by making the following correcting amendment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ In consideration of the foregoing, the Federal Aviation Administration corrects the adopted amendment, 14 CFR part 71, by making the following correcting amendment:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO MS E2 Elizabeth City, NC [Corrected]

Elizabeth City CGAS/Regional Airport, NC (Lat. 36°15′38″ long. 76°10′29″)

That airspace extending upward from the surface within a 4.1-mile radius of the Elizabeth City CGAS/Regional Airport.

* * * * *

Issued in College Park, Georgia, May 28, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–14071 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 347, and 352

[Docket Nos. 78N–0021 and 78N–021P]

RIN 0910–AA01

Skin Protectant Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) skin protectant drug products are generally recognized as safe and effective and not misbranded as part of the ongoing review of OTC drug products conducted by FDA. The final monograph includes OTC skin protectant drug products for minor cuts, scrapes, burns, chapped skin and lips, poison ivy, poison oak, poison sumac, and insect bites. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on skin protectant drug products for these specific uses that have come to the agency's attention. This final rule amends the regulation that lists nonmonograph active ingredients by adding those OTC skin protectant ingredients that have been found to be not generally recognized as safe and effective. This final rule also lifts the stay of 21 CFR part 352 (published at 66 FR 67485, December 31, 2001) to amend the final monograph for OTC sunscreen drug products to include sunscreen-skin protectant combination drug products, and then stays § 347.20(d) (21 CFR 347.20(d)) and part 352 until further notice in the **Federal Register**.

DATES: *Effective Date*: This rule is effective June 4, 2004.

Compliance Dates: The compliance date for products subject to parts 310 and 347 (21 CFR parts 310 and 347) with annual sales less than $25,000 is June 6, 2005. The compliance date for all other products subject to parts 310 and 347 is June 4, 2004. The compliance date for combination products containing skin protectant and sunscreen active ingredients in § 347.20(d) and for all products subject to part 352 is stayed until further notice.

Comment Date: Submit written or electronic comments on specific labeling items discussed in section X of the **SUPPLEMENTARY INFORMATION** section of this document by September 2, 2003.

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

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 4, 1978 (43 FR 34628), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC skin protectant drug products, together with the recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class (§ 330.10(a)(6) (21 CFR 330.10(a)(6))).

In the **Federal Register** of February 15, 1983 (48 FR 6820), FDA published the proposed regulation for OTC skin protectant drug products in the form of a tentative final monograph (TFM). In the **Federal Register** of October 3, 1989 (54 FR 40808), the agency published a document to amend the TFM to include OTC drug products for poison ivy, oak, and sumac and for the treatment and/or neutralization of insect bites. This final rule completes the TFMs published on February 15, 1983, and October 3, 1989, amends the final monograph for OTC skin protectant drug products used as astringents in part 347 published on October 21, 1993 (58 FR 54458), and incorporates the name change (''witch hazel'') published in the **Federal Register** of June 3, 1994 (59 FR 28767).

In the **Federal Register** of May 10, 1993 (58 FR 27636), the agency issued a final rule establishing that certain active ingredients, including some skin protectant active ingredients, in OTC drug products are not generally recognized as safe and effective or are misbranded. These skin protectant ingredients are listed in § 310.545(a)(18). This final rule adds several ingredients to that section.

On or after 12 months after date of publication in the **Federal Register**, and 24 months after date of publication in the **Federal Register**, for products with annual sales less than $25,000, except combination products containing skin protectant and sunscreen active ingredients, and for combination products containing skin protectant and sunscreen active ingredients, no OTC drug product that is subject to this final rule and that contains a nonmonograph condition may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved new drug application or abbreviated new drug application. Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the effective dates of the final rule must be in compliance with the monographs regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily as soon as possible.

All ''OTC Volumes'' cited throughout this document refer to information on public display in the Dockets Management Branch (*see* **ADDRESSES**).

II. The Agency's Conclusions on the Comments

(Comment 1) One comment stated its continuing position that OTC drug monographs are interpretive, as opposed to substantive, regulations.

The agency addressed this issue and reaffirms its conclusions stated in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products (37 FR 9464 at 9471 to 9472, May 11, 1972); in paragraph 3 of the preamble to the TFM for OTC antacid drug products (38

FR 31260, November 12, 1973); and in paragraph 1 of section I of the preamble to the TFM in the present proceeding (48 FR 6820 at 6821).

(Comment 2) One comment requested that the definition of ''skin protectant'' be reworded to add a primary effect of skin protectants, i.e., temporary relief of the effects of harmful or annoying stimuli and to include the word ''product''. The agency agrees and is revising the definition of ''skin protectant'' in § 347.3(d).

(Comment 3) Four comments opposed the agency's ''exclusivity policy,'' which limits the indications used in OTC drug product labeling to the ''specific words and phrases'' approved by FDA in a final OTC drug monograph.

After these comments were submitted, the agency published a final rule in the **Federal Register** of May 1, 1986 (51 FR 16258) changing its labeling policy (§ 330.1(c)(2) (21 CFR 330.1(c)(2))) for stating the indications for use of OTC drug products. That policy was revised and discussed in the **Federal Register** of March 17, 1999 (64 FR 13254 at 13270 to 13271, and 13294). The final rule in this document is subject to that new labeling policy.

(Comment 4) Three comments disagreed with the agency's position of prohibiting cosmetic claims from appearing in any portion of the labeling that is required by an OTC drug monograph and the agency's view that this type of labeling could be misleading (*see* 48 FR 6820 at 6823). One comment noted its support for the distinction made by the agency between ''drug'' and ''cosmetic'' claims for the same ingredient. Two comments cited current agency regulations in § 701.3(d) (21 CFR 701.3(d)) regarding the combined label declarations of active drug ingredients and cosmetic ingredients and requested that cosmetic indications be allowed to be stated in a manner that is not false or misleading, without regard to their position on the label.

The agency has revised its labeling requirements for OTC drug products by adding § 201.66 (21 CFR 201.66) and amending § 701.3(d) since stating its position on drug-cosmetic labeling in the TFM. Section 701.3(d) now requires separate listing of the active drug ingredients and the cosmetic ingredients where a cosmetic product is also an OTC drug product. FDA does not review and approve cosmetic terminology in OTC drug monographs. Under the new OTC drug product labeling format in § 201.66, the ''Drug Facts'' area of a product's labeling only contains the indication(s) for the drug part of the product. Thus, manufacturers are not allowed to commingle drug and cosmetic claims within this specific area of the labeling. However, there are no specific restrictions on commingled information outside of the ''Drug Facts'' area of a product's labeling. The agency's position is that if commingled drug and cosmetic labeling information is confusing or misleading, the product's labeling may be misleading within the meaning of the Federal Food, Drug, and Cosmetic Act (the act) and the product misbranded under sections 502(a) or 602(a) of the act (21 U.S.C. 352(a) or 362(a)). The agency will review the labeling of affected products on a case-by-case basis.

(Comment 5) Several comments suggested that limiting the statement of identity to one term (''skin protectant'') is too restrictive, requested other equally descriptive appropriate terms, and asked for distinct statements of identity for each indication proposed in the monograph, e.g., ''minor cut protectant.''

The agency does not find it necessary to have distinct statements of identity for each use of a skin protectant drug product. The statement of identity is intended to provide information on the ''general pharmacological category(ies) of the drug or the principal intended action(s) of the drug'' (*see* § 201.61(b) (21 CFR 201.61(b))). This position is consistent with the statement of identity proposed by the agency as ''external analgesic'' for all drug products that provide relief of pain and itching caused by a number of conditions (48 FR 5852 at 5868, February 8, 1983) and as ''analgesic (pain reliever)'' for all drug products that relieve pain due to various conditions (53 FR 46204 at 46211, November 16, 1988).

The agency concurs with one comment's suggestion of adding the dosage form to the statement of identity, i.e., ''skin protectant (dosage form).'' The *United States Pharmacopeia* (*USP*) lists a number of dosage forms that might be used for OTC topical drug products (Ref. 1). From a marketplace survey (Refs. 2, 3, and 4), the agency finds that the most widely used dosage forms for OTC skin protectant drug products are lotions, creams, ointments, and gels. The examples of dosage forms listed in the statement of identity in § 347.50(a) of this final monograph are not all inclusive and depend on products' historical marketing as skin protectants.

(Comment 6) One comment questioned the agency's statement that the term ''soothes'' is a cosmetic claim in the context of skin protectant products (48 FR 6820 at 6828).

The agency considers claims such as ''temporarily protects'' and ''helps relieve'' to be more informative than ''soothes'' in conveying to consumers that a drug product provides therapeutic action. The term ''soothes'' may appear elsewhere in the product's labeling.

(Comment 7) Several comments contended that the indications proposed were too restrictive and omitted indications recommended by the Panel. The comments suggested additional labeling claims.

The agency agrees with some of the comments' suggestions for the indications in § 347.50(b)(2). While the agency wishes to emphasize the ''protectant'' function of these ingredients, they may also help provide some relief for chapped or cracked skin and lips. Therefore, the agency is allowing manufacturers to add, at their option, the words ''and helps relieve'' after the word ''protects'' in the indications in § 347.50(b)(2). The agency also agrees that the words ''cold'' and ''wind'' are informative to consumers, and possibly easier to understand than the word ''windburned.'' Accordingly, the agency has made this revision in an optional labeling statement.

The agency considers other suggested claims to be better represented in the agency's proposed indications.

The agency is deleting ''sunburn'' from the indication proposed in § 347.50(b)(1) because the agency has reexamined the data and determined that they do not support a ''protection of sunburn'' claim for these ingredients. The ''sunburn'' claim proposed in the TFM originated from the Panel when it recommended the use of ''skin protectant active ingredients for symptoms of dryness: 'For symptoms of chapping, peeling or scaling' (optional, any or all of the following) 'due to minor burns, sunburn, windburn, scrapes, abrasions, or cracked lips'" (*see* 43 FR 34628 at 34648). The Panel also recommended that the ingredients allantoin, cocoa butter, dimethicone, glycerin, petrolatum, and shark liver oil be included in the monograph as active ingredients for symptoms of dryness. Of these ingredients, petrolatum was the only one that the Panel discussed effectiveness for sunburn (43 FR 34628 at 34639). The Panel stated that ''the use of petrolatum as an emollient has been well accepted for dry skin conditions, especially with flaking skin such as sunburn, and chapping'' (43 FR 34628 at 34639).

The Panel's claim was revised in the TFM to a shortened ''drug'' claim that stated: ''For the temporary protection of minor cuts, scrapes, burns, and sunburn'' (*see* 48 FR 6820 at 6832). The agency did not include peeling or scaling claims in the TFM (48 FR 6820

at 6828). The Panel's reference to symptoms of dryness was not included in the TFM because the agency considers the use of skin protectants for dryness to be a cosmetic claim. The agency has now determined that it should not have included the ''sunburn'' claim in the TFM because the only context in which the Panel discussed it was cosmetic in nature.

The agency is also concerned that skin protectants may inappropriately be used for ''sunburn'' because the data indicate that it is not desirable to apply a skin protectant to sunburn that has just occurred. As the Panel noted, when petrolatum is applied to sunburn, evaporation is curtailed (43 FR 34628 at 34639). The agency is concerned that application of skin protectants, such as petrolatum and the other igredients for which the Panel recommended a dryness claim for sunburn, to sunburn that has just occurred would occlude the area and prevent evaporation from occurring or significantly reduce evaporation. Thus, there are no data in the administrative record for this rulemaking to support a ''protection of sunburn'' claim for these ingredients. The agency would consider including such a claim for these ingredients, however, if adequate supporting data are provided.

The agency has determined that insufficient data were submitted to include the words ''to allow healing to begin'' and to include uses for heat rash, burning feet, and foot discomfort in § 347.50(b)(3). The agency concludes that the expanded ''uses'' section in this final monograph provides manufacturers an adequate number of options for labeling OTC skin protectant drug products.

(Comment 8) One comment mentioned that no wound healing claim or Category I labeling was provided for three skin protectant ingredients: Allantoin, live yeast cell derivative (LYCD), and zinc acetate.

The Panel classified these ingredients as Category III skin protectants for wound-healing based on the lack of effectiveness data (43 FR 34628 at 34644 through 34647). Insufficient data were submitted for LYCD (*see* section II. comment 25 of this document) and no additional data were submitted for allantoin or zinc acetate to support a ''wound healing'' use.

(Comment 9) One comment requested that compound benzoin tincture be included as a Category I topical skin protectant. The comment mentioned the conclusion of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (Cough-Cold Panel) that compound benzoin tincture was safe for use in boiling water as a steam inhalant for expectorant purposes (41 FR 38312 at 38360, September 9, 1976). The comment also cited the recommendation of the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products (Dental Panel) that compound benzoin tincture was safe and effective for use as an oral mucosal protectant (47 FR 22712 at 22746 and 22747, May 25, 1982). The comment cited acceptance of compound benzoin tincture in several pharmacopeias, experience over decades of use, and the low incidence of adverse reactions or significant side effects in the published literature. The comment cited several skin protectant uses from well-established references or current product labeling: ''* * * to small cuts and to intact skin under occlusive plasters and bandages'' (Ref. 5), ''* * * ulcers, bedsores, cracked nipples, and fissures of the lips and anus'' (Ref. 6), and ''apply to the skin under adhesive dressings, to treat skin fissures and bedsores, to reduce skin sensitivity to adhesive plasters, and to prevent skin irritation in ischemic areas'' (Ref. 7).

Compound benzoin tincture is included in the *USP* as a fixed formulation containing 10 percent benzoin, 2 percent aloe, 8 percent storax, 4 percent tolu balsam, and 74 to 80 percent ethanol (Ref. 8). The agency finds that use as a steam inhalant for expectorant purposes evaluated by the Cough-Cold Panel (41 FR 38312 at 38360) has little relevance to use as a skin protectant. Although the agency acknowledges that standard references (Refs. 5 and 6) and literature articles describe numerous uses for compound benzoin tincture, no data from controlled clinical studies were provided.

Gosselin et al. (Ref. 9) indicated that the alcohol in benzoin tincture would be responsible for major toxic effects if ingested. The Dental Panel discussed literature reports of three cases of irritation and hypersensitivity resulting from topical use of benzoin tincture (47 FR 22712 at 22746 and 22747). In addition, the published literature contains numerous other reports of allergic contact dermatitis and sensitivity attributed to compound benzoin tincture and benzoin tincture. Cullen, Tonkin, and May (Ref. 10) stated that the literature was replete with reports of cutaneous sensitivity to compound benzoin tincture and its components, citing reports following local application. Rademaker and Kirby (Ref. 11) reported two cases of bullous contact dermatitis to a skin adhesive spray and mentioned that Fisher (Ref. 12) recommends that benzoin no longer be used as a skin adhesive. Marks and Rainey (Ref. 13) and James, White, and Yanklowitz (Ref. 14) reported other cases of allergic contact dermatitis. Sixteen cases resulted when benzoin was applied to prevent friction blisters. Other authors report contact dermatitis from benzoin used as an ingredient in greasepaint makeup (Ref. 15) and as an antioxidant in food additives (Ref. 16). In addition, benzoin provokes pemphigus erythematosus (Ref. 17), complicates management of venous leg ulcers (Ref. 18), and adversely affects wound healing after circumcision in children (Ref. 19).

Based on these reports of adverse events and the availability of other monograph skin protectant ingredients, the agency concludes that compound benzoin tincture is not safe for use as a general OTC skin protectant ingredient and would be inappropriate for many of the uses included in this final monograph.

(Comment 10) One comment requested that camphorated metacresol be included as an active ingredient in the final monograph for OTC skin protectant drug products, as long as the amount of metacresol did not exceed 1.5 percent (by weight) and the amount of camphor did not exceed 3 percent. Noting that phenol (0.5 to 1.5 percent) and camphor (0.1 to 3 percent) were proposed Category I ingredients in the TFM for OTC external analgesic drug products (48 FR 5852 at 5867, February 8, 1983) and citing an agency letter (Ref. 20) agreeing that metacresol was less toxic than phenol, the comment contended that there should be no safety concern about products containing camphor and metacresol in these concentrations.

Because information has not been provided to demonstrate a skin protectant effect, camphorated metacresol is not included in this final monograph.

(Comment 11) One manufacturer submitted data and information (Refs. 21 and 22) to FDA's Miscellaneous External Panel in response to the call-for-data notice published in the **Federal Register** of November 16, 1973 (38 FR 31697). The data were for a drug product containing water-soluble chlorophyllins in an ointment and a solution dosage form with a label indication ''to promote healing and to relieve itching and discomfort of minor wounds, burns, surface ulcers, cuts, abrasions and skin irritations.''

The Miscellaneous External Panel was disbanded before reviewing these submissions. Subsequently, because the product label contained a claim for

wound healing and products with this claim had previously been included in the skin protectant rulemaking, the agency placed the submissions in the skin protectant rulemaking as a comment to the February 15, 1983, TFM, and the manufacturer submitted a more recent study on effectiveness for wound healing (Ref. 23).

The Dental Panel evaluated water-soluble chlorophyllins as oral wound healing agents in its report on OTC oral mucosal injury drug products (44 FR 63270, November 2, 1979) and concluded that water-soluble chlorophyllins were safe but that there were insufficient data available to permit final classification of effectiveness for OTC use as an oral wound healing agent (44 FR 63270 at 63286). The agency accepted the Dental Panel's classification in the TFM for OTC oral mucosal injury drug products (48 FR 33984 at 33991, July 26, 1983). No additional data were submitted and, in the final rule (51 FR 26112, July 18, 1986), the agency included water soluble chlorophyllins in the list of nonmonograph ingredients in 21 CFR 310.534.

The agency has reviewed the manufacturer's submissions (Refs. 21, 22, and 23). One submission (Ref. 21) contained information on various kinds of wounds that were treated with water-soluble chlorophyllins by health-care professionals. None were self-treatment conditions. Another (Ref. 22) contained translations of three foreign articles reporting laboratory and animal studies on water-soluble chlorophyllins that contain background information but do not support general recognition of safety and effectiveness in humans. A research report (Ref. 23) did not assess OTC uses, lacked subject and placebo controls, and questioned whether the observed effects were due to the products or the manner of caring for the wounds.

The agency concludes that the data submitted do not support effectiveness of water-soluble chlorophyllins for promoting wound healing for conditions treated with OTC skin protectant drug products.

(Comment 12) Cod liver oil was not categorized by the Panel for use as an OTC skin protectant because it was not included among the labeled ingredients in marketed products submitted to the Panel for review. In evaluating cod liver oil for use in diaper rash drug products, the agency considered the long history of clinical use as a skin protectant ingredient (55 FR 25204 at 25213, June 20, 1990).

In the rulemaking for OTC anorectal drug products, the Advisory Review Panel on OTC Hemorrhoidal Drug Products (Hemorrhoidal Panel) classified cod liver oil as Category I for use as an anorectal protectant and recommended a maximum daily dose of 10,000 I.U. (International Units equivalent to USP Units) for vitamin A and 400 I.U. for vitamin D (cholecalciferol) per 24 hours (45 FR 35576 at 35630, May 27, 1980). The Hemorrhoidal Panel stated that an extensive review of the literature on cod liver oil revealed no adverse effects when applied topically as a protectant and concluded that the effectiveness of cod liver oil, as a protectant, is due to its bland and soothing effect associated with its oily nature. In the TFM (53 FR 30756 at 30767, August 15, 1988) and final monograph (55 FR 31776 at 31780, August 3, 1990) for OTC anorectal drug products, the agency affirmed the Hemorrhoidal Panel's Category I classification and specified that cod liver oil may be used only in combination with one to three other protectant active ingredients.

The agency has surveyed the marketplace and determined that cod liver oil is marketed only in combination with other ingredients in several products with skin protectant claims (Refs. 3 and 24). One product contains 12.5 percent (Ref. 24), but in most cases the cod liver oil concentration is not provided.

Therefore, the agency is including cod liver oil as an active ingredient in skin protectant drug products in accord with § 347.20(a)(1) and (a)(2), only in combination with certain other skin protectant active ingredients, within the concentrations (5 to 13.56 percent) specified in § 347.10(e), provided that the product is labeled so that the amount of the product that is used in a 24-hour period represents a quantity that does not exceed 400 USP Units of vitamin D and 10,000 USP Units of vitamin A.

(Comment 13) In the notice of proposed rulemaking (54 FR 40808 at 40810), the agency stated that it was necessary to have publicly available chemical information for colloidal oatmeal. One manufacturer submitted a proposed standard for colloidal oatmeal, which it stated was patterned after standards for starch and psyllium (Ref. 25). The agency sent this information to the U.S. Pharmacopeial Convention (USPC) (Ref. 26). Compendial standards were proposed in the Pharmacopeial Forum of January and February 1992 (Ref. 27) and a final *USP* monograph became effective on November 15, 1992 (Ref. 28).

(Comment 14) One comment requested that colloidal oatmeal be included in the skin protectant monograph as a safe and effective ingredient for the claim: ''For prompt temporary relief of itchy, sore, sensitive skin due to rashes, eczema/psoriasis, hemorrhoidal and genital irritations, diaper rash, chicken pox, prickly heat, hives, poison ivy/oak, and sunburn.'' The comment cited references (Refs. 29 through 33) to support this claim.

The agency previously discussed poison ivy/oak claims in comment 1 of the skin protectant poison ivy, oak, and sumac notice of proposed rulemaking (54 FR 40808 at 40809 to 40811). The agency has determined the additional references cited by the comment show that colloidal oatmeal can provide temporary skin protection and relieve minor irritation and itching due to a number of conditions. Further, the agency has no adverse reaction reports on file for colloidal oatmeal. Thus, the agency is expanding the indications for colloidal oatmeal in § 347.50(b)(4) in this final monograph. In addition, manufacturers can opt to select one or more of the ''due to'' conditions to list in the product's labeling. However, since no data were submitted using colloidal oatmeal for chicken pox, sunburn, or hives, these indications are nonmonograph. The agency will discuss a ''prickly heat'' claim in the skin protectant diaper rash drug products final rule.

(Comment 15) Two comments noted that the agency's proposed directions in § 347.50 (54 FR 40808 at 40818) for the use of colloidal oatmeal as a soak in a tub do not allow for the range of use concentrations or dosage forms that have been reported in the clinical literature and requested that FDA specify a use concentration range. The comment stated that colloidal oatmeal is unusual in comparison to other barrier skin protectants because it is often intended for dispersion in water and is formulated in a variety of other dosage forms.

One comment summarized and calculated the colloidal oatmeal concentrations used in baths (Refs. 32 and 34 through 41). The comment noted that the most common concentration ranges of colloidal oatmeal are from 0.007 to 10 percent in use but added that colloidal oatmeal is present in commercial products from 1 to 100 percent. Another comment recommended changing the proposed directions in § 347.50(d)(2) from one ''cupful'' to ''up to a cupful.''

The agency has reviewed the recommended concentrations of colloidal oatmeal reported in the literature and reference texts (Refs. 4, 29 through 32, 34 through 45, 47, 48, and 49) and has considered the range of

concentrations for colloidal oatmeal used in bath additive products and in other dosage forms. Products containing colloidal oatmeal have been formulated in the following dosage forms: Lotion (1 and 10 percent colloidal oatmeal), cleansing cream (8 percent colloidal oatmeal), shampoo (5 percent colloidal oatmeal), and cleansing bars (30, 50, and 51 percent colloidal oatmeal) (Refs. 4, 46, and 47). The agency has calculated the approximate minimum and maximum concentrations of colloidal oatmeal that have been used as follows: For regular colloidal oatmeal, a range of 0.023 to 0.625 percent when used as a tub bath soak (Refs. 29, 34 through 38, and 44), a range of 0.24 to 1.2 percent when used as a foot bath soak (Refs. 30, 31, and 34), a range of 0.24 to 15 percent in aqueous solution when used in a wet pack (Refs. 30, 31, 32, 34, and 45), and a range of 3.75 to 15 percent in aqueous solution when used as a topical lotion (Refs. 30, 32, and 34); for oilated colloidal oatmeal, a range of 0.003 to 0.03 percent when used as a tub bath soak (Refs. 35 and 39 through 43).

With regard to dosage forms, the agency agrees with the comment that colloidal oatmeal as a skin protectant does not need to be dosage-form specific and can be used in a variety of ''barrier type'' topical dosage forms, except for ''cleanser type'' topical dosage forms, for which the agency has no data to support use as a skin protectant. Therefore, based on the additional information that has been submitted, the agency is revising the directions for use in § 347.50(d)(2) in this final monograph.

(Comment 16) One comment requested that colloidal oatmeal be included in the skin protectant monograph for the claim: ''For prompt temporary relief of itchy, sore, sensitive skin due to * * * hemorrhoidal and genital irritations * * *.'' The comment provided reports recommending use of colloidal oatmeal baths and creams for rectal itching and other conditions in the genital area (Refs. 50 through 54).

Claims for itching in the genital area (e.g., pruritus vulvae) are included in the rulemaking for OTC external analgesic drug products. A comment to that rulemaking (Ref. 55) specifically requested a claim for colloidal oatmeal for ''prompt temporary relief of itchy, sore, sensitive skin due to rashes, eczema/psoriasis, hemorrhoidal and genital irritations, diaper rash, chicken pox, prickly heat, hives, poison ivy/oak, and sunburn.'' Therefore, the agency will address this comment in the final rule for OTC external analgesic drug products.

The agency concludes that the comment's requested claims for relief of rectal itching and hemorrhoids are similar to the indication (21 CFR 346.50(b)(1)) for OTC anorectal drug products that include protectant active ingredients under 21 CFR 346.14, and to the definition of a protectant drug under 21 CFR 346.3(i) as a drug that provides a physical barrier, forming a protective coating over skin or mucous membranes. Since colloidal oatmeal was not reviewed during any stage of the rulemaking for OTC anorectal drug products, interested parties should provide necessary information to demonstrate that colloidal oatmeal meets the standards of an OTC anorectal protectant active ingredient and petition the agency to include colloidal oatmeal in the final monograph for OTC anorectal drug products (Ref. 56).

(Comment 17) One comment requested that colloidal oatmeal be allowed to be combined with other Category I skin protectants for the treatment of minor irritation and itching caused by insect bites and poisonous plants. The comment cited reports using an oilated colloidal oatmeal bath additive to help treat various dermatoses.

The agency has reviewed the cited studies (Refs. 34, 43, 57, 58, and 59), and finds that these reports support the combination of colloidal oatmeal with mineral oil to treat the irritation, itching, and dryness of various dry skin dermatoses. The agency is including the combination of colloidal oatmeal and mineral oil in new § 347.20(a)(4) for the uses included in new § 347.50(b)(7) of this final monograph. Nevertheless, poison ivy, oak, and sumac are not exclusively dry skin dermatoses; they are characterized by a phase of weeping, oozing exudation. The studies cited by the comment fail to demonstrate the value of adding an additional skin protectant (an oilating component) for the treatment of these conditions in the exudative phase, and also fail to specify how many of the cases of contact dermatitis were due to poisonous plants. In addition, only one case of insect bite was identified in the studies. The agency concludes that the data are insufficient to support the combination of colloidal oatmeal with other skin protectants to treat insect bites and poison ivy, oak, and sumac.

(Comment 18) One comment responded to the agency's request in the skin protectant poison ivy, oak, and sumac notice of proposed rulemaking (54 FR 40808 at 40810) to provide information and directions to support the use of colloidal oatmeal on children under 2 years of age. The comment stated that most barrier type skin protectant active ingredients have not been restricted to any age group and submitted reports of use of colloidal oatmeal in infants (Refs. 34, 45, 50, 51, and 57). The comment added that the Miscellaneous External Panel had evaluated colloidal oatmeal and placed it in Category I for relief of itching claims with no age restrictions (Ref. 61).

The agency has reviewed the reports submitted by the comment, which described the effective use of colloidal oatmeal on infants and children from 2 months to 18 years of age for various dermatoses associated with dry skin. No adverse effects were reported. The Miscellaneous External Panel (Ref. 61) at its twenty-third meeting concluded that colloidal oatmeal, at all concentrations, is safe and effective for ''the symptomatic relief and treatment of itching.'' Based on the Miscellaneous External Panel's evaluation and the references provided by the comment, the agency is including colloidal oatmeal in the final monograph for use on infants and children under 2 years of age in the same concentrations, dosage forms, and directions for use for adults.

(Comment 19) One comment noted that in the skin protectant poison ivy, oak, and sumac notice of proposed rulemaking the agency proposed (in § 347.50(c)(9)) a specific warning for colloidal oatmeal: ''Take special care to avoid slipping when getting into and out of the tub'' (54 FR 40808 at 40818). The comment agreed that a warning against slipping is proper and appropriate, but contended that the agency's warning is unnecessarily longer than the warning on its labels, ''Take special care to avoid slipping.'' Furthermore, the comment contended, the reference to entering and leaving the tub may lessen the consumer's perception of need for care during bathing or when bathing a child.

The agency notes that a number of authors have expressed concerns about slipping in the bath tub with oil baths in general, and with colloidal oatmeal baths in particular (Refs. 29, 40, 44, 48, 54, and 62). Two authors (Refs. 29 and 48) recommended use of a mat to reduce the possibility of slipping. Accordingly, the agency has revised the warning, which appears in § 347.50(c)(5) of the final monograph, to read: ''When using this product [bullet] to avoid slipping, use mat in tub or shower.''

(Comment 20) One comment objected to the highly specific directions for colloidal oatmeal the agency proposed in § 347.50(d)(2) of the skin protectant poison ivy, oak, and sumac notice of proposed rulemaking (54 FR 40808 at 40818). The comment requested that

FDA modify the directions for use to allow for other concentrations and to address the use of other dosage forms, such as ointments, lotions, and cleansing bars. The comment objected to a specified frequency of use (''once or twice daily'') because absorption of active agent seems unlikely to occur.

The agency has reviewed the literature and agrees with the comment that other directions may also provide safe and effective use concentrations. Since a bathtub, foot bath, sitz bath, or infant bath can be used to soak and a compress or wet dressing can be applied as a soak, the agency is including all of these forms of a ''soak'' in the final monograph. Colloidal oatmeal can also be formulated in other topical products intended for direct application (e.g., ointment, lotion), and the monograph provides directions for these products.

Frequent and prolonged exposure to water may have a drying effect. Authors have different views on recommended frequency and duration of bathing (Refs. 37, 48, and 63 through 67) depending on the condition. The Miscellaneous External Panel noted that bathing can dry the skin out and exacerbate some conditions (Ref. 68). Given the variety of conditions for which colloidal oatmeal preparations may be used, the agency agrees with the comment and is not specifying a frequency of use in the directions but is providing for a warning statement in § 347.50(c)(7) to fully inform consumers.

(Comment 21) One comment inquired whether two high-molecular weight dimethylpolysiloxanes, designated as SF96–350 and SF96–1000, were acceptable active ingredients for skin protectant use. The comment included general safety and toxicity information on silicone products, and stated that dimethicone, a proposed Category I skin protectant ingredient, belongs to the same chemical family as the dimethylpolysiloxanes.

In the notice of proposed rulemaking for OTC skin protectant diaper rash drug products, the agency stated that silicone is a general term, but it is often used to describe dimethicone (55 FR 25204 at 25218). The agency did not classify silicone per se because there are various silicone compounds and because the agency considered dimethicone, the only silicone ingredient for which data were submitted.

The agency notes that the information provided by the comment summarizes the results of chronic and acute toxicity studies and irritation studies for specific classes of silicones. However, no specific information was provided for the individual dimethylpolysiloxanes SF96–350 and SF96–1000. In addition, no information was provided to describe the chemical structure of these dimethylpolysiloxanes. The agency concludes that the data provided are inadequate to support general recognition of the safety and effectiveness of these ingredients for OTC skin protectant use in this final monograph.

(Comment 22) In the TFM for OTC skin protectant drug products, the agency discussed a submission on 2 percent glycerin and stated that the skin protectant final monograph would not be issued until these data were reviewed by the agency and interested persons provided an opportunity to comment on an agency proposal (48 FR 6820 at 6823). The submission (Ref. 69) contained data on the use of glycerin for the indications of dry skin, minor skin irritation, skin protectant, and chapping and included a double-blind study.

The agency has reviewed the data and determined that the study was inadequately controlled and failed to demonstrate that 2, 10, or 18 percent glycerin is effective for the indication ''helps prevent and temporarily protects chafed, chapped, cracked, or windburned skin and lips,'' as proposed by the agency for 20 to 45 percent glycerin in the TFM for OTC skin protectant drug products (48 FR 6820 at 6832). The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 70). The agency concludes that glycerin at concentrations other than 20 to 45 percent is nonmonograph for use in OTC skin protectant drug products.

(Comment 23) One comment requested the agency to reopen the administrative record to include the ingredient ''hard fat,'' as described in the ''National Formulary'' (NF) (Ref. 71), as a Category I skin protectant.

In the **Federal Register** of December 19, 1991 (56 FR 65873), the agency agreed with the petition that it would be appropriate to reopen the administrative record and include data and information on ''hard fat'' in the rulemaking for OTC skin protectant drug products. The agency stated that, based on its action in the rulemaking for OTC anorectal drug products (55 FR 31776), hard fat would be classified as a monograph ingredient in the final skin protectant monograph. Since no adverse comments on hard fat were received in response to this reopening of the administrative record, the agency is including hard fat in § 347.10 at concentrations of 50 to 100 percent as a single active ingredient. Hard fat is also allowed in permitted combinations in § 347.20(a)(1), (a)(2), (b), (c), and (d) of this final monograph. Products containing hard fat may be labeled for the indications in § 347.50(b)(1), (b)(2)(i), and (b)(2)(ii) and should bear the warnings in § 347.50(c)(1) through (c)(4) and the directions in § 347.50(d)(1). In a future issue of the **Federal Register**, the agency will address claims for hard fat in OTC skin protectant cold sore/fever blister drug products (*see* proposed § 347.50(b)(2)(ii), 55 FR 3362 at 3370).

(Comment 24) One comment requested that lanolin be categorized as an active ingredient in the skin protectant monograph for use as a single ingredient or in combination, as permitted by the monograph. In support of lanolin's safety and effectiveness as a skin emollient, the comment cited animal and human test data submitted to the Miscellaneous External Panel (Ref. 72), Kligman, Grove, and Studemayer (Ref. 73), and the Advisory Review Panel on OTC Ophthalmic Drug Products' (Ophthalmic Panel) Category I classification of lanolin as an ocular emollient for the treatment of conditions involving ocular membranes (43 FR 30002 at 30044 and 30045, May 6, 1980).

The agency has considered lanolin as a protectant or emollient active ingredient in several OTC drug rulemakings. In the TFM for OTC skin protectant diaper rash drug products (55 FR 25204 at 25218 to 25219), the agency determined that the data submitted supported the use of 15.5 percent lanolin as a skin protectant active ingredient only in combination with other skin protectant active ingredients for the treatment and prevention of diaper rash.

In the final rule for OTC ophthalmic drug products (53 FR 7076 at 7090, March 4, 1988), lanolin and anhydrous lanolin were included as monograph conditions at a 1 to 10 percent concentration in combination with one or more oleaginous emollients included in the monograph. In the final rule for OTC anorectal drug products (55 FR 31776 at 31780), lanolin was included as a monograph protectant active ingredient at concentrations of 50 percent and above as a single ingredient or between 12.5 and 50 percent in combinations.

The agency has surveyed the marketplace (Refs. 3, 74, 75, and 76), and found that lanolin is being marketed as a skin protectant both as a single ingredient and in combination with other ingredients. The concentration in two single ingredient products is 37 and 50 percent. In almost all cases, the concentration of the lanolin in the combination products is not provided. Based on the agency's market survey and its previous actions

in the rulemakings for OTC diaper rash, anorectal, and ophthalmic drug products, the agency is including lanolin in the final skin protectant drug products monograph as a single ingredient and in combination with certain other skin protectant active ingredients, depending on the labeled use of the product. The use concentration included in the final monograph is 12.5 to 50 percent in accord with the concentration of marketed single ingredient skin protectant drug products and the concentration used in anorectal protectant combination drug products. The use concentration of 15.5 percent proposed in § 347.10(o) for OTC diaper rash skin protectant drug products (55 FR 25204 at 25232) will be addressed in the final rule for those drug products.

(Comment 25) One comment submitted data (Refs. 77 through 89), including two clinical studies by Kaplan (Refs. 77, 78, 80, 81, and 84), in support of reclassifying LYCD from Category III to Category I as a wound healing aid. The first Kaplan study (Ref. 77) has been published (Ref. 90). The comment also submitted data included earlier in the rulemaking for OTC anorectal drug products and transcripts of meetings of the Hemorrhoidal Panel (Ref. 87).

The ingredient LYCD was reviewed by both the Hemorrhoidal Panel and the Topical Analgesic Panel. Neither panel found LYCD to be effective. The agency determined that the data were inadequate to support the use of LYCD in the final rule for OTC anorectal drug products (58 FR 46746, September 2, 1993).

The agency has reviewed the wound healing studies (Refs. 77, 78, 80, 81, and 84) submitted to this rulemaking for OTC skin protectant drug products and determined that the studies are inadequate to include LYCD as a wound healing aid in this final monograph. The agency's detailed comments and evaluations of the nonconfidential data are on file in the Dockets Management Branch (Refs. 91 and 92).

The agency also informed the company that additional information is needed on the chemical and physical characterization of LYCD before a final classification can be made and suggested the company provide information to establish a compendial monograph for the ingredient (Ref. 93). The company submitted information, both nonconfidential (Refs. 88 and 89) and confidential, but it also was not adequate. The agency's detailed comments on the information are on file in the Dockets Management Branch (Refs. 94 and 95).

(Comment 26) The agency has included in the rulemaking for OTC skin protectant drug products several submissions (Refs. 96, 97, and 98) for drug products containing mineral oil that were originally submitted to the Miscellaneous External Panel for review. One submission (Ref. 96) did not contain any data on mineral oil as an individual ingredient and the other submissions (Refs. 97 and 98) were discussed in the TFM for OTC skin protectant diaper rash drug products (55 FR 25204 at 25220 to 25221). The agency concluded that the ingredient's physical properties were sufficient, along with the Category I findings of two other panels (Hemorrhoidal and Ophthalmic Panels), to support the effectiveness of mineral oil in § 347.10(p) of the skin protectant diaper rash TFM (55 FR 25204 at 25232) for diaper rash claims proposed in § 347.50(b)(5). In this final monograph for OTC skin protectant drug products, mineral oil in the first concentration listed in § 347.10(l) (50 to 100 percent) may be labeled for the claims listed in § 347.50(b)(1) and (b)(2). In addition, mineral oil in the second concentration listed in § 347.10(1) (30 to 35 percent) when combined with colloidal oatmeal may be labeled for the claims listed in § 347.50(b)(7).

(Comment 27) One comment urged FDA to consider a single statement of identity for the ingredient petrolatum because of its multi-purpose uses in OTC drug products. The comment suggested the term ''protectant.''

Petrolatum is generally recognized as safe and effective in two other OTC drug final monographs: Ophthalmic (part 349 (21 CFR part 349)) and anorectal (21 CFR part 346). The statement of identity for ophthalmic use is ''lubricant'' or ''emollient (lubricant) eye ointment'' (*see* § 349.65(a)).

The agency previously considered a related issue in the proposed rulemaking for OTC anorectal drug products (*see* comment 39, 53 FR 30756 at 30771) and determined that a comment's suggested statement of identity (topical protectant and lubricant) did not make it clear that such a product could be used anorectally and thus did not fully satisfy the requirements of § 201.61(b). The agency believes that the same is true of the currently suggested statement of identity ''protectant.'' Thus, the agency is not adopting a single statement of identity for the ingredient petrolatum and is using ''skin protectant'' as the statement of identity for drug products containing petrolatum included in this final monograph (part 347).

(Comment 28) One comment argued that petrolatum should be exempt from the ''directions for use'' proposed in § 347.50(d), citing petrolatum's long history of consumer use, efficacy, and safety and contending that petrolatum meets the requirements for such exemption under § 201.116 (21 CFR 201.116).

The agency disagrees. Section 201.116 allows for exemption from section 502(f)(1) of the act which requires adequate directions for use, if adequate directions for common uses are known to the ordinary individual. While some individuals may know that petrolatum may be applied as needed, the agency believes that not all people who use this drug would know that it can be applied on an as needed basis. Therefore, the agency is requiring the standard direction in § 347.50(d)(1) for products that contain petrolatum.

(Comment 29) One comment contended that petrolatum should be exempt from the warnings proposed in the TFM (48 FR 6820 at 6832 to 6833). The comment argued that sufficient evidence to exempt these warnings is provided by the universal use of petrolatum over many decades for a wide variety of topical indications, the clinical and marketing experience over this long period of extensive and universal use, the Panel conclusion that ''large amounts of petrolatum are essentially nontoxic when ingested * * *'' (43 FR 34628 at 34639), the results of a long-term chronic feeding study by Oser et al. (Ref. 99) as demonstrating safety on ingestion, and the fact that petrolatum is regulated as an approved direct food additive (under § 172.880 (21 CFR 172.880)) and is listed in the Food Chemicals Codex (Ref. 100).

Although the comment suggested a revision, it agreed in principle with the warning ''Not to be applied over deep or puncture wounds, infections, or lacerations. Consult a doctor.'' A second comment requested, in the interest of brevity, clarity, and conservation of scarce label space, that the warning be shortened to read: ''Do not apply over deep or puncture wounds or infections.''

The agency discussed the importance of each of the proposed warnings in comments 25 through 31 of the TFM (48 FR 6820 at 6828 to 6830) and stated that these warnings are necessary for petrolatum used as a skin protectant. In comment 31 of the TFM, however, the agency proposed not to require the ''For external use only warning'' for all products (including those containing petrolatum) formulated as lip balms. The agency is finalizing that proposal in this document.

In this final monograph, products containing the skin protectant ingredients mineral oil or sodium bicarbonate may omit the ''For external use only'' warning if they also provide labeling for oral use of the product. The agency believes that it could be confusing to consumers if products that contain petrolatum do not have the ''For external use only'' warning. Therefore, the agency is not exempting petrolatum (except in lip protectant products) from the ''For external use only'' warning in §§ 201.66(c)(5)(i) and 347.50(c)(1).

The agency considers the warning about not getting the product into the eye useful to help prevent possible improper use of skin protectant drug products which are often marketed in nonsterile, multiple use containers. The agency believes that the first comment misconstrued the purpose of the ''if condition worsens'' warning (§ 347.50(c)(3) of this final monograph). The warning is intended to direct consumers to seek medical attention for a condition if it gets worse or has not improved after 7 days of treatment and not to set 7 days as a maximum safe treatment period. The agency has shortened this warning for products containing petrolatum (or white petrolatum) as a single ingredient to state: ''See a doctor if condition lasts more than 7 days.''

With regard to the suggestion that the warning in § 347.50(c)(4) be revised, after the submission of this comment, the agency published a similar warning for OTC first aid antibiotic drug products (52 FR 47312 at 47324, December 11, 1987) and OTC first aid antiseptic drug products (56 FR 33644 at 33677, July 22, 1991). The agency is revising the warning in § 347.50(c)(4), accordingly, in the new format required by § 201.66.

(Comment 30) One comment considered the two general warnings in § 330.1(g) unnecessary for 100 percent petrolatum. The comment cited two references (Refs. 99 and 100) to support its contention that petrolatum is a uniquely safe OTC drug and presents no risk to the health of children from misuse, overuse, or abuse.

The agency finds the information in the cited references (as well as the information in § 172.880 regarding the regulation of petrolatum as an approved food additive) insufficient to support an exemption for 30 to 100 percent petrolatum from the two general warnings in § 330.1(g). References 99 and 100 list petrolatum concentrations at 0.02 to 5 percent, significantly lower than the concentration range included in the monograph. The agency revised the wording of these warnings in § 330.1(g) in the final rule for the new OTC drug product labeling format (64 FR 13254 at 13294).

(Comment 31). One comment stated that the agency's proposed directions for sodium bicarbonate for use as a soak in a tub allow for a topical use concentration of about 0.3 percent, which is less than the dosage range for topical use of 1 to 100 percent (54 FR 40808 at 40818).

The agency has reviewed its calculations and agrees with the comment that the proposed directions for use as a soak in a tub allow for a topical concentration of less than 1 percent, depending on the amount of water in the tub and the size of the cup used. However, these directions are consistent with those suggested in the literature (Refs. 101 through 104). When these measurements are made by consumers, they may not be precise. Accordingly, in this final monograph, the agency recognizes that it is not possible or critical to make a precise determination of the use concentration for this ingredient. Thus, the agency has revised its recommendations.

(Comment 32) The agency has considered topical starch (formerly known as corn starch) in several rulemakings. In the advance notice of proposed rulemaking for OTC skin protectant drug products (43 FR 34628 at 34636), the TFM for OTC skin protectant drug products (48 FR 6820 at 6828), the TFM for OTC skin protectant poison ivy, poison oak, poison sumac, and insect bites drug products (54 FR 40808 at 40811 to 40812), the Miscellaneous External Panel's statement on OTC diaper rash drug products (47 FR 39436 at 39439, September 7, 1982), the TFM for OTC skin protectant diaper rash drug products (55 FR 25204 at 25232), and the TFM (53 FR 30756 at 30782) and final monograph (55 FR 31776 at 31780) for OTC anorectal drug products.

Based on the evaluations of the Topical Analgesic, Miscellaneous External, and Hemorrhoidal Panels, and the subsequent inclusion of topical starch as a protectant in the final monograph for OTC anorectal drug products and in the TFM for OTC diaper rash drug products, the agency is including topical starch at a concentration of 10 to 98 percent as an active ingredient under § 347.10(q) of this final monograph for OTC skin protectant drug products. The agency is including a minor skin irritation indication for the skin protectant uses of topical starch in § 347.50(b)(6). Because topical starch should not be used on broken skin, other conditions (e.g., cuts, scrapes, chapped/cracked skin and lips) are not included in this final monograph. Warnings applicable to topical starch drug products in a powder dosage form are included in § 347.50(c)(6).

(Comment 33) Two comments from the same company requested that vitamins A and D be added to the list of Category I active ingredients in the skin protectant monograph. The comments stated that shark liver oil, which contains significant quantities of vitamins A and D, is an oleaginous substance that provides lubricity and emolliency. The comments mentioned that vitamins A and D, like cod and shark liver oils, have an emollient nature that provides a physical barrier to an irritant and aids in the temporary relief of minor skin irritations. The comments added that these oleaginous substances can lessen dermal injury caused by friction and lessen itching and dryness caused by water loss from the stratum corneum, thereby providing additional protection for exposed skin. The comments cited the Hemorrhoidal Panel's recommendations on the safety and topical use of vitamins A and D (45 FR 35576 at 35630 and 35634). Another comment stated that a number of the claims recommended by the Hemorrhoidal Panel in the advance notice of proposed rulemaking for OTC skin protectant drug products (43 FR 34628 at 34648) should be listed in the monograph for the ingredients vitamin A and vitamin D.

The Hemorrhoidal Panel did not review vitamin A or vitamin D (cholecalciferol) as single ingredients for use as protectants in OTC anorectal drug products but did consider these ingredients in its review of ingredients used for wound healing (45 FR 35576 at 35655 and 35656). The Hemorrhoidal Panel concluded that the data submitted were insufficient to prove effectiveness of vitamins A and D as wound healing agents and classified these ingredients in Category III for this use (45 FR 35576 at 35655 and 35656). The agency did not include vitamins A or D in the anorectal final monograph because no data were submitted to support the effectiveness of these ingredients for protectant uses. However, the Hemorrhoidal Panel recommended that cod liver and shark liver oils be included in the Category I list of active ingredients for use as protectants in OTC anorectal drug products (45 FR 35576 at 35630 and 35634) and the agency concluded that these oils are monograph ingredients (55 FR 31776 at 31780). The agency pointed out in its proposed rulemaking for OTC diaper rash drug products (55 FR 25204 at 25225) that vitamins A and D have not been classified as skin protectants in

any rulemaking in the OTC drug review, concluded that additional data are needed, and placed these ingredients in Category III.

Because no data were submitted to support the effectiveness of vitamins A and D for skin protectant uses, the agency concludes that these ingredients are nonmonograph when used individually or in combination other than as a component of cod liver oil listed in § 347.10(e) of this final monograph.

(Comment 34) In the TFM for OTC first aid antiseptic drug products (56 FR 33644 at 33650), the agency deferred data on a physical barrier cream product with protective claims to the rulemaking for OTC skin protectant drug products. The cream product contains a combination of ingredients: Cetyl alcohol, glyceryl stearate, isopropyl palmitate, stearyl alcohol, and beeswax, labeled as ''skin wound protectant'' ingredients. The product labeling states ''helps protect minor cuts, burns, and skin irritations against contamination.'' This claim is very similar to the claim included in § 347.50(b)(1) of this final monograph. The submission included the results of animal and human safety studies on the finished product, including LD50 in mice and rats, acute dermal toxicity studies in rabbits, 48-hour and 72-hour primary irritation studies in humans using occlusive patch tests, and 21-day cumulative irritation studies. The submission also included reports of studies on the cream product's protective barrier effect and a clinical study to evaluate safety and effectiveness. The clinical study was described as a randomized, controlled, double-blind, parallel-group comparison of two products to determine the cream product's safety and effectiveness under actual use conditions. The control formulation was not provided.

The agency finds the submitted data insufficient to establish the skin protectant effect of any of the ingredients present in the cream product because the contribution, if any, of each of the individual active ingredients cannot be determined. The Panel recommended that there need be no limit to the number of skin protectant ingredients that may be combined in a product (43 FR 34628 at 34631). However, each ingredient must make a contribution to the claimed effect(s) in order to be deemed an active ingredient (§ 330.10(a)(4)(iv)). Further, the agency notes that the Miscellaneous External Panel classified the ingredients cetyl alcohol and stearyl alcohol as inactive in the advance notice of proposed rulemaking for OTC alcohol drug products (47 FR 22324 at 22326, May 21, 1982). In addition, the Dental Panel classified beeswax as inactive in the advance notice of proposed rulemaking for OTC drug products for the relief of oral discomfort (47 FR 22712 at 22715). No additional data on these three ingredients have been submitted to any rulemaking in the OTC drug review. The other two listed active ingredients, glyceryl stearate and isopropyl palmitate, have not been considered in any rulemaking in the OTC drug review. Consequently, the agency concludes that the safety and effectiveness data are insufficient on beeswax, cetyl alcohol, glyceryl stearate, isopropyl palmitate, and stearyl alcohol. Therefore, these ingredients are being included in § 310.545(a)(18) as nonmonograph.

(Comment 35) Two comments contended that, as a class, skin protectant ingredients may be combined with more different types of therapeutic categories than any other class of ingredients. However, in the TFM, proposed § 347.20 does not list any ingredients other than skin protectant ingredients that may be combined. The comments stated that skin protectant ingredients have been found appropriate for use in combination with several other ingredient categories in other OTC drug product rulemakings. The comments requested that the agency include a provision in the final monograph allowing the combination of skin protectant ingredients with any therapeutic class of ingredients when such a combination has been found appropriate by any other OTC advisory review panel.

Proposed § 347.20 in the skin protectant TFM was published in the **Federal Register** on February 15, 1983, before the TFMs for many other categories of OTC drug products. Subsequently, based on panel recommendations in other OTC drug rulemakings and the TFMs for OTC external analgesic drug products (48 FR 5852 at 5868), OTC first aid antiseptic drug products (56 FR 33644 at 33677), and OTC sunscreen drug products (58 FR 28194 at 28296, May 12, 1993), this final monograph includes skin protectant active ingredients in combination with other ingredients from these therapeutic classes.

Therefore, the agency has further considered and expanded the ingredient combinations included in § 347.20 of this final monograph, including skin protectant-sunscreen combinations in § 347.20(d). The agency is also amending the final monograph for OTC sunscreen drug products (64 FR 27666, May 21, 1999) to include sunscreen-skin protectant drug products. Further, the agency may be expanding the permitted combinations in § 347.20(b) and (c) as data submitted to the rulemakings for OTC external analgesic and first aid antiseptic drug products are evaluated and the final monographs for those OTC drug classes are issued.

III. Conclusion

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC skin protectant drug products are generally recognized as safe and effective and not misbranded. Any drug product labeled, represented, or promoted for use as an OTC skin protectant drug that contains any of the ingredients listed in § 310.545(a)(18)(i)(A) or (a)(18)(i)(B) or that is not in conformance with the monograph (part 347) may be considered a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) and misbranded under section 502 of the act. Such a drug product cannot be marketed for skin protectant uses unless it is the subject of an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314). An appropriate citizen petition to amend the monograph may also be submitted in accord with 21 CFR 10.30 and 330.10(a)(12)(i). Any OTC skin protectant drug product initially introduced or initially delivered for introduction into interstate commerce after the compliance dates of the final rule for § 310.545(a)(18)(i)(A) or this final rule that is not in compliance with the regulations is subject to regulatory action.

Our decision to revise the warnings set forth in this final rule is based on comments made in response to the proposed rule. Mandating warnings in an OTC drug monograph does not require a finding that any or all of the OTC drug products covered by the monograph actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings repudiate the prior OTC drug monographs and monograph rulemakings under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that warnings are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the the act. This judgment balances the benefits of these drug products against their potential risks (*see* 21 CFR 330.10(a)).

FDA's decision to act in this instance need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F. 3d 986, 991 (8th Cir. 2001)). To mandate warnings, or take similar regulatory action, FDA need not show, nor do we allege, actual causation. For an expanded discussion of case law supporting FDA's authority to require such warnings, *see* the final rule entitled ''Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use'' (67 FR 72555, December 6, 2002).

IV. Labeling Guidance

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA established a standardized format and standardized content for the labeling of OTC drug products. Table 1 of this document shows how the warnings proposed in the TFM have been revised in this final rule based on comments received and using the new format in § 201.66. Using the format in § 201.66(c)(4), the warnings in §§ 347.50(c) and 347.52(c) appear as follows:

TABLE 1.—REVISION OF PROPOSED MONOGRAPH WARNINGS TO NEW FORMAT

Skin Protectant Tentative Final Monograph	Skin Protectant Final Monograph
Not to be applied over deep or puncture wounds, infections, or lacerations. Consult a doctor. Do not use on broken skin.	Do not use on • deep puncture wounds • animal bites • serious burns • broken skin[1]
Avoid contact with the eyes. Keep powder away from child's face to avoid inhalation, which can cause breathing problems. Take special care to avoid slipping when getting into and out of the tub.	When using this product • do not get into eyes • keep away from face and mouth to avoid breathing it • in some skin conditions, soaking too long may overdry • to avoid slipping, use mat in tub or shower
If condition worsens or does not improve within 7 days, consult a doctor.	Stop use and ask doctor if • condition worsens • symptoms last more than 7 days or clear up and occur again within a few days
For external use only.	For external use only[2]

[1] Only required for powder products containing kaolin or topical starch. *See* § 347.50(c)(6).
[2] In bold type on the line immediately following the line for the Warnings heading. *See* § 201.66(c)(5)(i) and (d)(6).

Section 201.66(d)(10) (21 CFR 201.66(d)(10)), which sets forth format and content requirements for OTC drug product labeling, establishes a modified labeling format for small packages that need more than 60 percent of their total surface area available to bear labeling to meet the format requirements of § 201.66(d)(1) through (d)(9). The agency stated in the final rule that established these labeling requirements that it would consider additional approaches for accommodating certain products in their respective monographs, taking into consideration the risks and benefits of the drug, the intended use, and the need to communicate limitations or restrictions about the use of the product to the target population (64 FR 13254 at 13270).

In the final monograph for OTC sunscreen drug products (64 FR 27666 at 27678), the agency discussed modified warnings for lip balm products and stated that it expects to adopt the same modifications when it issues the final monograph for OTC skin protectant drug products. Accordingly, the agency is establishing additional labeling exemptions for lip balm/lip protectant products that meet the criteria established in § 201.66(d)(10). The specifications for products formulated and labeled as a lip protectant or lip balm that meet the criteria established in § 201.66(d)(10) are in § 347.50(e) of the skin protectant final monograph. In making this determination for lip protectant/lip balm products, the agency considered a number of factors that were discussed in the final rule that established the new OTC drug product labeling format in § 201.66 (64 FR 13254 at 13270). These factors include the risks and benefits of the drug, the intended use, and the need to communicate limitations or restrictions about the use of the product to the target population. Lip protectant/lip balm products are typically packaged in small amounts, applied to limited areas of the body, have a high therapeutic index, carry extremely low risk in actual consumer use situations, provide a favorable public health benefit, require no specified dosage limitation, and require few specific warnings and no general warnings (e.g., pregnancy or overdose warnings). For these reasons, the agency has concluded that minimal information is needed for the safe and effective use of such products.

The agency is also including in this final rule some modified labeling requirements in § 347.50(f) of the final monograph for products containing only cocoa butter, petrolatum, or white petrolatum singly or in combination with each other when marketed other than as a lip protectant or lip balm. In making this decision for cocoa butter, the agency considered the factors discussed in the previous paragraphs and the Panel's recommendations on cocoa butter. The Panel stated in its safety evaluation of cocoa butter (43 FR 34628 at 34635) that ''No reports regarding the safety of cocoa butter have been specifically identified. However, the Panel recognizes that its safety has been established by its wide and continuous use in pharmaceutical products and cosmetics. Clinical and marketing experience has confirmed that cocoa butter is safe in the dosage range used as a skin protectant.'' Thus, these products have an extremely low risk in actual consumer use situations. In addition, the agency has considered the OTC uses for this ingredient as providing temporary protection of minor cuts, scrapes, burns, and chapped or cracked skin and lips. Application to these areas for these uses will likely be infrequent and to limited areas of the body. In making this decision for petrolatum and white petrolatum, the agency considered the factors discussed in the previous paragraphs, the Panel's recommendations, and the evidence and data described in section II., comment

29 of this document. The Panel stated in its safety evaluation of petrolatum preparations (43 FR 34628 at 34639) that ''Petrolatum is not absorbed through intact or injured skin and is neither sensitizing nor irritating. Large amounts are essentially nontoxic when ingested in liquid laxative preparations. Clinical and marketing experience has confirmed that petrolatum is safe in the OTC dosage range used as a skin protectant.'' As noted for cocoa butter, the agency has considered the OTC uses for these ingredients and believes that application to these areas for these uses will likely be infrequent and to limited areas of the body. The agency concludes that petrolatum and white petrolatum have an extremely low risk in actual consumer use situations. Moreover, both products provide a favorable public health benefit, require no specified dosage limitation, and require few specific warnings nad no general warnings (e.g., pregnancy or overdose warnings).

V. Stay of § 347.20(d) and Part 352

The agency is lifting the stay for the sunscreen monograph in part 352 for the sole purpose of amending the codified language as set forth in the skin protectant final monograph. Once the codified language is amended, part 352 will remain stayed indefinitely. The agency is also staying § 347.20(d) because it involves combination products that contain sunscreen active ingredients. To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) in that obtaining public comment is impracticable, unnecessary, and contrary to the public interest. The agency complied with the notice and comment procedures in 5 U.S.C. 553 when it issued the skin protectant final monograph set forth in this notice. The agency is lifting the stay for part 352 in order to revise part 352 to be consistent with that monograph. As the agency stated in the **Federal Register** of December 31, 2001 (66 FR 67485), FDA intends to publish a proposal to amend part 352 in order to develop a comprehensive sunscreen monograph that addresses formulation, labeling, and testing requirements for both ultraviolet B (UVB) and ultraviolet A (UVA) radiation protection. That amendment will propose a new effective date for part 352 and for § 347.20(d). Thus, there will be an opportunity for public comment on the new effective date within the proposed amendment to part 352. In accordance with 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether this partial stay should be modified or revoked.

VI. Analysis of Impacts

An analysis of the costs and benefits of this regulation, conducted under Executive Order 12291, was discussed in the TFM for OTC skin protectant drug products (48 FR 6820 at 6831). The agency certified that under the Regulatory Flexibility Act the proposed rule would not have a significant economic impact on a substantial number of small entities. No comments were received on the economic impact of this rulemaking.

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule may have a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The proposed rules that have led to the development of this final rule were published on February 15, 1983, and October 3, 1989, before the Unfunded Mandates Reform Act of 1995 was enacted. The agency explains in this final rule that the final rule will not result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year.

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to establish allowable monograph ingredients and labeling under which OTC skin protectant drug products are generally recognized as safe and effective. Of the 29 active ingredients considered in this final rule, 19 are being included in the final monograph while 10 are not. Of the 10 not included, 1 is deferred to the final rule on OTC skin protectant diaper rash drug products and 1 may be included pending development of a USP/NF monograph for the ingredient.

Products containing the remaining eight active ingredients will need to be reformulated to delete and replace the ingredient(s) with another (monograph) skin protectant active ingredient or an inactive vehicle. As discussed in section II, comment 34 of this document, at least three and maybe five of these eight ingredients also could be used as inactive (vehicle) ingredients in topical drug products. Therefore, some of these manufacturers may be able to relabel their products without reformulations to comply with this rule.

The agency's Drug Listing System identifies approximately 4,000 drug products containing these 8 ingredients; however, only a limited number of these products list these ingredients as active for a skin protectant drug product (table 2) in the next paragraph of this document.

TABLE 2.—NUMBER OF MARKETERS AND PRODUCTS LISTING INGREDIENTS AS ACTIVE

Ingredient	No. of Marketers	No. of Products
Beeswax	2	2
Boric acid	21	22
Cetyl alcohol	3	9

The cost to reformulate a product will vary greatly depending on the nature of the change in formulation, the product, the process, and the size of the firm. Some of the 33 manufacturers of the 50 products containing nonmonograph active ingredients may not have to reformulate. For those products that need reformulation, the cost can be significant. Because of the large number of monograph active ingredients available for reformulation, no manufacturer should need to change its

dosage form; however, it will have to redo the validation (product, process, new supplier), conduct stability tests, and change master production records. The agency estimates the cost of reformulation to range from $100,000 to $500,000. Therefore, if all 50 products are reformulated, the midpoint of the cost estimate implies total costs of $15 million. However, the agency believes the total costs will be much smaller because not all manufacturers will have to reformulate and some may choose to discontinue a product line if sales are too low to justify the added cost and/or they also produce substitute products that do not require reformulation.

Because these products must be manufactured in compliance with the pharmaceutical current good manufacturing practices (21 CFR parts 210 and 211), all firms would have the necessary skills and personnel to perform these tasks either in-house or by contractual arrangement. No additional professional skills are needed.

This final rule establishes the monograph for OTC skin protectant drug products and will require relabeling of all products covered by the monograph. The agency's Drug Listing System identifies approximately 1,300 OTC skin protectant drug products containing the 29 ingredients covered by this final rule. It is likely that there are a number of additional products that are not currently included in the agency's system. Also, as indicated previously, a number of the skin protectant ingredients can be and often are used as inactive ingredients in many of the OTC drug products included in the Drug Listing System. While it is difficult to determine an exact number, the agency estimates that 2,000 to 2,500 OTC stockkeeping units (SKUs) (individual products, packages, and sizes) will need to be relabeled based on this final rule. Based on information in the Drug Listing System, the agency estimates there are at least 200 manufacturers and 700 marketers of these products. Marketers, however, generally do not incur these costs because manufacturers of OTC drug products are usually responsible for product labeling, testing, and formulation.

Estimates of relabeling costs for the type of changes required by this rule vary greatly and range from $500 to $15,000 per SKU depending on whether the products are nationally branded or private label. The agency assumes the same weighted average cost to relabel (i.e., $3,600 per SKU) that it estimated for the final rule requiring uniform label formats of OTC drug products (64 FR 13254 at 13279 to 13281). Assuming 2,000 to 2,500 affected OTC SKUs in the marketplace, total one-time costs of relabeling would be $7.2 to $9.0 million. Because frequent labeling redesigns are a recognized cost of doing business in the OTC drug industry, these costs may be less. Manufacturers that make voluntary market-driven changes to their labeling during the implementation period can implement the regulatory requirements for a nominal cost. The final rule would not require any new reporting or recordkeeping activities.

This final rule may have an economic impact on some small entities. The agency's Drug Listing System indicates that about 700 marketers will need to relabel, and that this relabeling will be prepared by about 200 manufacturers, most of which are private label or contract manufacturers. Based on the Small Business Administration's determination that a small firm in this industry has fewer than 750 employees, roughly 70 percent of the firms are considered small. The economic impact on any particular firm is very difficult to measure, because it will vary with the type and number of products affected, the number of SKUs per product, and the ability to coordinate these label changes with those required for other purposes. For example, assuming average industry costs, a small company that had 5 products with 3 SKUs each, for a total of 15 SKUs, would experience a one-time cost of $54,000 (15 x $3,600). A small private label manufacturer with the same product line and 10 customers per SKU, for a total of 150 SKU's, would experience a one-time cost of $540,000 (150 x $3,600). If one or more products needed to be reformulated, the costs would increase by $100,000 to $500,000 per reformulation. Some of these relabeling costs may be mitigated to the extent that manufacturers can coordinate this relabeling with relabeling requirements for the standardized format and content labeling requirements of OTC drug products (§ 201.66) and the sunscreen rule. Products with annual sales less than $25,000 have 1 additional year. Therefore, many of the labeling revisions may be done in the normal course of business. These steps should help to minimize the impact on small entities by providing enough time for implementation to enable entities to use up existing labeling stock. The agency believes that these actions provide substantial flexibility and reductions in cost for small entities.

The agency considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this new labeling in place as soon as possible, a longer time period would unnecessarily delay the benefit of new labeling and revised formulations, where applicable, to consumers. The agency rejected an exemption for small entities because the new labeling and revised formulations, where applicable, are also needed by consumers who purchase products marketed by those entities. However, a longer (24-month) compliance date is being provided for products with annual sales less than $25,000.

This analysis shows that the agency has undertaken important steps to reduce the burden to small entities. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

VII. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

X. Request for Comments

This final rule includes reduced labeling requirements for products formulated and labeled as a lip protectant that meet the criteria established in § 201.66(d)(10) (*see* § 347.60(e)); for products containing only cocoa butter, petrolatum, or white petrolatum identified in § 347.10(d), (m), and (r), used singly or in combination with each other, and marketed other than as a lip protectant (*see* § 347.60(f)); for sunscreen drug products labeled for use only on specific small areas of the face (e.g., lips, nose, ears, and/or around eyes) and that meet the criteria established in § 201.66(d)(10) (*see* § 352.52(f)); and for combinations of skin protectant and sunscreen active ingredients (*see* § 352.60(b)(2), (c), and (d)). Some of this reduced labeling results from the modified labeling format for OTC drug products in § 201.66(d)(10), which did not exist when the TFM and amended TFM were published. Some of this reduced labeling is in response to comments specifically addressing petrolatum and white petrolatum, which the agency has extended to cocoa butter. The agency is providing 90 days for comment on the specific labeling requirements discussed in this section. Comments should be identified with the docket number found in brackets in the heading of this document. Three copies of all mailed comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Received comments may be seen in the Dockets Management Branch (*see* **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday. If the comments justify a change in labeling, the agency will propose to amend the final monographs accordingly at a later date. Because the amendment process can take a significant period of time, manufacturers of the products covered by this final rule should implement the labeling stated therein at this time, unless the compliance date has been stayed.

XI. References

The following references are on display in the Dockets Management Branch (*see* **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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20. Letter from W. E. Gilbertson, FDA, to L. Gilson, Otis Clapp & Son, Inc., coded ANS002, Docket No. 78N–0301, Dockets Management Branch.
21. OTC Vol. 160034.
22. OTC Vol. 160165.
23. Comment No. C00062, Docket No. 78N–0021, Dockets Management Branch.
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List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Parts 347 and 352

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 310, 347, and 352 are amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

■ 2. Section 310.545 is amended by revising paragraphs (a)(18)(i), (a)(18)(v), (a)(18)(vi), and (d)(1), and by adding paragraph (d)(32) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(18) * * *

(i)(A) *Ingredients—Approved as of May 7, 1991.*

Allantoin (wound healing claims only)

Sulfur

Tannic acid

Zinc acetate (wound healing claims only)

(B) *Ingredients—Approved as of* June 4, 2004; June 6, 2005, *for products with annual sales less than $25,000.*

Beeswax

Bismuth subnitrate

Boric acid

Cetyl alcohol

Glyceryl stearate

Isopropyl palmitate

Live yeast cell derivative

Shark liver oil

Stearyl alcohol

* * * * *

(v) *Insect bite and sting drug products.*

(A) *Ingredients—Approved as of May 7, 1991.*

Alcohol

Alcohol, ethoxylated alkyl

Ammonia solution, strong

Ammonium hydroxide

Benzalkonium chloride

Camphor

Ergot fluid extract

Ferric chloride

Menthol

Peppermint oil

Phenol

Pyrilamine maleate

Sodium borate

Trolamine

Turpentine oil

Zirconium oxide

(B) *Ingredients—Approved as of* June 4, 2004; June 6, 2005, *for products with annual sales less than $25,000.*

Beeswax

Bismuth subnitrate

Boric acid

Cetyl alcohol

Glyceryl stearate

Isopropyl palmitate

Live yeast cell derivative

Shark liver oil

Stearyl alcohol

(vi) *Poison ivy, poison oak, and poison sumac drug products.*

(A) *Ingredients—Approved as of May 7, 1991.*

Alcohol

Anion and cation exchange resins buffered

Benzethonium chloride

Benzocaine

Benzyl alcohol

Bismuth subnitrate

Bithionol

Boric acid

Camphor

Cetalkonium chloride

Chloral hydrate

Chlorpheniramine maleate

Creosote

Diperodon hydrochloride

Diphenhydramine hydrochloride

Eucalyptus oil

Ferric chloride

Glycerin

Hectorite

Hydrogen peroxide

Impatiens biflora tincture

Iron oxide

Isopropyl alcohol

Lanolin

Lead acetate

Lidocaine

Menthol

Merbromin

Mercuric chloride

Panthenol

Parethoxycaine hydrochloride

Phenol

Phenyltoloxamine dihydrogen citrate

Povidone-vinylacetate copolymers

Salicylic acid

Simethicone

Tannic acid

Topical starch

Trolamine

Turpentine oil

Zirconium oxide

Zyloxin

(B) *Ingredients—Approved as of* June 4, 2004; June 6, 2005, *for products with annual sales less than $25,000.*

Beeswax

Bismuth subnitrate

Boric acid

Cetyl alcohol

Glyceryl stearate

Isopropyl palmitate

Live yeast cell derivative

Shark liver oil

Stearyl alcohol

* * * * *

(d) * * *

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(2)(i), (a)(3)(i), (a)(4), (a)(6)(i)(A), (a)(6)(ii)(A), (a)(7) (except as covered by paragraph (d)(3) of this section), (a)(8)(i), (a)(10)(i) through (a)(10)(iii), (a)(12)(i) through (a)(12)(iv)(A), (a)(14) through (a)(15)(i), (a)(16) through (a)(18)(i)(A), (a)(18)(ii) (except as covered by paragraph (d)(22) of this section), (a)(18)(iii), (a)(18)(iv), (a)(18)(v)(A), and (a)(18)(vi)(A) of this section.

* * * * *

(32) June 4, 2004, for products subject to paragraphs (a)(18)(i)(B), (a)(18)(v)(B), and (a)(18)(vi)(B) of this section. June 6, 2005, for products with annual sales less than $25,000.

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 3. The authority citation for 21 CFR part 347 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 4. Part 347 is amended by revising the heading for subpart A to read as follows:

Subpart A—General Provisions

* * * * *

■ 5. Section 347.3 is revised to read as follows:

§ 347.3 Definitions.

As used in this part:

Astringent drug product. A drug product applied to the skin or mucous membranes for a local and limited protein coagulant effect.

Lip protectant drug product. A drug product that temporarily prevents dryness and helps relieve chapping of the exposed surfaces of the lips; traditionally called ''lip balm.''

Poison ivy, oak, sumac dermatitis. An allergic contact dermatitis due to exposure to plants of the genus Rhus (poison ivy, poison oak, poison sumac), which contain urushiol, a potent skin-sensitizer.

Skin protectant drug product. A drug product that temporarily protects injured or exposed skin or mucous membrane surfaces from harmful or annoying stimuli, and may help provide relief to such surfaces.

■ 6. Section 347.10 is redesignated as § 347.12 and revised, and subpart B, consisting of a new § 347.10, newly redesignated § 347.12, and new § 347.20, is added to read as follows:

Subpart B—Active Ingredients

Sec.
347.10 Skin protectant active ingredients.
347.12 Astringent active ingredients.
347.20 Permitted combinations of active ingredients.

Subpart B—Active Ingredients

§ 347.10 Skin protectant active ingredients.

The active ingredients of the product consist of any of the following, within the concentration specified for each ingredient:

(a) Allantoin, 0.5 to 2 percent.

(b) Aluminum hydroxide gel, 0.15 to 5 percent.

(c) Calamine, 1 to 25 percent.

(d) Cocoa butter, 50 to 100 percent.

(e) Cod liver oil, 5 to 13.56 percent, in accordance with § 347.20(a)(1) or (a)(2), provided the product is labeled so that the quantity used in a 24-hour period does not exceed 10,000 U.S.P. Units vitamin A and 400 U.S.P. Units cholecalciferol.

(f) Colloidal oatmeal, 0.007 percent minimum; 0.003 percent minimum in combination with mineral oil in accordance with § 347.20(a)(4).

(g) Dimethicone, 1 to 30 percent.

(h) Glycerin, 20 to 45 percent.

(i) Hard fat, 50 to 100 percent.

(j) Kaolin, 4 to 20 percent.

(k) Lanolin, 12.5 to 50 percent.

(l) Mineral oil, 50 to 100 percent; 30 to 35 percent in combination with colloidal oatmeal in accordance with § 347.20(a)(4).

(m) Petrolatum, 30 to 100 percent.

(n) [Reserved]

(o) Sodium bicarbonate.

(p) [Reserved]

(q) Topical starch, 10 to 98 percent.

(r) White petrolatum, 30 to 100 percent.

(s) Zinc acetate, 0.1 to 2 percent.

(t) Zinc carbonate, 0.2 to 2 percent.

(u) Zinc oxide, 1 to 25 percent.

§ 347.12 Astringent active ingredients.

The active ingredient of the product consists of any one of the following within the specified concentration established for each ingredient:

(a) Aluminum acetate, 0.13 to 0.5 percent (depending on the formulation and concentration of the marketed product, the manufacturer must provide adequate directions so that the resulting solution to be used by the consumer contains 0.13 to 0.5 percent aluminum acetate).

(b) Aluminum sulfate, 46 to 63 percent (the concentration is based on the anhydrous equivalent).

(c) Witch hazel.

§ 347.20 Permitted combinations of active ingredients.

(a) *Combinations of skin protectant active ingredients.* (1) Any two or more of the ingredients identified in § 347.10(a), (d), (e), (i), (k), (l), (m), and (r) may be combined provided the combination is labeled according to § 347.50(b)(1) and provided each ingredient in the combination is within the concentration specified in § 347.10.

(2) Any two or more of the ingredients identified in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r) may be combined provided the combination is labeled according to § 347.50(b)(2) and provided each ingredient in the combination is within the concentration specified in § 347.10.

(3) Any two or more of the ingredients identified in § 347.10(b), (c), (j), (s), (t), and (u) may be combined provided the combination is labeled according to § 347.50(b)(3) and provided each ingredient in the combination is within the concentration specified in § 347.10.

(4) The ingredients identified in § 347.10(f) and (l) may be combined provided the combination is labeled according to § 347.50(b)(7) and provided each ingredient in the combination is within the concentration specified in § 347.10.

(b) *Combinations of skin protectant and external analgesic active ingredients.* Any one (two when required to be in combination) or more of the active ingredients identified in § 347.10(a), (d), (e), (i), (k), (l), (m), and (r) may be combined with any of the following generally recognized as safe and effective external analgesic active ingredients: Single amine and ''caine''-type local anesthetics, alcohols and ketones, antihistamines, or any permitted combination of these ingredients, but not with hydrocortisone, provided the product is labeled according to § 347.60(b)(l).

(c) *Combinations of skin protectant and first aid antiseptic active ingredients.* Any one (two when required to be in combination) or more of the active ingredients identified in § 347.10(a), (d), (e), (i), (k), (l), (m), and (r) may be combined with any generally recognized as safe and effective single first aid antiseptic active ingredient, or any permitted combination of these ingredients, provided the product is labeled according to § 347.60(b)(2).

(d) *Combinations of skin protectant and sunscreen active ingredients.* Any one (two when required to be in combination) or more of the skin protectant active ingredients identified in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r) may be combined with any generally recognized as safe and effective single sunscreen active ingredient, or any permitted combination of these ingredients, provided the product meets the conditions in § 352.20(b) of this chapter and is labeled according to §§ 347.60(b)(3) and 352.60(b) of this chapter.

■ 7. Section 347.20(d) is stayed until further notice.

■ 8. Section 347.50 is redesignated as § 347.52 and revised, and subpart C, consisting of a new § 347.50, newly redesignated § 347.52, and new § 347.60, is added to read as follows:

Subpart C—Labeling

Sec.
347.50 Labeling of skin protectant drug products.
347.52 Labeling of astringent drug products.
347.60 Labeling of permitted combinations of active ingredients.

Subpart C—Labeling

§ 347.50 Labeling of skin protectant drug products.

A skin protectant drug product may have more than one labeled use and labeling appropriate to different uses may be combined to eliminate duplicative words or phrases as long as the labeling is clear and understandable. When the labeling of the product contains more than one labeled use, the appropriate statement(s) of identity, indications, warnings, and directions must be stated in the labeling.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product with one or more of the following:

(1) *For any product.* ''Skin protectant'' (optional, may add dosage form, e.g., ''cream,'' ''gel,'' ''lotion,'' or ''ointment'').

(2) *For products containing any ingredient in § 347.10(b), (c), (j), (s), (t), and (u).* ''Poison ivy, oak, sumac drying'' (optional, may add dosage form, e.g., ''cream,'' ''gel,'' ''lotion,'' or ''ointment'').

(3) *For products containing any ingredient in § 347.10(b), (c), (f), (j), (o), (s), (t), and (u).* ''Poison ivy, oak, sumac protectant.''

(b) *Indications.* The labeling of the product states, under the heading ''Uses,'' one or more of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements, describing

only the uses that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing any ingredient in § 347.10(a), (d), (e), (i), (k), (l), (m), and (r).* The labeling states ''temporarily protects minor: [bullet][1] cuts [bullet] scrapes [bullet] burns''.

(2) *For products containing any ingredient in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r)—(i).* The labeling states ''temporarily protects'' (which may be followed by: ''and helps relieve'') ''chapped or cracked skin'' (which may be followed by: ''and lips''). This statement may be followed by the optional statement: ''helps protect from the drying effects of wind and cold weather''. [If both statements are used, each is preceded by a bullet.]

(ii) *For products formulated as a lip protectant.* The labeling states ''temporarily protects'' (which may be followed by: ''and helps relieve'') ''chapped or cracked lips''. This statement may be followed by the optional statement: ''helps protect lips from the drying effects of wind and cold weather''. [If both statements are used, each is preceded by a bullet.]

(3) *For products containing any ingredient in § 347.10(b), (c), (j), (s), (t), and (u).* The labeling states ''dries the oozing and weeping of poison: [bullet] ivy [bullet] oak [bullet] sumac''.

(4) *For products containing colloidal oatmeal identified in § 347.10(f).* The labeling states ''temporarily protects and helps relieve minor skin irritation and itching due to: [select one or more of the following: '[bullet] rashes' '[bullet] eczema' '[bullet] poison ivy, oak, or sumac' '[bullet] insect bites']. ''

(5) *For products containing sodium bicarbonate identified in § 347.10(o).* The labeling states ''temporarily protects and helps relieve minor skin irritation and itching due to: [bullet] poison ivy, oak, or sumac [bullet] insect bites''.

(6) *For products containing topical starch identified in § 347.10(q).* The labeling states ''temporarily protects and helps relieve minor skin irritation''.

(7) *For products containing the combination of ingredients in § 347.20(a)(4).* The labeling states ''temporarily protects and helps relieve minor skin irritation and itching due to: [select one or more of the following: 'rashes' or 'eczema']. '' [If both conditions are used, each is preceded by a bullet.]

(c) *Warnings.* The labeling of the product contains the following warnings under the heading ''Warnings'':

(1) ''For external use only'' in accord with § 201.66(c)(5)(i) of this chapter. For products containing only mineral oil in § 347.10(l) or sodium bicarbonate in § 347.10(o), this warning may be omitted if labeling for oral use of the product is also provided.

(2) ''When using this product [bullet] do not get into eyes''.

(3) ''Stop use and ask a doctor if [bullet] condition worsens [bullet] symptoms last more than 7 days or clear up and occur again within a few days''.

(4) For products labeled according to § 347.50(b)(1) or (b)(2): ''Do not use on [bullet] deep or puncture wounds [bullet] animal bites [bullet] serious burns''.

(5) For products containing colloidal oatmeal identified in § 347.10(f) when labeled for use as a soak in a tub. ''When using this product [bullet] to avoid slipping, use mat in tub or shower''.

(6) For powder products containing kaolin identified in § 347.10(j) or topical starch identified in § 347.10(q)—(i) ''Do not use on [bullet] broken skin''.

(ii) ''When using this product [bullet] keep away from face and mouth to avoid breathing it''.

(7) For products containing colloidal oatmeal identified in § 347.10(f) or sodium bicarbonate identified in § 347.10(o) when labeled for use as a soak, compress, or wet dressing. ''When using this product [bullet] in some skin conditions, soaking too long may overdry''.

(d) *Directions.* The labeling of the product contains the following statements, as appropriate, under the heading ''Directions'':

(1) *For products labeled according to § 347.50(b)(1), (b)(2), (b)(3), (b)(5), or (b)(6).* The labeling states ''apply as needed''.

(2) *For products containing colloidal oatmeal identified in § 347.10(f)*—(i) *For products requiring dispersal in water.* The labeling states ''[bullet] turn warm water faucet on to full force [bullet] slowly sprinkle'' (manufacturer to insert quantity to be used) ''of colloidal oatmeal directly under the faucet into the tub or container [bullet] stir any colloidal oatmeal settled on the bottom''.

(A) *For products used as a soak in a bath.* The manufacturer must provide adequate directions to obtain a solution containing a minimum of 0.007 percent colloidal oatmeal or 0.003 percent colloidal oatmeal in the oilated form for a tub bath, sitz bath, or infant bath, or a minimum of 0.25 percent colloidal oatmeal for a foot bath. ''For use as a soak in a bath: [bullet] soak affected area for 15 to 30 minutes as needed, or as directed by a doctor [bullet] pat dry (do not rub) to keep a thin layer on the skin''.

(B) *For products used as a compress or wet dressing.* The manufacturer must provide adequate directions to obtain a solution containing a minimum of 0.25 percent colloidal oatmeal. ''For use as a compress or wet dressing: [bullet] soak a clean, soft cloth in the mixture [bullet] apply cloth loosely to affected area for 15 to 30 minutes [bullet] repeat as needed or as directed by a doctor [bullet] discard mixture after each use''.

(ii) *For topical products intended for direct application.* The labeling states ''apply as needed''.

(3) *For products containing sodium bicarbonate identified in § 347.10(o).* The labeling states ''[bullet] adults and children 2 years of age and over:''

(i) The labeling states ''For use as a paste: [bullet] add enough water to the sodium bicarbonate to form a paste [bullet] apply to the affected area of the skin as needed, or as directed by a doctor''.

(ii) The labeling states ''For use as a soak in a bath: [bullet] dissolve 1 to 2 cupfuls in a tub of warm water [bullet] soak for 10 to 30 minutes as needed, or as directed by a doctor [bullet] pat dry (do not rub) to keep a thin layer on the skin''.

(iii) The labeling states ''For use as a compress or wet dressing: [bullet] add sodium bicarbonate to water to make a mixture in a container [bullet] soak a clean, soft cloth in the mixture [bullet] apply cloth loosely to affected area for 15 to 30 minutes [bullet] repeat as needed or as directed by a doctor [bullet] discard mixture after each use''.

(iv) Any of the directions in paragraphs (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section shall be followed by the statement: ''[bullet] children under 2 years: ask a doctor''.

(4) *For products containing aluminum hydroxide gel identified in § 347.10(b).* The labeling states ''[bullet] children under 6 months: ask a doctor''.

(5) *For products containing glycerin identified in § 347.10(h).* The labeling states ''[bullet] children under 6 months: ask a doctor''.

(6) *For products containing zinc acetate identified in § 347.10(s).* The labeling states ''[bullet] children under 2 years: ask a doctor''.

[1] *See* § 201.66(b)(4) of this chapter for definition of bullet symbol.

(e) *Products formulated and labeled as a lip protectant and that meet the criteria established in § 201.66(d)(10) of this chapter*. The title, headings, subheadings, and information described in § 201.66(c) of this chapter shall be printed in accordance with the following specifications:

(1) The labeling shall meet the requirements of § 201.66(c) of this chapter except that the title, headings, and information described in § 201.66(c)(1), (c)(3), (c)(6), and (c)(7) may be omitted, and the headings, subheadings, and information described in § 201.66(c)(2), (c)(4), and (c)(5) may be presented as follows:

(i) The active ingredients (§ 201.66(c)(2) of this chapter) shall be listed in alphabetical order.

(ii) The heading and the indication required by § 201.66(c)(4) may be limited to: ''Use [in bold type] helps protect'' (which may be followed by ''and relieve'') ''chapped lips''.

(iii) The ''external use only'' warning in § 347.50(c)(1) and in § 201.66(c)(5)(i) of this chapter may be omitted. The warnings in § 347.50(c)(2) and (c)(4) are not required and the warning in § 347.50(c)(3) may be revised to read ''Stop use and ask a doctor if condition lasts more than 7 days.''

(iv) The subheadings in § 201.66(c)(5)(iii) through (c)(5)(vi) of this chapter may be omitted, provided the information after the heading ''Warning'' contains the warning in § 347.50(e)(1)(iii).

(v) The warnings in § 201.66(c)(5)(x) of this chapter may be omitted.

(2) The labeling shall be printed in accordance with the requirements of § 201.66(d) of this chapter except that any requirements related to § 201.66(c)(1), (c)(3), (c)(6), and (c)(7), and the horizontal barlines and hairlines described in § 201.66(d)(8), may be omitted.

(f) *Products containing only cocoa butter, petrolatum, or white petrolatum identified in § 347.10(d), (m), and (r), singly or in combination with each other, and marketed other than as a lip protectant*. (1) The labeling shall meet the requirements of § 201.66(c) of this chapter except that the headings and information described in § 201.66(c)(3) and (c)(7) may be omitted, and the headings, subheadings, and information described in § 201.66(c)(2), (c)(4), and (c)(5) may be presented as follows:

(i) The active ingredients (§ 201.66(c)(2) of this chapter) shall be listed in alphabetical order.

(ii) The heading and the indication required by § 201.66(c)(4) of this chapter may be limited to ''Use [in bold type] helps protect minor cuts and burns'' or ''Use [in bold type] helps protect chapped skin'' or ''Use [in bold type] helps protect minor cuts and burns and chapped skin''.

(iii) The warning in § 347.50(c)(3) may be revised to read ''*See* a doctor if condition lasts more than 7 days.''

(iv) The subheadings in § 201.66(c)(5)(iv) through (c)(5)(vii) of this chapter may be omitted, provided the information after the heading ''Warnings'' contains the warnings in § 347.50(c)(2), (c)(4), and (f)(1)(iii).

(2) The labeling shall be printed in accordance with the requirements of § 201.66(d) of this chapter except that any requirements related to § 201.66(c)(3) and (c)(7) may be omitted.

§ 347.52 Labeling of astringent drug products.

(a) *Statement of identity*. The labeling of the product contains the established name of the drug, if any, and identifies the product as an ''astringent.''

(b) *Indications*. The labeling of the product states, under the heading ''Uses'' any of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements describing only the indications for use that have been established and listed in this paragraph (b) may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition of section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing aluminum acetate identified in § 347.12(a)*. ''For temporary relief of minor skin irritations due to: [select one or more of the following: 'poison ivy,' 'poison oak,' 'poison sumac,' 'insect bites,' 'athlete's foot,' or 'rashes caused by soaps, detergents, cosmetics, or jewelry'].''

(2) *For products containing aluminum sulfate identified in § 347.12(b) for use as a styptic pencil*. ''Stops bleeding caused by minor surface cuts and abrasions as may occur during shaving.''

(3) *For products containing witch hazel identified in § 347.12(c)*. ''Relieves minor skin irritations due to: [select one or more of the following: 'insect bites,' 'minor cuts,' or 'minor scrapes'].'' [If more than one condition is used, each is preceded by a bullet.]

(c) *Warnings*. The labeling of the product contains the following warnings under the heading ''Warnings'':

(1) ''For external use only. Avoid contact with the eyes.''

(2) *For products containing aluminum acetate identified in § 347.12(a) or witch hazel identified in § 347.12(c)*. ''If condition worsens or symptoms persist for more than 7 days, discontinue use of the product and consult a'' [select one of the following: 'physician' or 'doctor'].''

(3) *For products containing aluminum acetate identified in § 347.12(a) used as a compress or wet dressing*. ''Do not cover compress or wet dressing with plastic to prevent evaporation.''

(d) *Directions*. The labeling of the product contains the following information under the heading ''Directions'':

(1) *For products containing aluminum acetate identified in § 347.12(a)*—(i) *For products used as a soak*. ''For use as a soak: Soak affected area in the solution for 15 to 30 minutes. Discard solution after each use. Repeat 3 times a day.''

(ii) *For products used as a compress or wet dressing*. ''For use as a compress or wet dressing: saturate a clean, soft white cloth (such as a diaper or torn sheet) in the solution, gently squeeze, and apply loosely to the affected area. Saturate the cloth in the solution every 15 to 30 minutes and apply to the affected area. Discard solution after each use. Repeat as often as necessary.''

(2) *For products containing aluminum sulfate identified in § 347.12(b) for use as a styptic pencil*. ''Moisten tip of pencil with water and apply to the affected area. Dry pencil after use.''

(3) *For products containing witch hazel identified in § 347.12(c)*. ''Apply to the affected area as often as necessary.''

§ 347.60 Labeling of permitted combinations of active ingredients.

The statement of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity*. For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs.

(b) *Indications*. The labeling of the product states, under the heading

''Uses,'' the indication(s) for each ingredient in the combination as established in the indications sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (b). Other truthful and nonmisleading statements, describing only the indications for use that have been established in the applicable OTC drug monographs or listed in this paragraph (b) may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act. In addition to the required information identified in this paragraph (b), the labeling of the product may contain any of the ''other allowable statements'' that are identified in the applicable monographs, provided such statements are neither placed in direct conjunction with information required to appear in the labeling nor occupy labeling space with greater prominence or conspicuousness than the required information.

(1) *Combinations of skin protectant and external analgesic active ingredients in § 347.20(b)*. In addition to any or all of the indications for skin protectant drug products in § 347.50(b)(1), any or all of the allowable indications for external analgesic drug products may be used if the product is labeled for concurrent symptoms.

(2) *Combinations of skin protectant and first aid antiseptic active ingredients in § 347.20(c)*. In addition to any or all of the indications for skin protectant drug products in § 347.50(b)(1), the required indications for first aid antiseptic drug products should be used.

(3) *Combinations of skin protectant and sunscreen active ingredients in § 347.20(d)*. In addition to any or all of the indications for skin protectant drug products in § 347.50(b)(2)(i), the required indications for sunscreen drug products should be used and any or all of the additional indications for sunscreen drug products may be used.

(c) *Warnings*. The labeling of the product states, under the heading ''Warnings,'' the warning(s) for each ingredient in the combination, as established in the warnings section of the applicable OTC drug monographs unless otherwise stated in this paragraph (c).

(1) *For combinations containing a skin protectant and a sunscreen identified in §§ 347.20(d) and 352.20(b)*. The warnings for sunscreen drug products in § 352.60(c) of this chapter are used.

(2) [Reserved]

(d) *Directions*. The labeling of the product states, under the heading ''Directions,'' directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (d). When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not contain any dosage that exceeds those established for any individual ingredient in the applicable OTC drug monograph(s), and may not provide for use by any age group lower than the highest minimum age limit established for any individual ingredient.

(1) *For combinations containing a skin protectant and a sunscreen identified in §§ 347.20(d) and 352.20(b)*. The directions for sunscreen drug products in § 352.60(d) of this chapter are used.

(2) [Reserved]

PART 352—SUNSCREEN DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 9. The authority citation for 21 CFR part 352 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 10. The stay of 21 CFR part 352 published at 66 FR 67485, December 31, 2001, is lifted.

■ 11. Section 352.20 is amended by adding paragraph (b) to read as follows:

§ 352.20 Permitted combinations of active ingredients.

* * * * *

(b) *Combinations of sunscreen and skin protectant active ingredients*. Any single sunscreen active ingredient or any permitted combination of sunscreen active ingredients when used in the concentrations established for each ingredient in § 352.10 may be combined with one or more skin protectant active ingredients identified in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r) of this chapter. The concentration of each sunscreen active ingredient must be sufficient to contribute a minimum SPF of not less that 2 to the finished product. The finished product must have a minimum SPF of not less than the number of sunscreen active ingredients used in the combination multiplied by 2, and the product must be labeled according to § 352.60.

■ 12. Section 352.52 is amended by revising the heading in paragraphs (c)(2) and (d)(4) and by revising paragraphs (f)(1)(ii) and (f)(1)(vi) to read as follows:

§ 352.52 Labeling of sunscreen drug products.

* * * * *

(c) * * *

(2) *For products containing any ingredient identified in § 352.10 marketed as a lip protectant or lipstick*. * * *

(d) * * *

(4) *For products marketed as a lip protectant or lipstick*. * * *

* * * * *

(f) * * *

(1) * * *

(ii) The heading and the indication required by § 201.66(c)(4) of this chapter may be limited to: ''Use [in bold type] helps protect against sunburn.'' For a lip protectant product, the heading and the indication required by § 201.66(c)(4) may be limited to: ''Use [in bold type] helps protect against sunburn and chapped lips.''

* * * * *

(vi) For a lip protectant product or lipstick, the warnings ''Keep out of eyes'' in § 352.52(f)(1)(iv) and ''Keep out of reach of children'' in § 352.52(f)(1)(v) and the directions in § 352.52(d) may be omitted.

* * * * *

13. Section 352.60 is amended by revising paragraphs (b)(2), (c), and (d) to read as follows:

§ 352.60 Labeling of permitted combinations of active ingredients.

* * * * *

(b) * * *

(2) For permitted combinations containing a sunscreen and a skin protectant identified in § 352.20(b), any or all of the applicable indications for sunscreens in § 352.52(b) and the indication for skin protectants in § 347.50(b)(2)(i) of this chapter should be used. For products marketed as a lip protectant, the indication in § 352.52(f)(1)(ii) should be used.

(c) *Warnings*. The labeling of the product states, under the heading ''Warnings,'' the warning(s) for each ingredient in the combination, as established in the warnings section of the applicable OTC drug monographs, except that the warning for skin protectants in § 347.50(c)(3) of this chapter is not required for permitted combinations containing a sunscreen and a skin protectant identified in § 352.20(b). For products marketed as a lip protectant or lipstick, § 352.52(f)(1)(iii), (f)(1)(iv) (except

''Keep out of eyes,'' which may be omitted), and (f)(1)(vi) apply.

(d) *Directions*. The labeling of the product states, under the heading ''directions,'' directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not contain any dosage that exceeds those established for any individual ingredient in the applicable OTC drug monograph(s), and may not provide for use by any age group lower than the highest minimum age limit established for any individual ingredient. For permitted combinations containing a sunscreen and a skin protectant identified in § 352.20(b), the directions for sunscreens in § 352.52(d) should be used. For products marketed as a lip protectant or lipstick, § 352.52(d)(4) applies.

■ 14. Part 352 is stayed until further notice.

Dated: May 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13751 Filed 6–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Combe, Inc., to Farnham Companies, Inc.

DATES: This rule is effective June 4, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967; e-mail: dnewkirk@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Combe, Inc., 1101 Westchester Ave., White Plains, NY 10604, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 5–236 for SULFODENE Medication for Dogs to Farnam Companies, Inc., 301 West Osborn, Phoenix, AZ 85013–3928. Accordingly, the agency is amending the regulations in 21 CFR 524.1376 to reflect the transfer of ownership.

Following this change of sponsorship, Combe, Inc., is no longer the sponsor of any approved application. Accordingly, § 510.600(c) is being amended to remove the entries for Combe, Inc.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended].

■ 2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Combe, Inc.'' and in the table in paragraph (c)(2) by removing the entry for ''011509''.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1580b [Amended]

■ 4. Section 524.1376 *2–Mercaptobenzothiazole solution* is amended in paragraph (b) by removing ''011509'' and by adding in its place ''No. 017135''.

Dated: May 19, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–14107 Filed 6–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9048]

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document corrects temporary regulations (TD 9048), which was published in the **Federal Register** on Friday, March 14, 2003 (68 FR 12287). The temporary regulations redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member and also suspend certain losses recognized on the disposition of stock of a subsidiary member.

DATES: This correction is effective on March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Aimee K. Meacham at (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, TD 9048 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502–35T is amended by:

■ 1. Removing the word ''or'' at the end of paragraph (b)(3)(ii)(B).

■ 2. Removing the word ''or'' at the end of paragraph (b)(3)(ii)(C).

■ 3. Adding the word ''or'' at the end of paragraph (b)(3)(ii)(D).

■ 4. Adding new paragraph (b)(3)(ii)(E) to read as follows:

§ 1.1502–35T Transfers of subsidiary member stock and deconsolidations of subsidiary members (temporary).

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(E) The deconsolidation of the subsidiary member results from a termination of the group.

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–14062 Filed 6–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–010]

RIN 1625–AA00

Security Zone; Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). The need for this security zone is based on recent terrorist actions against the United States and for national security reasons to protect the public and areas surrounding MOTCO from potential terrorist attacks. The security zone will prohibit all persons and vessels from entering, transiting through or anchoring within a portion of the Suisun Bay surrounding MOTCO unless authorized by the Captain of the Port (COTP), or his designated representative.

DATES: This regulation is effective from 7 a.m. PDT on May 29, 2003 to 11:59 p.m. PDT on June 6, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–010] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This action was taken at the request of the United States Army and is a joint military operation with the U.S. Army, U.S. Navy and U.S. Coast Guard. This temporary security zone is necessary to safeguard the MOTCO terminal and the surrounding property from sabotage or other subversive acts, accidents, criminal actions, or other causes of similar nature. This zone is also necessary to protect military operations from compromise and interference. Additionally, the threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks* (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism* (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: *Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests,* detailing the current threat of attack, MARAD 02–07 (October 10, 2002). As a result, this security zone is needed for national security reasons to protect the United States and more specifically the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of all cargo vessels, their crews, the public and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of operations in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in, and necessary to military operations. Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons outlined above.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, United States Army officials have requested that the Captain of the Port, San Francisco Bay, California establish a temporary security zone in the navigable waters of the United States surrounding the Military Ocean Terminal Concord (MOTCO), California, to safeguard vessels, cargo and crew engaged in military operations.

Discussion of Rule

In this temporary rule, the Coast Guard is establishing a fixed security zone around Military Ocean Terminal Concord (MOTCO), California, encompassing the navigable waters, extending from the surface to the sea floor, bounded by the following coordinates: latitude 38°03′07″N and longitude 122°03′00″W; thence to latitude 38°03′15″N and longitude 122°03′04″W; thence to latitude 38°03′30″N and longitude 122°02′35″W; thence to latitude 38°03′50″N and longitude 122°01′15″W; thence to latitude 38°03′43″N and longitude 122°00′28″W; thence to latitude 38°03′41″N and longitude 122°00′03″W; thence to latitude 38°03′18″N and longitude 121°59′31″W, and along the shoreline back to the beginning point.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to the zone, the effect of this regulation will not be significant because the zone will encompass only a small portion of the waterway for a short duration. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for MOTCO, vessels engaged in operations at MOTCO, their crews, other vessels operating in the vicinity, their crews and passengers, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting to or from Suisun Bay via the Port Chicago Reach section of the channel.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because, although the security zone will occupy a section of the navigable channel (Port Chicago Reach) adjacent to the Marine Ocean Terminal Concord (MOTCO), vessels will receive authorization to transit through the zone by the Captain of the Port or his designated representative on a case-by-case basis. Additionally, vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where located under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T11–084 to read as follows:

§ 165.T11–084 Security Zone; Navigable Waters of the United States Surrounding Military Ocean Terminal Concord (MOTCO), Concord, California.

(a) *Location.* The security zone, which will be marked by lighted buoys, will encompass the navigable waters, extending from the surface to the sea floor, surrounding the Military Ocean Terminal Concord, Concord, California, bounded by the following coordinates: latitude 38°03′07″N and longitude 122°03′00″W; thence to latitude 38°03′15″N and longitude 122°03′04″W; thence to latitude 38°03′30″N and longitude 122°02′35″W; thence to latitude 38°03′50″N and longitude 122°01′15″W; thence to latitude 38°03′43″N and longitude 122°00′28″W; thence to latitude 38°03′41″N and longitude 122°00′03″W; thence to latitude 38°03′18″N and longitude 121°59′31″W, and along the shoreline back to the beginning point.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entering, transiting through or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 510–437–3073 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement and the MOTCO police as necessary.

(e) *Effective Dates.* This section becomes effective at 7 a.m. PDT on May 29, 2003, and will terminate at 11:59 p.m. PDT on June 6, 2003.

Dated: May 27, 2003.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–14015 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD 13–03–016]

RIN 1625–AA00

Safety Zone; Fireworks Display on the Willamette River, Milwaukie, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone during a fireworks display in the vicinity of Willamette River mile 19 in Milwaukie, Oregon. The Captain of the Port, Portland, is taking this action to safeguard watercraft and their occupants from safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective on July 26, 2003 from 9:30 p.m. (PDT) to 10:30 p.m. (PDT).

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD 13–03–016] and are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave., Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski at (503) 240–9370.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. A Final Rule, which established safety zones around fireworks displays for the Captain of the Port Portland area of responsibility, was recently published in the **Federal Register** (CGD13–03–008, 33 CFR 165.1315, 68 FR 13487, May 30, 2003). An amendment cannot successfully be made to 33 CFR § 165.1315 in time to ensure the safety of vessels and spectators gathering in the vicinity of this fireworks display.

The Coast Guard intends to amend 33 CFR § 165.1315 using normal rule-making procedures in the near future by adding this safety zone to that regulation.

Background and Purpose

The Coast Guard is establishing a temporary safety zone regulation to allow for a safe fireworks display. It is scheduled to start on July 26, 2003 at 9:30 p.m. (PDT) and last until 10:30 p.m. (PDT). This event will result in a large number of vessels congregating near the fireworks launching area. This safety zone is needed to provide for the safety of spectators and their watercraft from the inherent safety hazards associated with fireworks displays. Without providing an adequate safety zone, the public could be exposed to falling burning debris and would likely be within the blast range should a catastrophic accident occur on the launching barge. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

Discussion of Rule

This rule, for safety concerns, will control vessel movements in a regulated area surrounding a fireworks launching barge. Entry into this zone would be prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Coast Guard personnel would enforce this safety zone. The Captain of the Port may be assisted by other federal and local agencies.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation will encompass less than one-half of a mile of the Willamette River for one hour in the late evening when vessel traffic is low.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette River between 9:30 p.m. (PDT) and 10:30 p.m. (PDT) on July 4, 2003. This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for one hour at night when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if it is deemed safe to do so. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A temporary § 165.T13–010 is added to read as follows:

§ 165.T13–010 Safety Zone; Fireworks Display on the Willamette River, Milwaukie, OR.

(a) *Location.* An area of water 600 feet in diameter located around a fireworks launching barge centered at 45°26′33″ North, 122°38′45″ West [NAD 83]. This area is in the vicinity of Willamette River mile 19, Milwaukie, OR.

(b) *Enforcement period.* July 26, 2003 from 9:30 p.m. (PDT) to 10:30 p.m. (PDT).

(c) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, this Temporary Final Rule applies to any vessel or person in the navigable waters of the United States. No person or vessel may enter the above safety zone unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 03–14014 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP PHILADELPHIA 03–004]

RIN 1625–AA00

Security Zone; Limerick Generating Station, Schuylkill River, Montgomery County, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters adjacent to the Limerick Generating Station. This will protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the plants.

DATES: This rule is effective from 5 p.m. Eastern Daylight Time on May 13, 2003, to 5 p.m. Eastern Standard Time on January 24, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket COTP PHILADELPHIA 03–004 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Xaimara Vicencio-Roldan or Lieutenant Junior Grade Kevin Sligh, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B)and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the warnings from national security and intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

Delaying the effective date of the rule would be contrary to the public interest, since immediate action is needed to protect the persons at the facilities, the public and surrounding communities from the release of nuclear radiation. This security zone should have minimal impact on vessel transits due to the fact that the security zone does not block the channel.

Background and Purpose

Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington DC on September 11, 2001, heightened security measures are necessary for the area surrounding the Limerick Generating Station. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the plants. The Coast Guard intends to implement a permanent security zone surrounding the plants. The Coast Guard will be publishing a NPRM to establish a permanent security zone that is temporarily effective under this rule. The Coast Guard will use the effective period of this Temporary Final Rule to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Philadelphia, Pennsylvania zone.

Discussion of Rule

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, Pennsylvania or designated representative. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The primary impact of this rule will be on vessels wishing to transit the affected waterway. Although this rule restricts traffic from freely transiting portions of the Schuylkill River, that restriction affects only a limited area and will be well publicized to allow mariners to make alternative plans.

Small Entities

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

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

This rule may affect the following entities, some of which may be small entities: Owners or operators of fishing vessels and recreational vessels wishing to transit the portions of the Schuylkill River.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: The restrictions affect only a limited area and traffic will be allowed to transit through the zone with permission of the Coast Guard or designated representative. The opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted. Therefore, this regulation should have a negligible impact on recreational and charter fishing activity.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.lD, from further environmental documentation.

A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T05–090.

§ 165.T05–090 Security Zone; Limerick Generating Station, Schuylkill River, Montgomery County, Pennsylvania.

(a) *Location.* The following area is a security zone: the waters of the Schuylkill River in the vicinity of the Limerick Generation Station bounded by a line drawn from a point located at 40° 13′ 21.34″ N, 075° 35′ 27.49″ W to 40° 13′ 18.92″ N, 075° 35′ 29.83″ W, thence to 40° 13′ 11.36″ N, 075° 35′ 27.57″ W, thence to 40° 13′ 12.97″ N, 075° 35′ 22.74″ W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this temporary section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective dates.* This section is effective from 5 p.m. Eastern Daylight Time on May 13, 2003 to 5 p.m. Eastern Standard Time on January 24, 2004.

Dated: May 13, 2003.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03–14018 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP PHILADELPHIA 03–006]

RIN 1625–AA00

Security Zone; Peach Bottom Atomic Power Station, Susquehanna River, York County, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters adjacent to the Peach Bottom Atomic Power Station. This will protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the plants.

DATES: This rule is effective from 5 p.m. Eastern Daylight Time on May 13, 2003, to 5 p.m. Eastern Standard Time on January 24, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket COTP PHILADELPHIA 03–006 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Xaimara Vicencio-Roldan or Lieutenant Junior Grade Kevin Sligh, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the warnings from national security and intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

Delaying the effective date of the rule would be contrary to the public interest, since immediate action is needed to protect the persons at the facilities, the public and surrounding communities from the release of nuclear radiation. This security zone should have minimal impact on vessel transits due to the fact that the security zone does not block the channel.

Background and Purpose

Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington, DC on September 11, 2001, heightened security measures are necessary for the area surrounding the Peach Bottom Atomic Power Station. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the plants. The Coast Guard intends to implement a permanent security zone surrounding the plants. The Coast Guard will be publishing a NPRM to establish a permanent security zone that is temporarily effective under this rule. The Coast Guard will use the effective period of this Temporary Final Rule to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Philadelphia, Pennsylvania zone.

Discussion of Rule

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, Pennsylvania or designated representative. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The primary impact of this rule will be on vessels wishing to transit the affected waterway. Although this rule restricts traffic from freely transiting portions of the Susquehanna River, that

restriction affects only a limited area and will be well publicized to allow mariners to make alternative plans.

Small Entities

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

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

This rule may affect the following entities, some of which may be small entities: owners or operators of fishing vessels and recreational vessels wishing to transit the portions of the Susquehanna River.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions affect only a limited area and traffic will be allowed to transit through the zone with permission of the Coast Guard or designated representative. The opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted. Therefore, this regulation should have a negligible impact on recreational and charter fishing activity.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.lD, from further environmental documentation.

A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T05–092.

§ 165.T05–092 Security Zone; Peach Bottom Atomic Power Station, Susquehanna River, York County, Pennsylvania.

(a) *Location.* The following area is a security zone: the waters of the Susquehanna River in the vicinity of the Peach Bottom Atomic Power Station bounded by a line drawn from a point located at 39° 45′ 36.36″ N, 076° 16′ 08.93″ W to 39° 45′ 38.72″ N, 076° 15′

57.00″ W, thence to 39° 45′ 28.95″ N, 076° 15′ 49.74″ W, thence to 39° 45′ 28.20″ N, 076° 16′ 02.24″ W.

All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 16. The Captain of the Port can be contacted at (215) 271–4940.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 16.

(c) *Definitions.* For the purposes of this section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective dates.* This section is effective from 5 p.m. Eastern Daylight Time on May 13, 2003 to 5 p.m. on January 24, 2004.

Dated: May 13, 2003.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03–14017 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Juan–03–024]

RIN 1625–AA00

Security Zone; St. Thomas, U.S. VI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones 50 yards around all cruise ships entering, departing, moored or anchored in the Port of Charlotte Amalie, U.S. Virgin Islands. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port of San Juan or his designated representative.

DATES: This rule is effective July 7, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket [COTP San Juan–03–024] and are available for inspection or copying at Coast Guard Marine Safety Office San Juan, Rodriguez and Del Valle Building, San Martin Street, Carr. #2, Km. 4.9, Guaynabo, Puerto Rico, 00968, between the hours of 7 a.m. and 3:30 p.m., Monday through Friday, excluding Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Chip Lopez at Coast Guard Marine Safety Office San Juan, Puerto Rico, (787) 706–2444.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 19, 2003, we published a notice of proposed rulemaking (NPRM) entitled: ''Security Zone, St. Thomas, U.S. Virgin Islands, in the **Federal Register** (68 FR 7958). We received one letter commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of Charlotte Amalie, St. Thomas, U.S. Virgin Islands, against cruise ships entering, departing and moored within the Port of Charlotte Amalie. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely.

The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing security zones around all cruise ships entering, departing and moored within the Port of Charlotte Amalie. We previously published two temporary final rules entitled ''Security Zones; St. Thomas, U.S. Virgin Islands.'' in the **Federal Register** on February 1, 2002 (67 FR 4909) and on November 13, 2002 (67 FR 68760). These temporary final rules contained similar provisions as those in this rulemaking.

The security zone for a cruise ship entering port is activated when the vessel passes: St. Thomas Harbor green lighted buoy 3 in approximate position 18°19′19″ North, 64°55′40″ West when entering the port using St. Thomas Channel; red buoy 2 in approximate position 18°19′15″ North, 64°55′59″ West when entering the port using East Gregorie Channel; and red lighted buoy 4 in approximate position 18°18′16″ North, 64°57′30″ West when entering the port using West Gregorie Channel. These zones are deactivated when the cruise ship passes any of these buoys on its departure from the Port of Charlotte Amalie.

Persons and vessels are prohibited from entering into or transiting through a security zone unless authorized by the Captain of the Port (COTP), or his designated representative. Each person and vessel in a security zone must obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the Captain of the Port. The Captain of the Port will notify the public of these security zones through Marine Safety Information Bulletins via facsimile and the Marine Safety Office San Juan Web site at *http://www.msocaribbean.com.*

Discussion of Comments and Changes

We received one letter commenting on the proposed rule. This comment addressed whether or not this rule would affect the use of a ''dinghy dock'' adjacent to the Crown Bay Cruise Ship terminal. The originator of the comment stated that the establishment of a 50 yard security zone around cruise ships moored at the Crown Bay terminal should not impact the use of this ''dinghy dock'' as users would have enough sea room to use the dock and not enter the security zone. The Coast Guard agrees that this rule will not affect the use of the dock as vessels may transit to and from it without entering the 50 yard security zone. The Coast Guard will allow the continued use of this dock while cruise ships are moored at the Crown Bay terminal.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not

require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary because other vessels will be able to safely navigate around the zones while in place and persons may be authorized to enter or transit the zone with the permission of the Captain of the Port.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. The rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Port of Charlotte Amalie when a cruise ship is entering, departing, moored or anchored in the Port of Charlotte Amalie. This rule will not have a significant economic impact on a substantial number of small entities because other vessels will be able to safely navigate around the zones while in place and persons may be authorized to enter or transit the zone with the permission of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Chip Lopez at (787) 706–2444 for assistance in understanding this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this rule and has determined that, under figure 2–1, paragraph (34)g, of Commandant Instruction M16475.ID, that this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Section 165.762 is added to read as follows:

§ 165.762 Security Zone; St. Thomas, U.S. Virgin Islands.

(a) *Location.* Moving and fixed security zones are established 50 yards around all cruise ships entering, departing, moored or anchored in the Port of St. Thomas, U.S. Virgin Islands. The security zone for a cruise ship entering port is activated when the vessel passes: St. Thomas Harbor green lighted buoy 3 in approximate position 18°19′19″ North, 64°55′40″ West when entering the port using St. Thomas Channel; red buoy 2 in approximate position 18°19′15″ North, 64°55′59″ West when entering the port using East Gregorie Channel; and red lighted buoy 4 in approximate position 18°18′16″ North, 64°57′30″ West when entering the port using West Gregorie Channel. These zones are deactivated when the cruise ship passes any of these buoys on its departure from the Port.

(b) *Regulations.* (1) Under general regulations in § 165.33 of this part, entering, anchoring, mooring or transiting in these zones is prohibited unless authorized by the Coast Guard Captain of the Port of San Juan.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at the Greater Antilles Section Operations Center at (787) 289–2041 or via VHF radio on Channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(3) The Marine Safety Office San Juan will attempt to notify the maritime community of periods during which these security zones will be in effect by providing advance notice of scheduled arrivals and departures of cruise ships via a broadcast notice to mariners.

(c) *Definition.* As used in this section, *cruise ship* means a passenger vessel greater than 100 feet in length that is authorized to carry more than 150 passengers for hire, except for a ferry.

(d) *Authority.* In addition to 33 U.S.C 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: May 15, 2003.

William J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 03–14016 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 165

[COTP Miami 03–075]

RIN 1625–AA00

Safety Zone; Coral Reef Club 4th of July Fireworks Display, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone offshore from Coral Reef Yacht Club in Miami, FL. The safety zone is established to protect boaters from the hazards associated with the Coral Reef Yacht Club fireworks display being held offshore from Coral Reef Yacht Club in Miami. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03–075 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, tel: (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, an NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing a 350-foot circle surrounding a barge in approximate position 25° 44.10 N, 080° 14.30 W offshore from Coral Reef Yacht Club in Miami for the Coral Reef Yacht Club 4th of July fireworks display. This rule is needed to increase safety in Miami from 9 p.m. July 4, 2003 to 10 p.m. on July 4, 2003 during the Coral Reef Yacht Club 4th of July fireworks display due to the significant number of vessels in the area for this event. The safety zone is created to provide for the safety of the spectator craft in the vicinity offshore from Coral Reef Yacht Club in Miami, FL. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Miami. The safety zone encompasses the area offshore from Coral Reef Yacht Club in Miami, FL.

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under section 605 (b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for 2 hours and vessels may be allowed to transit the zone with the express permission of the Captain of the Port of Miami.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46; Department of Homeland Security Delegation No. 0170.

■ 2. Temporary § 165.T07–075 is added to read as follows:

§ 165.T07–075 Safety Zone: Offshore from Coral Reef Yacht Club Miami, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone encompassing a 350-foot circle surrounding a barge in approximate position 25°44.10 N, 80°14.30 W offshore from Coral Reef Yacht Club in Miami for the Coral Reef Yacht Club 4th of July fireworks display.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Miami, FL.

(c) *Effective dates:* This rule is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

Dated: May 27, 2003.

James A. Watson, IV,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 03–14025 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 165

[COTP Miami 03–083]

RIN 1625–AA00

Safety Zone; City of Stuart 4th of July Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone in the St. Lucie River 1200 feet from the shore of City Hall in Stuart, FL. The safety zone is established to protect boaters from the hazards associated with the City of Stuart 4th of July fireworks display being held in the St. Lucie River 1200 feet from the shore of City Hall in Stuart, FL. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03–083 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, tel: (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, an NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing a 1680-foot circle surrounding a barge in approximate position 27°12.55 N, 080° 15.00 W in the St. Lucie River 1200 feet from the shore of City Hall for the City of Stuart 4th of July fireworks display. This rule is needed to increase safety in Stuart, FL from 9 p.m. July 4, 2003 to 10 p.m. on July 4, 2003 during the City of Stuart 4th of July fireworks display due to the significant number of vessels in the area for this event. The safety zone is created to provide for the safety of the spectator craft in the vicinity in the St. Lucie River 1200 feet from the

shore of City Hall in Stuart, FL. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Miami. The safety zone encompasses the area in the St. Lucie River 1200 feet from the shore of City Hall in Stuart, FL.

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under section 605 (b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for 2 hours and vessels may be allowed to transit the zone with the express permission of the Captain of the Port of Miami.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46; Department of Homeland Security Delegation No. 0170.

■ 2. Temporary § 165.T07–083 is added to read as follows:

§ 165.T07–083 Safety Zone: St. Lucie River 1200 feet from the shore off of City Hall Stuart, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone encompassing a 1680-foot circle surrounding a barge in approximate position 27°12.55 N, 80°15.00 W in the St. Lucie River 1200 feet from the shore off of City Hall in Stuart for the City of Stuart 4th of July fireworks display.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited

unless authorized by the Coast Guard Captain of the Port, Miami, FL.

(c) *Effective dates:* This rule is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

Dated: May 27, 2003.

James A. Watson, IV,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 03–14024 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Miami 03–082]

RIN 1625–AA00

Safety Zone; Rivera Beach 4th of July Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone in the ICW Northwest of Peanut Island in Rivera Beach, FL. The safety zone is established to protect boaters from the hazards associated with the Rivera Beach 4th of July fireworks display being held in the ICW Northwest of Peanut Island in Rivera Beach. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03–082 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, Fl 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, tel: (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, a NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing a 850-foot circle surrounding a barge in approximate position 26°46.06 N, 080° 02.09 W in the ICW Northwest of Peanut Island in Rivera Beach for the Rivera Beach 4th of July fireworks display. This rule is needed to increase safety in Rivera Beach from 9 p.m. July 4, 2003 to 10 p.m. on July 4, 2003 during the Rivera Beach 4th of July fireworks display due to the significant number of vessels in the area for this event. The safety zone is created to provide for the safety of the spectator craft in the vicinity in the ICW Northwest of Peanut Island in Rivera Beach, FL. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Miami. The safety zone encompasses the area in the ICW Northwest of Peanut Island in Rivera Beach, FL.

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under section 605 (b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for 2 hours and vessels may be allowed to transit the zone with the express permission of the Captain of the Port of Miami.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46, Department of Homeland Security Delegation No. 0170.

■ 2. Temporary § 165.T07–082 is added to read as follows:

§ 165.T07–082 Safety Zone; ICW Northwest of Peanut Island Rivera Beach, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone encompassing a 850-foot circle surrounding a barge in approximate position 26°46.06 N, 80°02.09 W in the ICW Northwest of Peanut Island in Rivera Beach for the Rivera Beach 4th of July fireworks display.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Miami, FL.

(c) *Effective dates:* This rule is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

Dated: May 27, 2003.

James A. Watson, IV,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 03–14023 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard CFR 33 CFR 165

[COTP Miami 03–073]

RIN 1625–AA00

Safety Zone; The Grand Opening Miami One, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone in Biscayne Bay in Miami, FL. The safety zone is established to protect boaters from the hazards associated with the Grand Opening of Miami One fireworks display being held in Biscayne Bay in Miami. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 9 p.m. on June 5, 2003 until 10 p.m. on June 5, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03–073 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, Fl 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, tel: (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, a NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing a 1300-foot circle surrounding a barge in approximate position 25°45.40 N, 080° 10.24 W in Biscayne Bay in Miami for the Grand Opening of Miami One fireworks display. This rule is needed to increase safety in Miami from 9 p.m. June 5, 2003 to 10 p.m. on June 5, 2003 during the Grand Opening of Miami One fireworks display due to the significant number of vessels in the area for this event. The safety zone is created to provide for the safety of the spectator craft in the vicinity of Biscayne Bay in Miami, FL. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Miami. The safety zone encompasses the area in Biscayne Bay in Miami, FL.

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost

and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under section 605 (b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for 2 hours and vessels may be allowed to transit the zone with the express permission of the Captain of the Port of Miami.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Temporary § 165.T07–073 is added to read as follows:

§ 165.T07–073 Safety Zone: Biscayne Bay Miami, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone encompassing a 1300-foot circle surrounding a barge in approximate position 25°45.40 N, 80°10.24 W in Biscayne Bay in Miami for the Grand Opening of Miami One fireworks display.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Miami, FL.

(c) *Effective dates:* This rule is effective from 9 p.m. on June 5, 2003 until 10 p.m. on June 5, 2003.

Dated: May 27, 2003.

James A. Watson, IV,

Captain, U. S. Coast Guard, Captain of the Port Miami.

[FR Doc. 03–14022 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 165

[COTP Miami 03–081]

RIN 1625–AA00

Safety Zone: Town of Lantana July 4th Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone in the ICW at East Ocean Avenue in Lantana, FL. The safety zone is established to protect boaters from the hazards associated with the Town of Lantana July 4th fireworks display being held in the ICW at East Ocean Avenue in Lantana. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03–081 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, tel: (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, a NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing a 850-foot circle surrounding a barge in approximate position 26° 34.36 N, 080° 02.51 W in the ICW at East Ocean Avenue in Lantana for the Town of Lantana July 4th fireworks display. This rule is needed to increase safety in Lantana from 9 p.m. July 4, 2003 to 10 p.m. on July 4, 2003 during the Town of Lantana July 4th fireworks display due to the significant number of vessels in the area for this event. The safety zone is created to provide for the safety of the spectator craft in the vicinity in the ICW at East Ocean Avenue in Lantana, FL. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Miami. The safety zone encompasses the area in the ICW at East Ocean Avenue in Lantana, FL.

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under section 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for 2 hours and vessels may be allowed to transit the zone with the express permission of the Captain of the Port of Miami.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Temporary § 165.T07–081 is added to read as follows:

§ 165.T07–081 Safety Zone: ICW at East Ocean Avenue, Lantana, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone encompassing an 850-foot circle surrounding a barge in approximate position 26°34.36 N, 80°02.51 W in the ICW at East Ocean Avenue in Lantana for the Town of Lantana July 4th fireworks display.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Miami, FL.

(c) *Effective dates.* This rule is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

Dated: May 27, 2003.

James A. Watson, IV,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 03–14021 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP PHILADELPHIA 03–007]

RIN 1625–AA00

Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters adjacent to the Three Mile Island Generating Station. This will protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the plants.

DATES: This rule is effective from 5 p.m. Eastern Daylight Time on May 13, 2003, to 5 p.m. Eastern Standard Time on January 24, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket COTP PHILADELPHIA 03–007 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Xaimara Vicencio-Roldan or Lieutenant Junior Grade Kevin Sligh, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the warnings from national security and intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

Delaying the effective date of the rule would be contrary to the public interest, since immediate action is needed to protect the persons at the facilities, the public and surrounding communities from the release of nuclear radiation. This security zone should have minimal impact on vessel transits due to the fact that the security zone does not block the channel.

Background and Purpose

Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington DC on September 11, 2001, heightened security measures are necessary for the area surrounding the Three Mile Island Generating Station. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the plants. The Coast Guard intends to implement a permanent security zone surrounding the plants. The Coast Guard will be publishing a NPRM to establish a permanent security zone that is temporarily effective under this rule. The Coast Guard will use the effective period of this Temporary Final Rule to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within

the Captain of the Port, Philadelphia, Pennsylvania zone.

Discussion of Rule

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, Pennsylvania or designated representative. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The primary impact of this rule will be on vessels wishing to transit the affected waterway. Although this rule restricts traffic from freely transiting portions of the Susquehanna River, that restriction affects only a limited area and will be well publicized to allow mariners to make alternative plans.

Small Entities

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

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

This rule may affect the following entities, some of which may be small entities: owners or operators of fishing vessels and recreational vessels wishing to transit the portions of the Susquehanna River.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions affect only a limited area and traffic will be allowed to transit through the zone with permission of the Coast Guard or designated representative. The opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted. Therefore, this regulation should have a negligible impact on recreational and charter fishing activity.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.lD, from further environmental documentation.

A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' will be

available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T05–093.

§ 165.T05–093 Security Zone; Three Mile Island Generating Station, Susquehanna River, York County, Pennsylvania.

(a) *Location.* The following area is a security zone: the waters of the Susquehanna River in the vicinity of the Three Mile Island Generating Station bounded by a line drawn from a point located at 40° 09′ 14.74″ N, 076° 43′ 40.77″ W to 40° 09′ 14.74″ N, 076° 43′ 42.22″ W, thence to 40° 09′ 16.67″ N, 076° 43′ 42.22″ W, thence to 40° 09′ 16.67″ N, 076° 43′ 40.77″ W.

All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective dates.* This section is effective from 5 p.m. Eastern Daylight Time on May 13, 2003 to 5 p.m. Eastern Standard Time on January 24, 2004.

Dated: May 13, 2003.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03–14020 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–008]

RIN 1625–AA00

Safety Zone; Annual fireworks events in the Captain of Port Portland Zone, Columbia River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Astoria Fireworks Display to be established by 33 CFR 165.1315 on May 30, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1315 will be enforced July 4, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT).

SUPPLEMENTARY INFORMATION: On May 30, 2003, the Coast Guard is publishing a final rule establishing safety zones, in 33 CFR 165.1315, to provide for the safety of vessels in the vicinity of fireworks displays one of which is the Astoria fireworks display. The safety zone will include all waters of the Columbia River at Astoria, Oregon enclosed by the following points: North from the Oregon shoreline at 123°50′1″ West to 46°11′50″ North, thence east to 123°49′15″ West, thence south to the Oregon shoreline and finally westerly along the Oregon shoreline to the point of origin. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on July 4, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT). The Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this security zone.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–14013 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–008]

RIN 1625–AA00

Safety Zone; Annual Fireworks Events in the Captain of Port Portland Zone, Coos River, North Bend, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Cedco Inc. Fireworks Display to be established by 33 CFR 165.1315 on May 30, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1315 will be enforced July 3, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT). A rain date is scheduled for July 4.

SUPPLEMENTARY INFORMATION: On May 30, 2003, the Coast Guard is publishing a final rule establishing safety zones, in 33 CFR 165.1315, to provide for the safety of vessels in the vicinity of fireworks displays one of which is the Cedco Inc. fireworks display. The safety zone will include waters on the Coos River bounded by shoreline to the east and west and 1000 feet of water to the north and south of the launching barge which is centered at 43°23′45″ North, 124°12′50″ West. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on July 3, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT).

A rain date is scheduled for July 4. The Captain of the Port may be assisted by other Federal, state, or local agencies in enforcing this security zone.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–14012 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–008]

RIN 1625–AA00

Safety Zone; Annual Fireworks Events in the Captain of Port Portland Zone, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Oregon Food Bank Blues Fireworks Display to be established by 33 CFR 165.1315 on May 30, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1315 will be enforced July 4, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT).

SUPPLEMENTARY INFORMATION: On May 30, 2003, the Coast Guard is publishing a final rule establishing safety zones, in 33 CFR 165.1315, to provide for the safety of vessels in the vicinity of fireworks displays one of which is the Oregon Food Bank Blues fireworks display. The safety zone will include all waters on the Willamette River bounded by the Hawthorne Bridge to the north, Marquam Bridge to the south, and shoreline to the east and west. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on July 4, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT). The Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this security zone.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave., Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–14011 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–008]

RIN 1625–AA00

Safety Zone; Annual Fireworks Events in the Captain of Port Portland Zone, Columbia River, Kennewick, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Tri-City Fireworks Display to be established by 33 CFR 165.1315 on May 30, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1315 will be enforced July 4, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT).

SUPPLEMENTARY INFORMATION: On May 30, 2003, the Coast Guard is publishing a final rule establishing safety zones, in 33 CFR 165.1315, to provide for the safety of vessels in the vicinity of fireworks displays one of which is the Tri-City fireworks display. The safety zone will include waters on the Columbia River bounded by shoreline to the north and south, Interstate 395 bridge to the east, and 1000 feet of water to the west of the launching barge which is centered at 46°13′38″ North, 119°08′52″ West. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on July 4, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT). The Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this security zone.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–14010 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Copper River and Fish Wheel Marking Adjustments

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect sockeye salmon escapement in the Copper River, while still providing for a subsistence harvest opportunity. This also provides notice of new options for identifying fish wheels in the Copper River. The fishing schedules and closures will provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 12, 2003. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2003 regulatory year.

DATES: The fishing schedule for the Chitina Subdistrict of the Upper Copper River District is effective May 15, 2003, through June 8, 2003. The fish wheel identification provision is effective May 15, 2003, through February 29, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—

Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, part 100 and Title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2003 fishing seasons, harvest limits, and methods and means were published on February 12, 2003, (68 FR 7276).

Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These adjustments are necessary because of the need to maintain the viability of salmon stocks in the Copper River based on in-season run assessments. These actions are authorized and in accordance with 50 CFR 100.19(d)–(e) and 36 CFR 242.19(d)–(e).

Copper River—Chitina Subdistrict

In December 2001, the Board adopted regulatory proposals establishing a new Federal subsistence fishery in the Chitina Subdistrict of the Copper River. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State conducts a personal use fishery in this Subdistrict that is open to all Alaska residents.

Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals. A run that approximates the pre-season forecast will allow fishing to proceed similar to the pre-season schedule with some adjustments made to fishing time based on in-season data. Adjustments to the preseason schedule are expected as a normal function of an abundance-based management strategy. State and Federal managers, reviewing and discussing all available in-season information, will make these adjustments.

While Federal and State regulations currently differ for this Subdistrict, the Board indicated that Federal in-season management actions regarding fishing periods were expected to mirror State actions. The State established a preseason schedule of allowable fishing periods based on daily projected sonar estimates. This preseason schedule is intended to distribute the harvest throughout the salmon run and provide salmon for upriver subsistence fisheries and the spawning escapement. The salmon season is closed until the first open period scheduled for June 7, 2003, at 8 a.m. Shown below is the first anticipated fishing schedule openings for the Chitina Subdistrict of the Copper River: Saturday, June 7, 8 a.m.–Sunday, June 8, 8 p.m.

State personal use and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2003. No deviation from this date is anticipated.

Copper River—Fish Wheel Identification

The new fish wheel identification requirements for the Copper River parallel State regulations recently enacted by the Alaska Board of Fisheries for the Glennallen Subdistrict. Fish wheel owners are provided with the flexibility of being identified by gear registration number and a sign bearing either their name and address, or their Alaska driver's license number, or their Alaska State identification card number. This allows for improved confidentiality, while maintaining the capability needed for enforcement purposes. The fish wheel owner is responsible for the fish wheel. Retaining the requirement to display name and address for operators other than the owner is necessary for effective enforcement.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska,

Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does 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.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA—Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: May 15, 2003.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: May 15, 2003.

Kenneth E. Thompson,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 03–13994 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AB20

NARA Facilities; Phone Numbers

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration is updating the phone numbers for its Presidential libraries and regional records facilities. The Presidential libraries and regional records facilities are open to the public and other Federal agency staff for visitation and use of records for research. This final rule also corrects the hours for the Washington National Records Center, which are from 8 a.m. to 4:30 p.m. This final rule affects the public.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: This rule is effective upon publication for good cause as permitted by the

Administrative Procedure Act (5 U.S.C. 553(d)(3)). NARA believes that delaying the effective date for 30 days is unnecessary as this rule represents minor technical amendments. Moreover, as the public benefits immediately being provided with corrections to phone numbers for Presidential libraries and the regional records facilities, and a correction to the hours that the Washington National Records Center is open to the public, any delay in the effective date would be contrary to the public interest.

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

List of Subjects in 36 CFR Part 1253

Archives and records.

■ For the reasons set forth in the preamble, NARA amends part 1253 of title 36, Code of Federal Regulations, chapter XII, as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

■ 1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

■ 2. Amend § 1253.3 by revising paragraphs (b), (e), (f), and (j) to read as follows:

§ 1253.3 Presidential Libraries.

* * * * *

(b) Franklin D. Roosevelt Library is located at 4079 Albany Post Rd., Hyde Park, NY 12538–1999. The phone number is 845–486–7770 and the fax number is 845–486–1147. The email address is *roosevelt.library@nara.gov.*

* * * * *

(e) John Fitzgerald Kennedy Library is located at Columbia Point, Boston, MA 02125–3398. The phone number is 617–514–1600 and the fax number is 617–514–1593. The email address is *kennedy.library@nara.gov.*

(f) Lyndon Baines Johnson Library is located at 2313 Red River St., Austin, TX 78705–5702. The phone number is 512–721–0200 and the fax number is 512–721–0236. The email address is *johnson.library@nara.gov.*

* * * * *

(j) George Bush Library is located at 1000 George Bush Drive West, College Station, TX 77845. The phone number is 979–691–4000 and the fax number is 979–691–4050. The email address is *bush.library@nara.gov.*

■ 3. Revise § 1253.4 to read as follows:

§ 1253.4 Washington National Records Center.

Washington National Records Center is located at 4205 Suitland Road, Suitland, MD (mailing address: Washington National Records Center, 4205 Suitland Road, Suitland, MD, 20746–8001). The hours are 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. The phone number is 301–778–1600.

■ 4. Amend § 1253.6 by revising paragraphs (a) through (d) to read as follows:

§ 1253.6 Records Centers.

* * * * *

(a) NARA—Northeast Region (Boston) is located at the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452–6399. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 781–663–0139.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 413–236–3600.

(c) NARA—Mid Atlantic Region (Northeast Philadelphia) is located at 14700 Townsend Rd., Philadelphia, PA 19154–1096. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 215–305–2003.

(d) NARA—Southeast Region (Atlanta) is located at 1557 St. Joseph Ave., East Point, GA 30344–2593. The hours are 7 a.m. to 4 p.m., Monday through Friday. The telephone number is 404–763–7063.

* * * * *

■ 5. Amend § 1253.7 by revising paragraphs (a) through (d) to read as follows:

§ 1253.7 Regional Archives.

* * * * *

(a) NARA—Northeast Region (Boston) is located in the Frederick C. Murphy Federal Center, 380 Trapelo Rd., 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 781–663–0121.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 413–236–3600.

(c) NARA—Northeast Region (New York City) is located at 201 Varick St., New York, NY 10014–4811. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 212–401–1620.

(d) NARA—Mid Atlantic Region (Center City Philadelphia) is located at 900 Market St., Philadelphia, PA 19107–4292. The hours are 8 a.m. to 5 p.m., Monday through Friday. The telephone number is 215–597–0921.

* * * * *

Dated: May 29, 2003.

John W. Carlin,

Archivist of the United States.

[FR Doc. 03–13917 Filed 6–3–03; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. MARAD 2003–15288]

RIN 2133–AB48

Regulated Transaction Involving Documented Vessels and Other Maritime Interests; Inflation Adjustment of Civil Monetary Penalties

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1996, as amended by the Debt Collection Improvement Act of 1996, this final rule incorporates inflation adjustments for the civil monetary penalties described in procedural regulations of the Maritime Administration (MARAD, we, us, our) contained in Subpart E of 46 CFR part 221.

EFFECTIVE DATE: This final rule is effective on June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Macey, Attorney-Advisor, Office of Chief Counsel, Division of Maritime Programs, Maritime Administration, at (202) 366–5182, fax (202) 366–7485.

SUPPLEMENTARY INFORMATION:

The Debt Collection Improvement Act of 1996

In an effort to maintain the remedial impact of civil monetary penalties (CMPs) and promote compliance with law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101–410) was amended by the Debt Collection Improvement Act of 1996

(Pub. L. 104–134) to require Federal agencies to regularly adjust CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, with specified exemptions, and to make further adjustments at lease once every four years thereafter. The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments (i) should apply only to the violations that occur after October 23, 1996, the Act's effective date, and (ii) should not exceed 10 percent of the penalty indicated.

Method of Calculation

Under the Act, the inflation adjustment for each applicable CMP is determined by increasing the maximum CMP amount per violation by the cost of living adjustment. The ''cost of living'' adjustment is defined as the percentage of each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. Any calculated increase under this adjustment is subject to a specific rounding formula set in the Act.

Civil Penalties Under 46 U.S.C. 31309 and 31330; 46 App. U.S.C. 808

MARAD has provisions in its regulations at 46 CFR part 221 prescribing procedures for three civil penalties that it may assess under the following authorities:

1. 46 U.S.C. 31309-a general civil penalty of up to $11,000 for violation of 46 U.S.C. Chapter 313-Commercial Instruments and Maritime Liens.

2. 46 U.S.C. 31330-a penalty of up to $27,500 for violation of 46 U.S.C. 31328 or 31329, relating to requirements for trustees of mortgaged vessels and vessel interests and purchasers of documented vessels under order of a district court.

3. 46 App. U.S.C. 808-a penalty of up to $11,000 for the unlawful transfer of a documented vessel or interests therein.

MARAD is amending its regulations at 46 CFR 221.61 to adjust the maximum amount of each of these three civil monetary penalties. Each of the $11,000 maximum penalties in being increased to $12,000. The $27,500 maximum penalty is being increased to $30,000.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies; Pub. L. 104–121

This final rule is exempt from review of OMB under E.O. 12866 because it is limited to the adoption of statutory language without interpretation. Additionally, this final rule is not likely to result in an annual effect on the economy of $100 million or more. It also is not considered a major rule for purposes of Congressional review under Pub. L. 104–121.

This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and benefits associated with this rulemaking are so minimal that no further analysis is necessary. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) provides an exception to the notice and comment procedures because they are unnecessary or contrary to the public interest. MARAD finds that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with notice and comment since this rule only implemented statutory authority as mandated in Pub. L. 104–134, with no issues of policy discretion. Accordingly, opportunity for public comment is unnecessary.

Federalism

We analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Regulatory Flexibility

The Maritime Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Any penalties that may be assessed by MARAD will take into account the party's ability to pay and the nature, circumstances, extent and gravity of the violation committed and, with respect to the Party, the degree of culpability, and history of prior offenses, and other factors that justice may require. The aggregate impact of any enforcement action that might be taken by MARAD on violations will not have a significant economic impact on small businesses entities.

Environmental Assessment

We have analyzed this Final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (''MAO'') 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves civil penalties and has no environmental impact.

Paperwork Reduction

This rulemaking contains no new or amended information collection or recordkeeping requirements which have been or require approval by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

This final rule would not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the Federal Civil Monetary Penalty Inflation Adjustment Act of 1996, as amended by the Debt Collection Improvement Act of 1996.

List of Subjects in 46 CFR Part 221

Maritime carriers, Mortgages, Reporting and recordkeeping requirements, Trust and trustees.

■ Accordingly, 46 CFR part 221 is amended as follows:

■ 1. The authority citation continues to read as follows:

Authority: 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 114(b), 1195; 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66 2.

■ 2. Section 221.61 is revised to read as follows:

§ 221.61 Purpose.

This subpart describes procedures for the administration of civil penalties that the Maritime Administration may assess under 46 U.S.C. 31309 and 31330, and section 9(d) of the Shipping Act, 1916, as amended (46 App. U.S.C. 808(d)), pursuant to 49 U.S.C. 336.

Note: Pursuant to 46 U.S.C. 31309, a general penalty of not more than $12,000 may be assessed for each violation of chapter 313 or 46 U.S.C. subtitle III administered by the Maritime Administration, and the regulations in this part that are promulgated thereunder, except that a person violating 46 U.S.C. 31328 or 31329 and the regulations promulgated thereunder is liable for a civil penalty of not more than $30,000 for each violation. A person that charters, sells, transfers or mortgages a vessel, or an interest therein, in violation of 46 App. U.S.C. 808 is liable for a civil penalty of not more than $12,000 for each violation. These penalty amounts are in accordance with Pub. L. 101–410, amended by Pub. L. 104–134. Criminal penalties may also apply to violations of these statutes.

Dated: May 29, 2003.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13954 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–M

Proposed Rules

Federal Register
Vol. 68, No. 107
Wednesday, June 4, 2003

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 810

[Docket No. FGIS–2003–001]

United States Standards for Wheat.

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), proposes to revise the United States Standards for Wheat to amend the definition of the class Hard White wheat to insert subclasses. The proposed rule would also change the definition of Contrasting Classes for Hard Red Winter wheat and Hard Red Spring wheat. Additionally, the rule will insert language into the wheat standard to specify the sample size used to determine sample grade factors. These changes would further help to facilitate the marketing of wheat.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Written comments must be submitted to Tess Butler at GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604; faxed to (202) 690–2755; or E-mailed to *comments.gipsa@usda.gov*. Please indicate your comment refers to Docket No. FGIS–2003–001, United States Standards for Wheat.

All comments received are available for public inspection at Room 1652, South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey, telephone (202) 720–4684 at GIPSA, USDA, STOP 3630, 1400 Independence Avenue, SW., Washington, DC, 20250–3630; Fax Number (202) 720–1015.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present any irreconcilable conflict with this rule. There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Regulatory Flexibility Act Certification

GIPSA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Under the provisions of the United States Grain Standards Act, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 33 export facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration. Further, the regulations are applied equally to all entities. The U.S. wheat industry, including producers (approximately 240,000), handlers (approximately 6,800 domestic elevators), traders (approximately 200 active wheat futures traders), processors (approximately 184 flour mills), merchandisers and exporters are the primary users of the U.S. Standards for Wheat and utilize the official standards as a common trading language to market wheat. We assume that some of the entities may be small. Further, the United States Grain Standards Act (USGSA) (7 U.S.C. 87f–1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. At present, there are 90 registrants who account for practically 100 percent of U.S. wheat exports, which for fiscal year (FY) 2002 totaled approximately 24,073,138 metric tons (MT). While most of the 90 registrants are large businesses, we assume that some may be small.

Background

GIPSA established the class Hard White wheat on May 1, 1990. In the Final Rule (54 FR 48735), FGIS stated ''that classification by varietal kernel characteristics rather than vitreousness of the kernel is practicable at this time for HWW and SWW since only a few hard endosperm white white (sic) varieties are being produced. FGIS recognizes that if more hard endosperm varieties are released into the marketplace in the future, the classification system may become less practical.'' FGIS further stated ''* * * if clear quality or market distinctions develop * * * it would consider subclasses at a future date''.

At that time, a minimum visual color line was established based on the variety *Klasic*, which was produced in California. GIPSA abandoned the *Klasic* color line in 1994, and in 1995 GIPSA issued Program Bulletin 95–15 which in part stated that GIPSA would class all hard endosperm white wheat as hard white. Due to pending release of a hard white variety which closely resembled hard red spring, GIPSA, with industry input and support, established a new color line in 1999 (Program Bulletin 99–8).

In 2001, environmental conditions caused a significant increase in the vitreous kernel content, hence darker visual appearance in some varieties of hard white, resulting in a GIPSA decision to suspend the color line for classification purposes (Program Notice 01–06). The rationale for abandoning the color line was that color had not been an issue in hard white, as grain handlers efficiently segregated it from

red wheat. Producers received premiums for hard white where it was appropriate and processors used the hard white primarily without incident. In addition to the 2001 environmental effect on color, the Hard White wheat market has been impacted by the introduction of many new varieties released by both public and private breeding programs. GIPSA proposes to amend the U.S. Standards for Wheat to better reflect the current and future needs of the Hard White wheat market.

The specific issues for consideration in this rule are (1) designation of subclasses in the class hard white, and (2) amending the definition of Contrasting Classes in hard red wheat classes. While proposing to amend the standards due to Hard White Wheat issues, GIPSA will also propose to include language in the standards which states the amount of wheat within which sample grade factors are determined. This action is proposed to help clarify the application of the standards for U.S. Sample Grade factors.

1. Subclass Designation

Under Program Notice 01–06, ''All hard white wheat varieties are considered hard white wheat regardless of color.'' A common conception is that the domestic milling industry will accept any hard white regardless of seed coat color. This may or may not be true depending on which milling company is being interviewed. Discussions with some U.S. millers led to the conclusion that some millers do consider seed coat color when making purchase and processing decisions. Some milling companies do not yet process much Hard White wheat, thus have few concerns about bran color, and feel if darker Hard White wheat processes well and has acceptable protein content, there is no perceived problem due to bran color.

Depending on the target flour product and the miller's flour extraction goal, the darker colors can present processing challenges. For some high extraction rate flours, darker seed coat color anticipated darker flour color hence final product color problems, requiring millers to add additional bleaching agents and/or cut flour streams in order to meet final product specifications. These processes add additional production costs.

In addition to the domestic millers' position, marketing of Hard White wheat to export customers must be considered. Currently there is interest in Hard White wheat from international customers. Many of these customers view Australian wheat as the benchmark of seed coat color. The major Asia-Pacific customers of U.S. wheat may not have an incentive to purchase Hard White wheat if they view the seed coat color as a detriment. Despite assigning the reason for darker color in 2001 to vitreous kernel content, a high percentage of which is perceived to be a benefit in milling (*e.g.* dark northern spring and hard amber durum), these customers may be hesitant to buy dark Hard White wheat because it may not meet their processing needs. Other international customers may have cultural considerations impacting purchase decisions: red wheat is viewed as appropriate for feeding animals while white wheat is viewed as appropriate for human food. The annual effect of environment cannot be predicted, thus making it impossible to say whether hard white from a given future harvest will be vitreous or not, whether bran coat will be light or dark, and which varieties will be more susceptible to environmental influences and genetic x environmental interactions. One way to facilitate marketing of hard white is to create subclasses which delineate a particular desirable quality factor.

Subclasses tend to highlight positive quality factors. In the case of Hard Red Spring and Durum wheat, subclasses based on vitreous kernel content convey quality factors which are considered indicative of improved *performance, vis-á-vis* milling yield, and premiums are often paid to sellers for these improved performance factors. To delineate the desirable nature of Hard White wheat including both lighter and darker kernels, the subclass approach could be used for Hard White wheat.

For Hard White wheat, the proposed subclass names are Hard White wheat and Hard Amber White wheat, for wheat meeting and exceeding (darker than) the interpretive color line, respectively. These names descriptively reflect the appearance of the kernel color in the overall sample. The naming of the subclasses maintains the convention utilized for Soft White wheat, which includes the subclass Soft White Wheat.

2. Contrasting Classes

Contrasting classes and wheat of other classes are ''grade determining'' factors. Contrasting classes in wheat essentially means the presence of wheat of opposite color commingled with the dominant class, thus white wheat is contrasting in red wheat and red wheat is contrasting in white wheat. A special case is Durum wheat, which is contrasting in all other market classes except Unclassed wheat, and all other classes are contrasting in Durum wheat. Wheat of other classes essentially means wheat of the same color but of different endosperm texture or growth habit, thus soft red winter and hard red spring are both wheat of other classes in the market class Hard Red Winter wheat.

Grade limits for contrasting classes are substantially tighter than the grade limits for wheat of other classes (2.0 percent vs. 5.0 percent, respectively, at U.S. #2). The tighter grade limit for contrasting classes is due to the perception that quality is compromised by the appearance of a contrasting class and the potential effect on flour color and end product color. In the case of durum wheat, the reasons are the difference in milling behavior of durum, the color of flour from durum and the need to make primarily semolina from Durum wheat.

Commingling of hard white and hard red wheat is problematic depending on which class is dominant. The presence of red wheat in white wheat may degrade the visual appearance of the lot and may raise quality concerns. Since Hard White wheat is a relatively new class, it is important to keep its quality as high as possible in order to expand its marketability, both domestically and internationally.

While flour functionality is not compromised, flour color and enzymatic browning problems may result when these classes are commingled. For some domestic millers, and most millers overseas, flour color is more critical than flour ash. For example, millers selling flour for Asian noodle manufacturing would be highly critical of the presence of red wheat in white wheat, as final product color would be jeopardized. These millers typically grind Australian wheat, which has only white seed coats. While this currently applies primarily to non-U.S. millers, noodles are growing in popularity globally and will likely become an opportunity for U.S. millers in the future.

In the second case, red wheat contains the enzyme polyphenol oxidase (PPO) which when activated, causes the color of a raw noodle to become darker—a serious defect in noodle making. White wheat has much lower PPO than red wheat, therefore causes negligible color change in raw noodles. Minimizing the amount of red wheat in white wheat cargoes is one way to improve the performance of Hard White wheat.

The presence of white wheat in red wheat is perceived by most as different from the presence of red wheat in white wheat. It is useful to examine the situation for classing wheat, especially contrasting classes in hard red. The current practice is to select only distinct white and lightly colored kernels as contrasting. Darker kernels are left in

the sample and count as red wheat kernels.

Most flour milling companies have little to no concern over the amount of Hard White wheat in a lot of hard red wheat. For these millers, there would be no reason to consider hard white as a contrasting class in hard red wheat. The proposed rule would change the definition of Contrasting Classes for Hard Red Winter wheat and Hard Red Spring wheat such that Hard White wheat is not a contrasting class in these two red wheat classes.

The following tables illustrate the current and proposed changes for contrasting classes.

TABLE I (CURRENT)

Minor class	Primary class						
	DU	HRS	HRW	SRW	HW	SWH	UNCL
DU		CCL	CCL	CCL	CCL	CCL	WOCL
HRS	CCL		WOCL	WOCL	CCL	CCL	WOCL
HRW	CCL	WOCL		WOCL	CCL	CCL	WOCL
SRW	CCL	WOCL	WOCL		CCL	CCL	WOCL
HW	CCL	CCL	CCL	WOCL		WOCL	WOCL
SWH	CCL	CCL	CCL	WOCL	WOCL		WOCL
UNCL	CCL	CCL	CCL	CCL	CCL	CCL	

CCL: Contrasting class.
WOCL: Wheat of other Classes.

TABLE II (PROPOSED)

Minor class	Primary Class						
	DU	HRS	HRW	SRW	HW	SWH	UNCL
DU		CCL	CCL	CCL	CCL	CCL	WOCL
HRS	CCL		WOCL	WOCL	CCL	CCL	WOCL
HRW	CCL	WOCL		WOCL	CCL	CCL	WOCL
SRW	CCL	WOCL	WOCL		CCL	CCL	WOCL
HW	CCL	WOCL	WOCL	WOCL		WOCL	WOCL
SWH	CCL	CCL	CCL	WOCL	WOCL		WOCL
UNCL	CCL	CCL	CCL	CCL	CCL	CCL	

CCL: Contrasting class.
WOCL: Wheat of other Classes.

3. Sample Size for Sample Grade Factors

GIPSA has received inquiries about the portion size of wheat used to determine Maximum Count Limits of Other Material such as stones, crotalaria seeds, glass, etc., these being Sample Grade factors. In the Official United States Standards for Grain (7 CFR part 810), subparts for certain grains define this portion size. The procedures in the Grain Inspection Handbook—Book II specify the portion size upon which the determination of Other Materials is made on wheat. This proposed change is needed because the standards should transmit this information. Thus GIPSA proposes to amend subpart M to define this amount.

Proposed GIPSA Action

GIPSA is issuing this proposed rule to invite comments and suggestions from all interested persons on how GIPSA can further enhance and best facilitate the marketing of Hard White wheat by inserting subclasses. In addition, the proposed rule would also change the definition of contrasting classes for Hard Red Winter wheat and Hard Red Spring wheat, and specify the sample size used to determine sample grade factors.

Subclass Designation

GIPSA is proposing to establish subclasses in Hard White wheat called Hard White wheat and Hard Amber White wheat. Further, GIPSA will use the existing interpretive color line as the benchmark for determining subclass, whereby wheat darker than the interpretive color line will be classed as Hard Amber White wheat.

To accomplish this, GIPSA proposes to revise § 810.2202(a)(5) to read: ''Hard White wheat. All hard endosperm white wheat varieties. This class is divided into the following two subclasses:

(i) Hard White wheat. Wheat which is lighter than or equivalent in color to the interpretive color line photograph.

(ii) Hard Amber White wheat. Wheat which is darker than the interpretive color line photograph.''

Contrasting Classes

GIPSA is proposing to amend the grain standards to change the definition of contrasting classes in Hard Red Winter wheat and Hard Red Spring wheat such that Hard White wheat and

its subclasses are not contrasting classes but are considered as wheat of other classes. The grade limit will remain unchanged. For kernel identification, Hard White wheat kernels would be determined by visual assessment and would include the dark colored, amber, white wheat kernels, per the Grain Inspection Handbook, Book II, Chapter 13, Section 13.26. In the case where samples challenge the normal visual inspection process, the alkali test would be utilized to determine kernel color (FGIS-Program Notice 01–07).

GIPSA proposes to revise § 810.2202(b)(1) *Contrasting Classes* to read: ''Durum wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.''.

Sample Size

GIPSA is proposing to amend the grain standards for wheat to specify the amount of wheat upon which sample grade factor determinations are made. GIPSA proposes to amend § 810.2204 *Grade and grade requirements of wheat* to read: ''Other material in one kilogram:'' under the sub-heading ''Maximum count limits of:''.

Comments, including data, views, and other information are solicited from interested persons. Pursuant to section 4(b)(1) of the United States Grain Standards Act, as amended (7 U.S.C. 76(b)(1)), upon request, such information concerning changes to the standards may be presented orally in an informal manner. Also, pursuant to this section, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless, in the judgement of the Secretary, the public health, interest, or safety require that they become effective sooner.

List of Subjects in 7 CFR Part 810

Export, Grain.

For reasons set out in the preamble 7 CFR Part 810 is proposed to be amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. The authority citation for Part 810 continues to read as follows:

Authority : Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 810.2202 is amended by revising paragraphs (a)(5) and (b)(1) to read as follows:

§ 810.2202 Definition of other terms.

* * * * *

(5) *Hard White wheat.* All hard endosperm white wheat varieties. This class is divided into the following two subclasses:

(i) *Hard White wheat.* Wheat which is lighter than or equivalent in color to the interpretive color line photograph.

(ii) *Hard Amber White wheat.* Wheat which is darker than the interpretive color line photograph.

* * * * *

(b) * * *

(1) Durum wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.

* * * * *

3. Section 810.2204(a) is revised as follows:

Grades and Grade Requirements

§ 810.2204 Grades and grade requirements for wheat.

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat.

Grading factors	Grades U.S. Nos.				
	1	2	3	4	5
Minimum pound limits of:					
Test weight per bushel:					
Hard Red Spring wheat or White Club wheat	58.0	57.0	55.0	53.0	50.0
All other classes and subclasses	60.0	58.0	56.0	54.0	51.0
Maximum percent limits of:					
Defects:					
Damaged kernels:					
Heat (part of total)	0.2	0.2	0.5	1.0	3.0
Total	2.0	4.0	7.0	10.0	15.0
Foreign material	0.4	0.7	1.3	3.0	5.0
Shrunken and broken kernels	3.0	5.0	8.0	12.0	20.0
Total [1]	3.0	5.0	8.0	12.0	20.0
Wheat of other classes: [2]					
Contrasting classes	1.0	2.0	3.0	10.0	10.0
Total [3]	3.0	5.0	10.0	10.0	10.0
Stones	0.1	0.1	0.1	0.1	0.1
Maximum count limits of:					
Other material in one kilogram:					
Animal filth	1	1	1	1	1
Castor beans	1	1	1	1	1
Crotalaria seeds	2	2	2	2	2
Glass	0	0	0	0	0
Stones	3	3	3	3	3
Unknown foreign substances	3	3	3	3	3
Total [4]	4	4	4	4	4
Insect-damaged kernels in 100 grams	31	31	31	31	31

U.S. Sample grade is Wheat that:
(a) Does not meet the requirements for U.S. Nos. 1, 2, 3, 4, or 5; or
(b) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor) or

Grading factors	Grades U.S. Nos.				
	1	2	3	4	5
(c) Is heating or of distinctly low quality.					

[1] Includes damaged kernels (total), foreign material, shrunken and broken kernels.
[2] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[3] Includes contrasting classes.
[4] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, or unknown foreign substance.

* * * * *

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

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BILLING CODE 3410–EN–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245–AE76

Small Business Size Regulations; Small Business Innovation Research Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to revise its small business size regulations to allow a small business that is owned and controlled by another business concern to be eligible for funding agreements under the SBA's Small Business Innovation Research (SBIR) Program. The proposed rule does not change the size standard requiring that an eligible small business concern, with its affiliates, have no more than 500 employees. The rule proposes to modify the small business eligibility requirements so that the SBIR awardee must meet one of the two following additional criteria: It must be a for-profit business concern that is at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States (as the regulations currently requires); or it must be a for-profit business concern that is 100% owned and controlled by another for-profit business concern that is itself at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States.

DATES: Comments must be received on or before July 7, 2003. Upon request, the SBA will make all public comments available.

ADDRESSES: Address written comments to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 Third Street, SW., Washington, DC 20416. You may submit comments via email to *sizestandards@sba.gov,* or via facsimile at (202) 205–6390. You may also submit comments electronically to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618, or Maurice Swinton, Assistant Administrator for Technology, at (202) 401–6365. You may also email questions to *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

The Small Business Innovation Development Act of 1982 (SBIDA) (Pub. L. 97–219) established the SBIR Program. This document can be found at *http://thomas.loc.gov/bss/d097/d097laws.html.* According to its legislative history, SBIDA was enacted to increase the rate of productivity in the United States by increasing technological innovations, especially those innovations of small concerns. In addition, the SBIR Program was created to increase the efficiency of federally funded research and development (R&D) by providing a long-needed mechanism to enable agency personnel to tap the resources of small, innovative firms; to facilitate the conversion of federally funded research results into commercially viable products and services; and to increase the share of the Federal R&D budget awarded to small businesses.

The SBA's Small Business Size Regulations establish small business eligibility criteria for receiving awards under the SBIR Program (13 CFR 121.701–121.703). Section 121.702(a) states that to be eligible to compete for award of an SBIR funding agreement, a business concern must ''(b)e at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; * * *.'' A concern may not receive an SBIR award if it is more than 50% owned and controlled by another business concern, such as a corporation or partnership, even if that concern is at least 51% owned and controlled by citizens of, or permanent resident aliens in, the United States.

SBIR Program managers at participating agencies will often receive a proposal from a concern that is owned by another concern. The concern's size, together with its parent company, will often be below the 500 employee small business size standard for an award, while its parent is at least 51% owned and controlled by one or more U.S. citizens or permanent resident aliens. However, because it is more than 50% owned by this other concern, it is ineligible for an SBIR award. Consequently, potential SBIR awards go unawarded because there may be no other meritorious and feasible proposals from qualified concerns, and the innovations of otherwise eligible small business concerns go unfunded.

The SBA believes that when Congress established the SBIR Program and when the SBA initially wrote its regulations to comply with SBIDA, there were few if any small businesses wholly owned by other entities interested in participating in the program. SBIDA did not preclude the SBA from including them in the program with its original regulations, which it could have done had it been aware that they existed as potential participants.

The SBA's experience over the last several years has led it to believe that it should reconsider its policy on this eligibility restriction. The SBA is particularly concerned about the anomalous situation that occurs under the current regulations. A parent company with a wholly owned subsidiary can compete as an eligible small business for SBIR funding, but its wholly subsidiary cannot compete in its own name. The SBA believes this is an unnecessary restriction which results in either a wholly owned subsidiary not competing or having to compete through the parent company (which it would not otherwise do).

The SBA's Proposals

Without modifying the size standard requiring that a concern, together with its affiliates, may have no more than 500 employees, the SBA proposes to revise § 121.702 to allow an SBIR funding awardee to be either:

(1) A for-profit business concern, as defined in § 121.105, that is at least 51% owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States; *or*,

(2) A for-profit business concern that is 100% owned by another for-profit business concern, as defined in § 121.105, that is itself at least 51% owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States.

The SBA also proposes to revise the first sentence of § 121.702 by changing ''To be eligible to compete for award * * *'' to ''To be eligible for award * * *'' Under this proposed change, an applicant for an SBIR award would not need to meet the eligibility requirements when it submits its proposal. Rather, the applicant would have to be eligible at the time of the award. Section 121.702 is the only regulatory reference requiring that the applicant be eligible for an award. This proposed change would make § 121.702 consistent with § 121.704, which sets forth when the SBA determines the size status of a business concern, and with the ''Policy Directive for the Small Business Innovation Research (SBIR) Program'' (Directive) (67 FR 60072, dated September 24, 2002), both of which require that the concern be eligible when it receives the SBIR award.

This proposed rule broadens program eligibility, but at the same time it adheres to the purpose of the SBIR Program—it seeks to increase productivity in the U.S. by increasing innovations of U.S. owned small business concerns. This proposed rule addresses only the ownership component pertaining to SBIR eligibility, maintains the 500 employee size standard, and changes no part of the definition of ''concern'' in § 121.105 and in the Directive. That is, a concern must be, besides meeting the 500 employee size standard, organized for profit, have a place of business located in the United States, and operate primarily within the United States or make a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

Request for Comments

The SBA seeks the public's comment on this proposed rule, and requests specific comments on at least the following:

(1) Whether a business concern owned by another business concern should be eligible for award of funding agreements in the SBA's SBIR Program;

(2) Whether ownership of the SBIR awardee should be limited to only one other concern, or whether the awardee could be owned by more than one business concern;

(3) If the SBIR awardee could be owned by more than one other concern, how SBIR Program managers could be assured that the ultimate ownership of the awardee is ''at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States;''

(4) How many firms may become eligible for SBIR awards under this proposed rule, if the SBA adopts it as a final rule;

(5) Whether the increased number of eligible business enterprises would create additional competition that would adversely affect research and development (R&D) concerns that meet the current ownership requirement;

(6) Whether permitting an R&D concern owned and controlled by another for-profit business concern that is itself ''at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States'' is consistent with the Congressional intent that the SBIR Program benefit small U.S. business concerns.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. Small business size standards determine what businesses are eligible for Federal small business programs. This proposed rule will not affect small business size standards, but may affect the number of awards to different small businesses pursuant to the SBIR Program. The SBA's Regulatory Impact Analysis follows.

Regulatory Impact Analysis

1. Need for This Regulatory Action

The SBA believes it should revise its Small Business Size Regulations to allow small businesses wholly owned by other for-profit business concerns to participate in the SBIR Program, because doing so will render the SBIR size eligibility requirements more consistent with the intent of Congress in SBIDA. Under § 121.702(a), an R&D company eligible for SBIR funding can be of any legal form, and must meet two criteria: (1) it must be organized for profit; that is, it must meet the definition of ''business concern'' in § 121.105; *and* (2) it must be 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. However, if that eligible concern has a wholly owned subsidiary, the rule precludes the subsidiary from being eligible for SBIR funding. This is true, even though the employees of the subsidiary are included in determining whether the eligible concern meets the 500 employee size standard. As discussed in the Preamble, the SBA believes this is an unnecessary restriction on potential SBIR participants.

Modifying the type of concern that could receive an SBIR award will raise the number and quality of technological innovations by small concerns, as Congress intended in SBIDA. Agency SBIR Program managers will be able to involve more small businesses in the SBIR Program, make awards that Congress and their agencies have funded but would likely go unawarded, and administer the program more consistently.

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of what it means to be a small business and define what small businesses are eligible for various Federal Government programs. The Small Business Act (15 U.S.C. 632(a)) delegates responsibility for establishing small business definitions to the SBA Administrator.

R&D concerns compete for SBIR awards based on technology, merit, feasibility and commercialization plans, not on cost. Newly eligible concerns might compete with one another for the SBIR awards that generally go unawarded, and with current program participants for all program awards as well. The proposed revision is consistent with the SBA's statutory mandate to assist small business. This proposed regulatory action will promote the Administrator's objectives. One of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit. Reviewing and modifying the SBA's Small Business Size Regulations, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

2. Potential Benefits and Costs of This Regulation

Small R&D concerns that become eligible for SBIR Program awards will be the primary beneficiaries of this rule. Specifically, benefits will flow to some concerns that are currently ineligible for SBIR awards solely because they are wholly owned subsidiaries. If the SBA adopts this proposal as a final rule, small concerns that are 100% owned and controlled by another for-profit business concern that is itself 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, will be eligible for SBIR awards; that is, provided it meets the 500 employees size standard and any other SBIR eligibility requirements.

The SBA cannot accurately determine how many concerns will be competing for SBIR awards because there are no data on business size by organizational structure to support a reasonable estimate. However, the SBA believes that there are about 50 to 100 concerns that might benefit. The SBA bases this estimate on the fact that a small number of such concerns have made inquiries about the program or expressed an interest in participating. Also, SBIR Program managers have relayed to the SBA their experiences with having to deny awards to those concerns that do apply. The SBA believes that these companies should not be precluded from participating. The SBA welcomes comments discussing the potential number of concerns that could become eligible under this rule and on the effect their eligibility would have on other small concerns.

In fiscal year 2002, SBIR awards totaled about 5,000 and $1.5 billion in funding. The SBA estimates that as much as $85 million could be awarded annually to newly eligible concerns. Phase I awards are as large as $100,000, and Phase II awards can be as high as $750,000. The maximum number of annual awards could be as high as 100, a 2% increase each year. If the maximum number of SBIR awards were made for their maximum possible award amounts, this could represent an additional $85 million awarded to small R&D concerns. However, the average SBIR award is about $300,000, based on the SBIR Program's current annual average of approximately 5,000 awards and $1.5 billion. An additional 100 (estimated maximum number) SBIR awards to R&D concerns would more likely total about $30 million. This, rather than $85 million, reflects the more realistic benefits to the newly eligible concerns.

Federal Government agencies with SBIR Programs will also benefit, because they will be able to tap the resources of small innovative firms, to facilitate the conversion of federally funded research results into commercially viable products and services, and to increase the share of the Federal R&D budget awarded to small businesses, as discussed in SBIDA's legislative history, more than they do now. Because that is Congress' intent, the rule, if the SBA adopts it as final, will further help Federal agencies to meet their mandate to assist small business concerns. There could be up to 2% more small business concerns that receive SBIR awards. Not only will there be more concerns competing for SBIR awards, but there will be more awards made to more small businesses.

The Federal Government's increased cost will equal the additional SBIR awards made because more concerns will be eligible under this proposed rule. However, it will require no additional appropriations for the participating agencies. Presently, some SBIR funds are unspent. Applicants with meritorious and feasible proposals are ineligible because they are wholly owned subsidiaries of other concerns, not because they with their affiliates exceed the 500 employee size standard. This rule, therefore, may possibly increase the cost to the government by up to $85 million per year in funds spent. However, the awards would come from already appropriated and budgeted SBIR funds, ordinarily left unspent.

The SBA estimates that there will be relatively few distributional effects if this proposed rule is adopted. The 50 to 100 annual awards that are unawarded not only do not go to small businesses, but they do not go to any concerns. Again, as stated above, The SBA cannot accurately determine how many concerns might become eligible for these awards, because there are no data to support an estimate of the distributional effects, but the SBA believes it could be no more than 100 awards made to newly eligible concerns. These newly eligible concerns may obtain SBIR funding that would otherwise be awarded to existing small concerns. With the relatively small proportion of additional firms and the fact that few small concerns obtain multiple SBIR awards, the SBA believes only a few small concerns could lose SBIR opportunities. If so, it is important to note that the newly eligible firms are not more competitive due to size, but differ only on the basis of organizational structure. The SBA specifically requests comments on the proposal's impact on current SBIR participants.

This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800. For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or recordkeeping requirements, other than those now required of the SBA and Federal agencies that request R&D proposals under the SBIR Program. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, the SBA has determined that this rule may have a significant economic effect on a substantial number of small entities. The SBA estimates that an additional 50 to 100 small concerns may become eligible for the SBIR Program and obtain up to $85 million in funding agreements. Immediately below, the SBA sets forth an Initial Regulatory Flexibility Analysis (IRFA) of this rule providing the following: (1) The need for and objective of the rule; (2) a description and estimate of the number of small concerns to which the rule will apply; (3) projected reporting, recordkeeping, and other compliance requirements of the rule; (4) relevant Federal rules that may duplicate, overlap or conflict with the rule; and (5) alternatives to allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities.

(1) Need and Objective of the Rule

There are, the SBA believes, a number of concerns that are currently precluded from participating in the SBIR Program, solely because of their ownership structure. Approximately 50 to 100 SBIR awards go unawarded annually because there are no meritorious and feasible proposals from qualified concerns that could be eligible, except for the fact that they do not meet the ownership criteria to participate in the SBIR Program. Congress, with SBIDA, did not define what concerns were eligible based on ownership; it stated that the purpose of the SBIR Program is to increase the share of the Federal R&D budget awarded to small businesses. The SBA proposes to make eligible concerns that are wholly owned by other for-profit business concerns eligible for SBIR awards. If the parent concern is not

organized for profit, the subsidiary would not be eligible because not-for-profit entities are not eligible for the SBIR Program. Further, the legislative history of SBIDA states that small business concerns have trouble competing with not-for-profit entities. The proposed change to size eligibility for the SBIR Program will more accurately define the type of small concern that the SBA believes meets the intent of Congress in SBIDA.

(2) Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

The SBA cannot determine precisely how many concerns would become eligible as a result of this rule, if adopted, because it has no data on how many wholly owned subsidiaries there are in the United States. In fiscal year 2002, there were about 5,000 annual SBIR awards for approximately $1.5 billion, less than 2% of which are multiple awards. The SBA believes that between 50 to 100 concerns will become eligible under this rule, as discussed above.

The SBA believes that the additional eligible concerns will not have a significant impact on existing small concerns. While there are approximately 5,000 annual SBIR awards, over 98% are awarded to concerns that receive no other awards during the year. That is, there are approximately 4,900 awards in any given year to approximately 4,900 individual concerns. The SBA estimates that there are on average three concerns competing for any given award. There would be, therefore, about 15,000 concerns seeking SBIR awards. The SBA does not believe that an additional 100 competitors, about 0.7%, will add significant competition for SBIR awards.

The SBA recognizes that newly eligible firms might be viewed as competition for those firms now receiving awards, because this rule could increase the number of concerns eligible for SBIR. However, newly eligible firms under this rule will not be larger in size than current participants. This rule will not increase the population of eligible firms by adding larger concerns; it will only add concerns with different ownership structures. Therefore, newly eligible concerns competing for SBIR awards will not have the benefits that generally accrue to larger concerns. While there will be a small increase in the number of concerns competing, they will not be more competitive due to their size.

The SBA also believes that many of the applicants who have been denied SBIR awards, or others that do not apply, are wholly owned subsidiaries of current and past participants in the SBIR Program. If the proposed rule is implemented as final, wholly owned subsidiaries of concerns that have in the past or that now participate in the SBIR Program can receive SBIR awards, provided they are otherwise eligible. The SBA's experience is that some participating concerns subcontract, to the degree permitted by the Directive, some of their projects to their subsidiaries. The SBA does not object to this practice. The SBA believes these concerns would prefer to have their subsidiaries eligible to submit proposals and receive awards. Further, when the parent concern is eligible, the SBA does not consider its newly eligible subsidiary as adverse competition for SBIR Program awards. The SBA has specifically requested comments on this issue in the Supplementary Information above to assess how this proposed rule will effect competition in the SBIR Program.

Participating agencies have no limit to the number and amount of awards they may make in a given fiscal year. The agencies have goals and objectives, but they are not limited to those levels. This rule, if the SBA adopts it as a final rule, will open up opportunities for more small R&D concerns to participate in the SBIR Program.

(3) Projected Reporting or Recordkeeping, or Other Compliance Requirements of This Rule

This proposed eligibility requirement does not impose any additional reporting, recordkeeping or other compliance requirements on small entities for the SBA's programs. It also does not create additional costs on a business to determine whether or not it qualifies as a small business. A business need only examine existing business information to determine its eligibility, such as its Federal tax returns. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

(4) Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Rule

The SBA's Small Business Size Regulations may in some instances overlap other Federal rules that use the SBA's small business size standards to define a small business. However, this proposed rule is limited to a single program and does not conflict with other regulatory requirements, or any small business program, other than the SBIR Program's Policy Directive. However, if this proposed change is adopted as final, the SBA will amend the Directive so that it is consistent with this rule.

(5) Alternatives To Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities

The SBA considered permitting concerns that are less than wholly owned by other concerns, or are owned by more than one other concern, to be eligible for SBIR awards. The SBA believes that in such cases it would be virtually impossible to assure that SBIR awardees are ultimately at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. To verify eligibility under those circumstances could require more reporting requirements for SBIR applicants. The SBA believes that the additional reporting requirements from applicants to prove their small business status would unnecessarily burden small concerns. The SBA is also concerned about how SBIR Program managers could be assured that the ultimate ownership of the awardee is an eligible small business for the SBIR Program under this alternative. However, the SBA specifically requests comment on whether this alternative is administratively feasible.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the Preamble, the SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 638, 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Revise § 121.702 to read as follows:

§ 121.702 What size standards are applicable to the SBIR program?

To be eligible for award of funding agreements in the SBA's Small Business Innovation Research (SBIR) program, a business concern must meet the following criteria:

(a) The concern must be either:

(1) At least 51 percent owned and controlled by one or more individuals who are citizens of the United States, or

permanent resident aliens in the United States; or,

(2) 100 percent owned and controlled by another business concern that is itself at least 51 percent owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States; and

(b) Not have more than 500 employees, including affiliates.

Dated: April 9, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–14036 Filed 6–3–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–50–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4; A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600); A310; A319; A320; A321; A330; and A340 Series Airplanes; Equipped With PPG Aerospace Windshields

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 Airbus Model A300 B2 and B4; A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes; equipped with certain PPG Aerospace windshields. This proposal would require replacement of certain windshields manufactured by PPG Aerospace with new windshields. This action is necessary to prevent failure of both structural plies of the windshield caused by overheating of the power lead wire, which could cause reduced structural integrity of the windshield assembly, and consequent loss of the windshield during flight. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–50–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. 2002–NM–50–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–50–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–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and B4; A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes; equipped with certain windshields manufactured by PPG Aerospace. The DGAC advises that, after landing, an operator reported breakage (failure of both structural plies) of a windshield. Investigations performed by the manufacturer identified the cause of the failure of both structural plies as abnormal localized overheating of the power lead wire located between the structural plies of the windshield. The localized overheating was caused by electrical arcing between the power lead wires that supply power to the upper bus bar from the terminal block due to damage to the wire during manufacturing rework in production. During rework, the wire migrated away from the windshield interlayer and was accidentally damaged by a sharp tool during removal of the windshield pressure seal. Failure of both structural plies of the windshield caused by overheating of the power lead wire, if not corrected, could result in reduced structural integrity of the windshield assembly, and consequent loss of the windshield during flight.

Explanation of Relevant Service Information

Airbus has issued the All Operators Telexes (AOT) specified in Table 1 of this AD, which describe procedures for replacement of certain windshields

manufactured by PPG Aerospace with new windshields. Accomplishment of the actions specified in the AOTs is intended to adequately address the identified unsafe condition. The DGAC classified these AOTs as mandatory and issued French airworthiness directive 2001–606(B), dated December 12, 2001, in order to assure the continued airworthiness of these airplanes in France.

The Airbus AOTs reference PPG Aerospace Service Bulletin NP–175201–56–001, dated September 26, 2001, as an additional source of service information for accomplishing the replacement proposed in this AD.

FAA's Conclusions

These airplane models are manufactured in France 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 DGAC has kept the FAA informed of the situation described above. We have examined the findings of the DGAC, 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 designs registered in the United States, the proposed AD would require accomplishment of the actions specified in the AOTs described previously.

Clarification of AOT Document Number

Operators should note that the French airworthiness directive incorrectly references the document number for the AOT applicable to Model A300–600 series airplanes as Airbus AOT A300–56A6004. The correct document number is A300–600–56A6004.

Cost Impact

We estimate that 622 airplanes of U.S. registry would be affected by this proposed AD. Currently, there are no Model A340 series airplanes on the U.S. registry.

The following table shows the estimated cost impact to do the proposed actions for airplanes affected by this proposed AD. The following table also shows the estimated cost impact for Model A340 series airplanes affected by this proposed AD, should an affected airplane be imported and placed on the U.S. Register in the future. The average labor rate is $60 per work hour, and there are 2 windshields per airplane. The estimated maximum cost for all airplanes affected by this proposed AD is $11,979,720 (assuming both windshields must be replaced on all affected airplanes); however, some warranty relief may be available.

Model	Number of U.S.-registered airplanes	Work hours per windshield (estimated)	Parts cost per windshield (estimated)	Maximum cost per airplane (estimated)
A300 B2 and B4, A300–600, A310, A319, A320, A321, A330	622	8	$9,150	$19,260
A340	0	8	9,150	19,260

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. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2002–NM–50–AD.

Applicability: Airplanes listed in Table 1 of this AD, certified in any category, as follows:

TABLE 1.—APPLICABILITY

Model—	Equipped with PPG Aerospace windshields having—	
	Part Nos. (P/N)—	And Serial Nos. (S/N) as listed in—
A300 B2 and B4 series airplanes	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A300–56A0011, dated October 2, 2001.
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600 airplanes.	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A300–600-56A6004, dated October 2, 2001.
A310 series airplanes	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A310–56A2005, dated October 2, 2001.
A319, A320, and A321 series airplanes	NP–165311–2, NP–165311–3, NP–165311–4, NP–165311–5, or NP–165311–6.	Airbus All Operators Telex A320–56A1010, Revision 01, dated October 1, 2001.
A330 series airplanes	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A330–56A3005, dated October 2, 2001.
A340 series airplanes	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A340–56A4005, dated October 2, 2001.

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 both structural plies of the windshield caused by overheating of the power lead wire, which could cause reduced structural integrity of the windshield assembly, and consequent loss of the windshield during flight, accomplish the following:

Windshield Replacement

(a) Within 6 months after the effective date of this AD, replace windshields manufactured by PPG Aerospace having certain P/Ns and S/Ns listed in the applicable Airbus all operators telex (AOT) listed in Table 1 of this AD with new windshields, per the applicable Airbus AOT listed in Table 1 of this AD.

Note 2: The Airbus AOTs reference PPG Aerospace Service Bulletin NP–175201–56–001, dated September 26, 2001, as an additional source of service information for accomplishing the replacement required by this AD.

Part Installation

(b) As of the effective date of this AD, no person shall install on any airplane a windshield manufactured by PPG Aerospace having a certain P/N and S/N listed in the applicable AOT listed in Table 1 of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–606(B), dated December 12, 2001.

Issued in Renton, Washington, on May 28, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13977 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–325–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model 717–200 airplanes. This proposal would require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new removal limits for certain components of the flap system and to reduce the interval of inspections for fatigue cracking of certain principal structural elements (PSEs). This action is necessary to detect and correct fatigue cracking of certain safe-life structure and certain PSEs, which could adversely affect the structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 21, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–325–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–325–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 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be

examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–325–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–325–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As service experience is accumulated on airplanes or as the result of post-certification testing and evaluation, it may become necessary to revise removal limits for removal of certain life-limited components of the airplane or revise the interval for certain structural inspections in order to ensure the continued structural integrity of the airplane. The manufacturer may revise the Airworthiness Limitations document to include more restrictive life limits or revise repetitive intervals for certain non-destructive inspection (NDI) techniques and procedures for each principal structural element (PSE). For the purposes of this airworthiness directive, a PSE is defined as an element of structure that contributes significantly to carrying flight, ground, and pressurization loads. If a failure occurs on any of those PSEs, it could adversely affect the structural integrity of the airplane.

Boeing has completed analyses of certain safe-life structure on Model 717–200 airplanes. The results of these analyses indicate that removal limits of certain components of the flap system must be revised. Additionally, new data also indicate that the interval for inspections to detect fatigue cracking for certain PSEs also must be revised.

The actions specified by the proposed AD are intended to detect fatigue cracking of certain safe-life structure and certain PSEs and to require removal of certain safe-life structure in a timely manner. Such fatigue cracking, if not detected and corrected, could adversely affect the structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing 717–200 Airworthiness Limitations Instructions (ALI), Boeing Report Number MDC–96K9063, Revision 3, dated August 2002. Among other things, Revision 3 contains mandatory removal limits for certain components of the flap system and revises some intervals for inspections for fatigue cracking of certain PSEs. Additionally, Revision 3 corrects certain part numbers specified in an earlier ALI revision, adds some flap idler hinge parts to the PSE removal limits, and corrects some typographical errors that appeared in an earlier ALI revision. Accomplishment of the actions specified in the ALI is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require operators to revise the Boeing 717–200 ALI to incorporate Boeing Report Number MDC–96K9063, Revision 3, dated August 2002.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to special flight permits and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

Cost Impact

There are approximately 133 Model 717–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 108 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 $6,480, 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 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:

McDonnell Douglas: Docket 2001–NM–325–AD.

Applicability: All Model 717–200 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of certain safe-life structure and certain principal structural elements, which could adversely affect the structural integrity of the airplane; accomplish the following:

Revising Airworthiness Limitations Section

(a) Within 180 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness, Airworthiness Limitations Instructions (ALI), in accordance with Boeing Report No. MDC–96K9063, Revision 3, dated August 2002.

(b) Except as provided by paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspection intervals or removal times may be approved for the safe-life limited parts specified in Boeing Report No. MDC–96K9063, Revision 3, dated August 2002.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on May 28, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13978 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–16–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 97–22–16, which applies to certain Raytheon Model 1900, 1900C, and 1900D airplanes. AD 97–22–16 currently requires you to replace the bearings on the vent blower assemblies with improved design bearings and install a thermal protection device for the vent blowers. That AD resulted from reports of vent blower assembly bearings seizing and locking the blower motor on several of the affected airplanes. This proposed AD is the result of reports that vent blower assemblies modified in accordance with AD 97–22–16 are still malfunctioning. This proposed AD would retain the actions required in AD 97–22–16 for certain vent blower assemblies and require you to incorporate further product improvement modifications on all affected vent blower assemblies. The actions specified by this proposed AD are intended to prevent smoke from entering the cockpit and cabin due to the current configuration of vent blower assemblies, which could result in the pilot becoming incapacitated or impairing her/his judgment. Such a condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 4, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–16–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–16–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is

extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003–CE–16–AD.'' We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

Reports of the vent blower assembly bearings seizing and locking the blower motor on several Raytheon Model 1900, 1900C, and 1900D airplanes caused us to issue AD 97–22–16, Amendment 39–10187 (62 FR 58894, October 31, 1997. AD 97–22–16 currently requires the following on certain Raytheon Model 1900, 1900C, and 1900D airplanes:

—Incorporating a modification to replace the bearings in the vent blower assemblies with improved design bearings (Electromech Technologies Kit No. EM630–201–1 or EM630–201–2 (as appropriate for the blower serial number)); and

—Installing a thermal protection for the vent blowers (Electromech Technologies Kit No. EM630–201–1 or EM630–201–2 or Advanced Industries Kit No. BC80A905 (as appropriate for the blower serial number)).

What Has Happened Since AD 97–22–16 To Initiate This Proposed Action?

The FAA has received reports that vent blower assemblies modified in accordance with AD 97–22–16 are still malfunctioning.

Is There Service Information That Applies to This Subject?

Raytheon has issued Mandatory Service Bulletin SB 21–3448, Issued: October, 2002.

What Are the Provisions of This Service Information?

This service bulletin includes procedures for incorporating Electromech Technologies Modification Kit No. P/N 630–203–1 and Advanced Industries Modification Kit No. Kit No. P/N BC80A–901–3.

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

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon Model 1900, 1900C, and 1900D airplanes of the same type design;

—The actions specified in AD 97–22–16 and the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 97–22–16 with a new AD that would retain the actions required in AD 97–22–16 for certain vent blower assemblies and require you to incorporate further product improvement modifications for all affected vent blower assemblies.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 300 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish this proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 per hour = $180	$415 (for both the forward and aft ventilation blower assemblies).	$595	$595 × 300 = $178,500

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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 proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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, under 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. FAA amends § 39.13 by removing Airworthiness Directive (AD) 97–22–16, Amendment 39–10187 (62 FR 58894, October 31, 1997), and by adding a new AD to read as follows:

Raytheon Aircraft Company: Docket No. 2003–CE–16–AD; Supersedes AD 97–22–16, Amendment 39–10187.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are:

(1) Certificated in any category; and

(2) Equipped with vent blower assembly, part number 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7.

Model	Serial Nos.
1900	UA–3.
1900C	UB–1 through UB–74 and UC–1 through UC–174.
1900 (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–427.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent smoke from entering the cockpit and cabin due to the current configuration of vent blower assemblies, which could result in the pilot becoming incapacitated or impairing his/her judgment. Such a condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Check the maintenance records to determine if a part number (P/N)114–380028–1, 114–380028–3, 114-380028–5, or 114–380028–7 ventilation blower assembly is installed.	Within the next 800 hours time-in-with service (TIS) after the effective date of this AD, unless already accomplished.	In accordance Raytheon Aircraft Mandatory Service is Bulletin SB 21–3448, Issued: October, 2002. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.
(2) If, by checking the maintenance records, the owner/operator can definitely show that a P/N 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly is not installed, no further action is required by this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Prior to further flight after the maintenance records check required in paragraph (d)(1) of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.
(3) If, by checking the maintenance records, the owner/operator can definitely show that a P/N 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly is installed, accomplish the following for each P/N:. (i) *P/N 114–380028–1:* modify in accordance with Raytheon Service Bulletin No. 2721, Issued: January, 1997, prior to incorporating Electromechanic Technologies Modification Kit No. P/N 630–203–01 and changing the P/N to 114–380028–11. (ii) *P/N 114–380028–3:* incorporate Advanced Industries Modification Kit No. P/N BC80A–901–3 and change the P/N to 114–380028–9. (iii) *P/N 114–380028–5 with a serial number (S/N) of 2162 or above or with a S/N of 2162 with an "A" suffix:* no modification is required. Change the part number to 114–380028–11 and make an entry into the aircraft records that shows compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Accomplish all modifications prior to further flight after the maintenance check required in paragraph (d)(1) unless already accomplished.	In accordance with Raytheon Aircraft Mandatory Service Bulletin SB 21–3448, Issued: October, 2002, and Raytheon Service Bulletin No. 2721, Issued: January, 1997.

Actions	Compliance	Procedures
(iv) *P/N 114–380028–5 with a S/N prior to 2162 without an ''A'' suffix:* incorporate Electromechanic Technologies Modification Kit No. P/N 630–203–01 and change the P/N to 114–380028–11. (v) *P/N 114–380028–7:* incorporate Advanced Industries Modification Kit No. P/N BC80A–901–3 and change the P/N to 114–380028–9.		
(4) If the pilot cannot definitely show that a P/N 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly is installed through the maintenance records check, an appropriately-rated mechanic must perform an inspection to determine the P/N of the installed ventilation blower assembly and accomplish the applicable modification required in paragraphs (d)(2)(i), (d)(2)(ii), (d)(2)(iii), (d)(2)(iv), and (d)(2)(v) of this AD.	Inspect within the next 800 hours TIS after the effective date of this AD. Perform all modifications prior to further flight.	In accordance with Raytheon Aircraft Mandatory Service Bulletin SB 21–3448, Issued: October, 2002, and Raytheon Service Bulletin No. 2721, Issued: January, 1997.
(5) Do not install any P/N 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly, unless it has been modified as specified in paragraphs (d)(2)(i), (d)(2)(ii), (d)(2)(iii), (d)(2)(iv), and (d)(2)(v) of this AD.	As of the effective date of this AD	In accordance with Raytheon Aircraft Mandatory Service Bulletin SB 21–3448, Issued: October, 2002, and Raytheon Service Bulletin No. 2721, Issued: January, 1997.

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

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4107.

(2) Alternative methods of compliance approved in accordance with AD 97–22–16, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 97–22–16, Amendment 39–10187.

Issued in Kansas City, Missouri, on May 28, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13979 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–22–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 97–20–14, which applies to all Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU–2B series airplanes. AD 97–20–14 currently requires incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that would require pilot training before flight into known or forecast icing conditions after a certain date. AD 97–20–14 was the result of the Federal Aviation Administration's analysis that the training level of the pilots-in-command (PIC) of the MU–2B series airplanes made it difficult for pilots to recognize adverse operating conditions and operate safely while flying in icing conditions. Since issuance of AD 97–20–14, a new training video has been developed that includes information that is critical to safety of the MU–2B series airplanes. This proposed AD would require updating the AFM information to require this new video as the mandatory pilot training. The actions specified by this proposed AD are intended to decrease the chance of icing-related incidents or accidents of the MU–2B series airplanes due to pilot error.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 5, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–22–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–22–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may view information related to this proposed AD at the address above.

FOR FURTHER INFORMATION CONTACT: Contact one of the following for questions or more information related to this subject:

—*For General Icing Related Questions:* Mr. Paul Pellicano, Aerospace Engineer (Icing Specialist), Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097;

—*For Questions Relating to Airplanes on Type Certificate Data Sheet (TCDS) A2PC:* Mr. Carl Fountain, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5222; facsimile: (562) 627–5228; or

—*For Questions Relating to Airplanes on TCDS A10SW:* Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003–CE–22–AD.'' We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

Analysis that the training level of the pilots-in-command (PIC) of the MU–2B series airplanes made it difficult for them to recognize adverse operating conditions and operate safely while flying in icing conditions caused FAA to issue AD 97–20–14, Amendment 39–10150 (62 FR 51594, October 2, 1997). AD 97–20–14 currently requires incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that requires pilot training before further flight into known or forecast icing conditions after a certain date. This AFM limitation consists of the following:

> On or after November 15, 1997, no person may serve as pilot-in-command (PIC) of a Mitsubishi MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Biennial Icing Awareness Training (IAT), Mitsubishi Training Video No. YET–97336. This eight-hour training became available September 22, 1997, and is provided by Mitsubishi Heavy Industries at no cost, as part of the Mitsubishi Systems Review (MSR) program. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Mitsubishi at (972) 980–5001. Training is also available at the Flight Safety International (Houston) and Reese Howell Enterprises training facilities. Mitsubishi will provide pilot log book endorsements upon the completion of this training. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement.

What Has Happened Since AD 97–20–14 To Initiate This Proposed Action?

Since issuance of AD 97–20–14, Mitsubishi has developed a new training video, and FAA has determined that it includes information that is critical to the safety of the MU–2B series airplanes. This information includes:

—Procedures to recognize severe icing conditions that may overpower the propeller ice protection system and result in rapid airspeed loss without significant airframe ice accretion;

—Pneumatic deicing boot activation procedures as required by AD 2000–02–25, Amendment 39–11543 (65 FR 5422, February 4, 2000); and

—A clarified definition of icing conditions that is critical for operation of the engine ice protection system.

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

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on type design Mitsubishi MU–2B series airplanes if the PIC is not proficient in the operating conditions of these airplanes;

—The actions of AD 97–20–14 should be changed to incorporate the new training video; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 97–20–14 and would require incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that would require pilot training before further flight into known or forecast icing conditions after a certain date. This AFM limitation would consist of the following:

> On or before ____ (6 months after the effective date of this AD), no person may serve as pilot-in-command (PIC) of a Mitsubishi MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Mitsubishi Icing Awareness Training (IAT) video YET–01295. If training mandated by AD 97–20–14 has been received in the 24 months before ____ (6 months after the effective date of this AD), then the new training must be done no later than 24 months after the date of the AD 97–20–14 training. This eight-hour training has been available since July 2, 2002, and is provided by Mitsubishi Heavy Industries at no cost, as part of the Mitsubishi Systems Review (MSR) program. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Turbine Aircraft Services at (972) 248–3108. Training is also available at the Sim Com and Reese Howell Enterprises training facilities and some local Flight Standards District Offices (FSDOs). Mitsubishi will provide pilot log book endorsements upon the completion of this training. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of

compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 300 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

The pilot can accomplish all the work associated with this proposed action. We estimate less than 1 hour to incorporate the information into the AFM and another 8 hours to view the training video.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of the proposed AFM incorporation is ''within the next 10 days after the effective date of this AD.'' The actual viewing of the training video would be incorporated into the current schedule of the video required by AD 97–20–14.

Why Is This Proposed Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The unsafe condition described in this proposed AD is not a direct result of airplane design or operation, but is attributed to the expertise and knowledge of the PIC. For this reason, FAA has determined that a compliance time based upon calendar time should be proposed instead of a certain number of hours TIS.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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 proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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, under 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. FAA amends § 39.13 by removing Airworthiness Directive (AD) 97–20–14, Amendment 39–10150 (62 FR 51594, October 2, 1997), and by adding a new AD to read as follows:

Mitsubishi Heavy Industries, Ltd.: Docket No. 2003–CE–22–AD; Supersedes AD 97–20–14, Amendment 39–10150.

(a) *What airplanes are affected by this AD?* This AD affects Models MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–26A, MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–36A, MU–2B–40, and MU–2B–60 airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to decrease the chance of icing-related incidents or accidents of the MU–2B series airplanes due to pilot error.

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

Actions	Compliance	Procedures
Incorporate information into the Limitations Section of the Airplane Flight Manual (AFM) that would require pilot training before further flight into known or forecast icing conditions after a certain date. This AFM limitation would consist of the following: ''On or before _____(6 months after the effective date of this AD), no person may serve as pilot-in-command (PIC) of a Mitsubishi MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Mitsubishi IAT video YET–01295. If training mandated by AD 97–20–14 has been received in the 24 months before _____(6 months after the effective date of this AD), then the new training must be done no later than 24 months after the date of the AD 97–20–14 training. This eight-hour training has been available since July 2, 2002, and is provided by Mitsubishi Heavy Industries at no cost, as part of the Mitsubishi Systems Review (MSR) program. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Turbine Aircraft Services at (972) 248–3108. Training is also available at Sim Com and Reese Howell Enterprises training facilities and some local Flight Standards District Offices (FSDOs). Mitsubishi will provide pilot log book endorsements upon the completion of this training. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement''.	Do the AFM incorporation within the next 10 days after the effective date of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the AFM incorporation requirement of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4110; facsimile: (816) 329–4090.

(2) For information on any already approved alternative methods of compliance, contact Mr. Paul Pellicano, Aerospace Engineer (Icing Specialist), Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097.

(3) Alternative methods of compliance approved in accordance with AD 97–20–14, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may view information related to this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 97–20–14, Amendment 39–10150.

Issued in Kansas City, Missouri, on May 28, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13980 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14905; Airspace Docket No. 03–AGL–04]

Proposed Modification of Class E Airspace; Cheboygan, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Cheboygan, MI. Standard Instrument Approach Procedures (SIAPS) have been developed for Cheboygan County Airport, MI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing controlled airspace for Cheboygan County Airport.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Send comments on the 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–2003–14905/ Airspace Docket No. 03–AGL–04, 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, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

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, aeronautical, 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 document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14905/Airspace Docket No. 03–AGL–04.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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 Document's 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 NPRM's 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 14 CFR part 71 to modify Class E airspace at Cheboygan, MI, for Cheboygan County Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth 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 designations 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 than will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Cheboygan, MI [Revised]

Cheboygan County Airport, MI
(Lat. 45°39′13″ N., long. 84°31′09″ W.)
That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Cheboygan County Airport.

* * * * *

Issued in Des Plaines, Illinois on May 20, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–14069 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14906; Airspace Docket No. 03–AGL–05]

Proposed Modification of Class E Airspace; West Union, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at West Union, OH. Standard Instrument Approach Procedures (SIAPS) have been developed for Alexander Salamon Airport, West Union, OH. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing

controlled airspace for Alexander Salamon Airport.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Send comments on the 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–2003–14906/ Airspace Docket No. 03–AGL–05, 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, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

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, aeronautical, 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 document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14906/Airspace Docket No. 03–AGL–05.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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 Document's 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 NPRM's 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 14 CFR part 71 to modify Class E airspace at West Union, OH, for Alexander Salamon Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth 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 designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 7.1. [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 West Union, Oh [Revised]

West Union, Alexander Salamon Airport, OH
(Lat. 38°51′05″ N., long. 83°33′59″ W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Alexander Salamon Airport.

* * * * *

Issued in Des Plaines, Illinois on May 20, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–14070 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 343

[Docket No. 77N–0941]

RIN 0910–AA01

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of the Tentative Final Monograph, and Related Labeling; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until September 2, 2003, the comment period on the agency's proposal to amend the tentative final monograph (TFM) for over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic (IAAA) drug products to include ibuprofen as a generally recognized safe and effective analgesic/antipyretic active ingredient for OTC use and to amend its regulations to include consistent allergy warnings for OTC IAAA drug products containing nonsteroidal antiinflammatory active ingredients. The proposal was published in the **Federal Register** of August 21, 2002 (67 FR 54139). FDA is taking this action in response to a request for an extension of 90 days for the submission of comments on the proposed rule. The comment period for this information closed on November 19, 2002.

DATES: Submit written or electronic comments by September 2, 2003.

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

FOR FURTHER INFORMATION CONTACT: Ida I. Yoder, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 21, 2002 (67 FR 54139), FDA published a proposed rule to amend the TFM for OTC IAAA drug products to include ibuprofen as a generally recognized safe and effective analgesic/antipyretic active ingredient for OTC use and to amend its regulations to include consistent allergy warnings for OTC IAAA drug products that contain nonsteroidal antiinflammatory active ingredients.

The proposed rule was in response to a citizen petition and a comment to that petition and is part of FDA's ongoing review of OTC drug products. Based on the information submitted and other relevant information, FDA determined that ibuprofen in a 200-milligram (mg) tablet formulation for use in adults and children 12 years of age and older, at a maximum daily dose of 1,200 mg, qualifies as safe and effective for inclusion in an OTC drug monograph when labeled with adequate warnings and directions for use. Therefore, FDA proposed to include ibuprofen 200 mg, in tablet formulation, in 21 CFR 343.10(g) as a safe and effective ingredient for the relief of pain and fever in adults and children 12 years of age and older and to include specific warnings and directions for use in 21 CFR 343.50(c) and (d).

The agency also tentatively concluded that, for consistency, the ''Allergy alert'' and additional allergy warning statements required for certain OTC NSAID IAAA drug products should be extended to all such products, whether marketed under an OTC drug monograph or an NDA/ANDA. These standardized allergy alert and warning statements (in proposed § 201.324) would provide the following information:

(a) ''**Allergy alert**: [insert name of active ingredient (first letter of first word for ingredient in uppercase)] may cause a severe allergic reaction which may include:

- hives.
- facial swelling.
- asthma (wheezing).
- shock''.

(b) ''**Do not use** if you have ever had an allergic reaction to any other pain reliever/fever reducer'' (This statement appears as the first warning under the subheading ''Do not use.'')

(c) ''**Stop use and ask a doctor if** an allergic reaction occurs. Seek medical help right away.'' (These statements appear as the first warning under the subheading ''Stop use and ask a doctor if.'')

On October 11, 2002, FDA received a request (Ref. 1) for an extension of 90 days for submission of comments on the proposed rule. The comment stated that it had delayed its response to the proposal so that consideration could be given to the impact of FDA's Nonprescription Drug Advisory Committee (NDAC) discussions on the labeling of all OTC IAAA drug products, including ibuprofen, at its September 19 and 20, 2002, meeting. Therefore, the comment stated that it needed additional time to evaluate and comment on labeling suggestions that arose from the NDAC meeting and to review the preclinical and clinical safety data that the agency used to support label warning statements. Further, the comment stated that it was considering conducting consumer research on information relevant to crafting an appropriate OTC label for these products.

FDA has carefully considered the request and acknowledges that additional time may be beneficial to fully evaluate and respond to the issues. FDA considers an extension of time for comments to be in the public interest. Therefore, the agency is providing additional time for comments by reopening the comment period for 90 days from the date of this notice.

II. Request for Comments

Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Reference

The following reference is on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. EXT1.

Dated: May 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13914 Filed 6–3–03; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7507–5]

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Hanford Site for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization of transuranic (TRU) radioactive waste at the Hanford site proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents (Item II–A2–44, Docket A–98–49) are available for review in the public dockets listed in **ADDRESSES.** EPA will conduct an inspection of waste characterization systems and processes at Hanford to verify that the site can characterize transuranic waste in accordance with EPA's WIPP compliance criteria. EPA will perform this inspection the week of June 16, 2003.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before July 7, 2003.

ADDRESSES: Comments should be submitted to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Docket No. A–98–49, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m.

As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying. Air Docket A–98–49 in Washington, DC, accepts comments sent electronically or by fax (fax: 202–566–1741; e-mail: *a-and-r-docket@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Ms. Rajani D. Joglekar, Office of Radiation and Indoor Air, (202) 564–7734. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Web site at *http://www.epa/gov/radiation/wipp*.

SUPPLEMENTARY INFORMATION:

Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of Hanford's technical program for waste characterization in accordance with Condition 3 of the WIPP certification. We will evaluate the adequacy, implementation, and effectiveness of the applicable technical activities related to the Hanford TRU waste characterization program. We will confirm the continued adequacy of waste characterization processes at Hanford for (a) retrievably-stored, contact-handled debris at the Waste Receiving and Processing (WRAP) facility, and (b) homogeneous solids characterized at the Plutonium Finishing Plant (PFP) approved previously by EPA. These include: (1) Segmented Gamma Scanning Assay System at the Plutonium Finishing Plant for characterizing debris and solids; (2) Gamma Energy Assay (GEA) System Units A and B at the Waste Receiving and Processing (WRAP) facility used for characterizing retrievably-stored CH-debris waste; (3) visual examination at WRAP and PFP; and (4) other processes (such as acceptable knowledge, radiography, visual examination, data verification & validation). Also, we will evaluate capabilities of the following new equipment to characterize debris and solids, as applicable: (1) SGSAS at PFP Room 172; (2) seven calorimeters at PFP; (3) two Integrated Passive and Active Neutron (IPAN) systems at WRAP; and (4) visual examination technique at WRAP. The inspection is scheduled to take place the week of June 16, 2003.

EPA has placed DOE documents pertinent to the inspection in the public docket described in **ADDRESSES.** These include: (1) Hanford Site Transuranic Waste Certification Plan, HNF2600, Rev. 10, May 2003 and (2) Hanford Site Transuranic Waste Characterization Quality Assurance Project Plan, HNF 2599, Draft Rev. 9, May 2003. The documents are included in item II–A2–44 in Docket A–98–49. In accordance with 40 CFR 194.8, as amended by the final certification decision, EPA is providing the public 30 days to comment on these documents.

If EPA determines as a result of the inspection that the proposed processes and programs at Hanford adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste characterized by the approved processes from Hanford to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed. Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico

contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: May 30, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 03–14186 Filed 6–3–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1684, MB Docket No. 03–121, RM–10707]

Television Broadcast Service; Longview, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Estes Broadcasting, Inc., permittee of channel 54+, proposing the substitution of channel 38 − for channel 54+ at Longview, Texas. TV Channel 38 − can be allotted to Longview, Texas, with a minus offset at reference coordinates 32–35–23 N. and 95–23–27 W.

DATES: Comments must be filed on or before July 14, 2003, and reply comments on or before July 29, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee G. Petro, Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209–3801 (Counsel for Estes Broadcasting, Inc.).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–121, adopted May 14, 2003, and released May 21, 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, S.W., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Texas, is amended by removing Channel 54+ and adding Channel 38 − at Longview.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–14007 Filed 6–3–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AG70

Injurious Wildlife Species; Black Carp (*Mylopharyngodon piceus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the reopening of the public comment period on the proposed rule to add black carp (*Mylopharyngodon piceus*) to the list of injurious fish, mollusks, and crustaceans under the Lacey Act. We are reopening the comment period at this time in order to collect the best and most current scientific and economic data available on the proposed rule. Comments previously submitted need not be resubmitted as they will be incorporated into the public record and will be fully considered in the preparation of the next action.

DATES: Comments must be submitted on or before August 4, 2003.

ADDRESSES: Comments may be hand-delivered, mailed, or sent by fax to the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22203; FAX (703) 358–1800. You may send comments by electronic mail (e-mail) to: *BlackCarp@fws.gov. See* the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Kari Duncan, Division of Environmental Quality, Branch of Invasive Species, at (703) 358–2464 or *kari_duncan@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service published a proposed rule to add black carp to the list of injurious fish, mollusks, and crustaceans under the Lacey Act on July 30, 2002 (67 FR 49280). This listing would have the effect of prohibiting the importation of any live animal or viable egg of the black carp into the United States and prohibiting the movement of black carp or viable eggs between States without a permit issued by the Director of the Service. The best available information indicates that this action is necessary to protect the interests of human beings, and wildlife and wildlife resources from the purposeful or accidental introduction and subsequent establishment of black carp populations into ecosystems of the United States. As proposed, live black carp or viable eggs could be imported only by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits would also be required for the interstate transportation of live black carp or viable eggs currently held in the United States for scientific, medical, educational, or zoological purposes. The proposal would prohibit interstate transportation of live black carp or viable eggs currently held in the United States for any other purpose.

The 60-day comment period on the proposed rule to add black carp to the list of injurious wildlife closed on

September 30, 2002. During that comment period, we received information indicating that we had identified only one of the two parasites affecting the catfish, baitfish, sportfish, largemouth bass, and hybrid striped bass aquaculture facilities and that we had underestimated the economic impact that the proposed rulemaking may have on those facilities. However, we did not receive sufficient information on the magnitude of the effects of these parasites on those facilities to complete the economic analysis. We are reopening the comment period to gather more economic and scientific data on black carp. In addition to seeking general scientific and economic information on black carp, we are seeking specific information relative to the magnitude of impact that yellow grubs (*Clinostomum complanatum*) and flatworms (*Bolbophorus confusus*) have had on catfish, baitfish, sportfish, largemouth bass, and hybrid striped bass aquaculture facilities; alternative chemical and/or biological methods used to control the parasites affecting these aquaculture facilities; potential or known distribution of black carp; and potential or known impact of black carp on native species.

Public Comments Solicited

We are reopening the comment period at this time in order to collect the best and most current scientific and economic data available regarding the proposal to add black carp to the list of injurious wildlife under the Lacey Act. Previously submitted comments on the proposed rule need not be resubmitted. We will accept new and/or additional written comments and information during this reopened comment period.

Submit comments as identified in **ADDRESSES.** If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: [RIN 1018–AG70]'' in your e-mail subject line and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our office at telephone number 703–358–2148 during normal business hours. Please note that this e-mail address will be closed at the termination of this public comment period.

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 rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for 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 organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

The authority citation continues to read as follows:

Authority: 18 U.S.C. 42.

Dated: May 22, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–13996 Filed 6–3–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030519127–3127–01; I.D. 042403A]

RIN 0648–AO10

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Skate Complex (Skate) Fisheries; Skate Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Northeast (NE) Skate Fishery Management Plan (FMP). This proposed rule would establish: A possession limit for skate wings; a bait-only exemption to the wing possession limit restrictions; a procedure for the development, revision, and/or review of management measures on an annual, biennial, and interannual basis, including a framework adjustment process; open access permitting requirements for fishing vessels, operators, and dealers; new species-level reporting requirements for skate vessels and dealers; new discard reporting requirements for Federal vessels; and prohibitions on possessing smooth skates in the Gulf of Maine (GOM) Regulated Mesh Area (RMA), and thorny skates and barndoor skates throughout the management unit. This proposed rule would also implement other measures for administration and enforcement. The purpose of this proposed action is to manage the NE skate complex pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP and to prevent overfishing of skate resources.

DATES: Comments must be received at the appropriate address or fax number, (*See* **ADDRESSES**), on or before 5:00 p.m., local time, on July 7, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Skate FMP.'' Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

Copies of the FMP, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Michael Pentony, Senior Policy Analyst, 978–281–9283, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed by the New England Fishery Management Council (Council) in response to concerns that the continued harvest and increased landings in the skate fisheries required implementation of management measures to prevent overfishing and to allow for the collection of catch information on the status of the stocks. A notice of availability for the FMP was published in the **Federal Register** on May 1, 2003 (68 FR 23275). The comment period on the FMP ends on June 30, 2003.

Skates are harvested in two very different fisheries, one for lobster bait and one for wings for human consumption. The fishery for lobster bait is a more traditional and directed skate fishery that lands skates in whole form. The bait fishery involves vessels, primarily from ports in southern New England that target a combination of little skates (estimated to be ≤90 percent of landings) and, to a much lesser extent, juvenile winter skates (>10 percent of landings). Juvenile winter skates and little skates are difficult to differentiate due to their nearly identical appearance. The fishery for skate wings evolved in the 1990s as skates were promoted as an underutilized species, and fishermen shifted effort from groundfish and other troubled fisheries to skates and dogfish. The wing fishery is a more incidental fishery that involves a larger number of vessels located throughout the region. Vessels tend to catch skates when targeting other species such as groundfish, monkfish, and scallops, and land them if the price is sufficient to warrant the labor associated with cutting the wings.

On January 15, 1999, NMFS requested information from the public on barndoor skate for possible inclusion on the list of candidate species under the Endangered Species Act (ESA). In March and April 1999, several petitions were received from conservation groups requesting that NMFS immediately list barndoor skate as an endangered or threatened species and designate Georges Bank and other appropriate areas as critical habitat. This provided the impetus to complete a benchmark stock assessment for the entire skate complex. NMFS identified the need to develop an FMP to end overfishing and rebuild the resources based on the conclusions presented in late 1999 at the 30th Stock Assessment Workshop (SAW 30).

In March 2000, NMFS informed the Council of its decision to designate it as the responsible body for the development and management of the seven species included in the NE skate complex. In November 2000, the Council's Skate Committee approved the scoping document for the FMP. During the development of the FMP, the Skate Plan Development Team (PDT) continued to update the status determinations for the skate species based on the biomass reference points used during SAW 30. Currently (through the autumn 2001 survey), only two species remain in an overfished condition: Barndoor and thorny skates. In January 2001, the Council published a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register**, officially beginning the Council's FMP scoping process (66 FR 91).

On September 27, 2002, NMFS published its findings relative to the petitions to list barndoor skate as an endangered species as a notice of petition finding in the **Federal Register** at 68 FR 61005. After review of the best available scientific and commercial information, NMFS determined that listing the barndoor skate was not warranted at this time. The following factors all indicate a positive trend for barndoor skate populations: Recent increases in abundance of barndoor skate observed during trawl surveys; the expansion of known areas where barndoor skate have been encountered; increases in size range; and an increase in the number of small barndoor skates collected.

The Council held four public hearings on the draft FMP to provide an opportunity for public testimony by industry and other interested parties. During the public hearings, industry members expressed concerns about species identification problems in relation to the reporting requirements, as well as the species prohibitions (i.e., barndoor and thorny skates throughout their range, and smooth skates in the GOM RMA). Provincetown fishermen supported the lower trip limits, while New Bedford fishermen supported the higher trip limits. In terms of the proposed species prohibitions, many people were concerned about the potential for inadvertent retention of prohibited species that may result in violations, especially on high-volume trips. For this reason, some industry members did not support the prohibitions on possession and instead supported prohibitions on landing or sale. Overall, however, the proposed measures were generally well-supported and everyone who attended the public hearings and commented on the draft FMP agreed that it was important to collect more and better information on the skate resources.

Very little information is available about the individual skate species and the fisheries of which they are a component. Because skates have not been managed through a Federal FMP, few accurate and complete fishery data are available (e.g., landings and discards by species, amount of skate bait sold directly to lobster vessels, etc.). While developing the measures proposed in the FMP, the Council wrestled with difficult issues related to overfishing definition reference points and appropriate management measures to address individual skate species in need of rebuilding. Moreover, effective plan monitoring and appropriate recommendations for management adjustments, especially for fisheries in which skates are caught incidentally, hinge on the availability of more comprehensive information about these species, which will come once the FMP is implemented.

The biological, economic, and social impacts of these measures and the cumulative impacts associated with other FMPs and regulations are discussed in the FMP and FEIS.

Status of the Stock Complex

There are no direct estimates of biomass available for the seven individual skate species in the complex, so biomass indices from the Northeast Fisheries Science Center (NEFSC) trawl surveys have been used to characterize stock size. More specifically, for each species in the complex, information on the weight of the catch per tow (kg/tow) from the most representative trawl survey series over the longest possible time span was assembled. The data in the selected series were then used to characterize the distribution of biomass over the examined time period. Finally, candidate reference points were selected from the distribution so as to provide proxies for biomass targets that have a high probability of correctly characterizing the stock level that produces maximum sustainable yield (MSY).

For the aggregate skate complex, the NEFSC spring survey index of biomass was relatively constant from 1968 to 1980, then increased significantly to peak levels in the mid to late 1980s. The biomass of large-sized skates (barndoor, winter, and thorny) has declined steadily since the mid–1980s, while the recent increase in aggregate skate biomass has been attributed to an increase in little skates.

Overfishing Definitions

This FMP proposes overfishing definitions for each of the seven skate species in the complex, in accordance with the national standards of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act (SFA) of 1996. Determining the maximum fishing mortality rate (F) threshold for the skate species is problematic, given the current inability to directly estimate fishery exploitation rates. Therefore, the approach chosen by the Council was to use biomass levels indexed by the NEFSC trawl surveys as an indicator of exploitation. More specifically, a decline in the biomass of a species (for several years or based on a moving average), would indicate that current/

recent removals are in excess of the stock's ability to maintain its current population size. If an analysis of biomass levels leads to the determination of overexploitation, the Council would adopt measures to eliminate overfishing via either a framework adjustment or an amendment to the FMP.

The thresholds for F are based on annual percentage declines of the three-year average of the NEFSC trawl survey (spring or autumn, depending on the species). The percentages are specified for each species individually, based on historical variation within the survey. The F thresholds also include a precautionary ''backstop'' that indicates that overfishing is occurring if the trawl survey mean weight per tow declines for three consecutive years. The reference points and selected time series could be re-specified through a peer-review process and/or as updated stock assessments are completed.

Winter and thorny skates

Winter and thorny skates would be considered to be in an overfished condition when the three-year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing would be considered to be occurring when the three-year moving average of the autumn survey mean weight per tow declines by 20 percent or more, or when the autumn survey mean weight per tow declines for three consecutive years.

Smooth and clearnose skates

Smooth and clearnose skates would be considered to be in an overfished condition when the three-year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing would be considered to be occurring when the three-year moving average of the autumn survey mean weight per tow declines by 30 percent or more, or when the autumn survey mean weight per tow declines for three consecutive years.

Barndoor skate

Barndoor skate would be considered to be in an overfished condition when the three-year moving average of the autumn survey mean weight per tow is less than one-half of the mean weight per tow observed in the autumn trawl survey from 1963–1966 (currently 0.81 kg/tow). Overfishing would be considered to be occurring when the three-year moving average of the autumn survey mean weight per tow declines by 30 percent or more, or when the autumn survey mean weight per tow declines for three consecutive years.

Little skate

Little skate would be considered to be in an overfished condition when the three-year moving average of the spring survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the spring trawl survey from the selected reference time series. Overfishing would be considered to be occurring when the three-year moving average of the spring survey mean weight per tow declines by 20 percent or more, or when the spring survey mean weight per tow declines for three consecutive years.

Rosette skate

Rosette skate would be considered to be in an overfished condition when the three-year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing would be considered to be occurring when the three-year moving average of the autumn survey mean weight per tow declines by 60 percent or more, or when the autumn survey mean weight per tow declines for three consecutive years.

These proposed overfishing definitions incorporate the biomass targets and thresholds that were developed at SAW 30. The FMP contains additional discussion of the rationale for the biomass reference points for each skate species.

Optimum Yield (OY)

The SAW 30 Working Group determined that the traditional approaches that are used to estimate MSY are not appropriate in the case of skates for two principal reasons: There is no reliable time series of commercial fishery landings or discards for any of the individual species, and the time series for the complex as a whole is considered to be incomplete; and, very little reliable and current growth and maturity information is available for any of the species in the complex and very little information is available on the length composition of the landings and discards. Together, these factors preclude the estimation of MSY from sequential population (e.g., age- or length-based virtual population analysis), biomass dynamics (e.g., surplus production models), or dynamic pool models (e.g., yield-per-recruit analysis). Therefore, MSY for the individual skate species and/or the complex as a whole cannot be estimated at this time. A discussion of the alternative methodologies that were considered to estimate MSY (e.g., sequential population analysis, dynamic pool models, catch history models, etc.) and the conclusions that were drawn are provided in the FMP.

The National Standard Guidelines (NSGs) allow the specification of a fishery-wide OY for a mixed-stock fishery, where management measures for separate target harvest levels for individual stocks may be specified, but are not required. For the same reasons discussed relative to MSY, these approaches cannot be adopted to estimate OY at this time.

The following OY specifications for each species in the NE skate complex are based on the management measures that the Council included in the FMP. Consistent with the NSGs, the Council intends that OY cannot exceed MSY or the allowable portion of MSY necessary to be consistent with the MSY-based control rule. As better fishery information becomes available, these OY specifications may be revised and/or refined.

Winter skate

Because fishery data are lacking, there is currently no time series of catch or landings of winter skate on which to base an absolute specification of OY. The OY for winter skate would therefore be defined as the amount of winter skates that are harvested legally under the provisions of the FMP and the yield that results from the management measures in other fisheries, to the extent that these measures further impact (and likely reduce) the harvest of winter skates.

Little skate

Since abundance of the little skate resource has increased considerably over a time period that coincides with the operation of the bait fishery, it can be assumed that the resource is being harvested at an F that is below FMSY. The OY for little skate would therefore be defined as the amount of little skates that are harvested for bait legally under the provisions of the FMP.

Smooth, thorny, and barndoor skates

The interaction of skate fishing and multispecies fishing suggests that even more benefits will be afforded to smooth, thorny, and barndoor skates as fishing effort is reduced further in the NE multispecies fishery. Moreover, the year-round groundfish closed areas in

the GOM, as they are currently defined, provide a great deal of protection to smooth, thorny, and barndoor skates.

Because barndoor and thorny skates are currently in an overfished condition, the Council is proposing management action to rebuild these resources to their long-term sustainable level. Smooth skate is not overfished, but it has not yet rebuilt to its long-term biomass target. Therefore, to be as precautionary as possible, the Council proposes to set the OY for smooth, thorny, and barndoor skates at zero.

Clearnose and rosette skates

Since abundance of the clearnose and rosette skates have increased considerably over a time period and in an area that coincides with the operation of many fisheries, it can be assumed that the resources are being harvested at an F that is below FMSY. Therefore, the OY for clearnose and rosette skates is proposed to be defined as the amount of clearnose and rosette skates that are harvested legally under the provisions of the FMP.

Even in this situation of extremely sparse data, it is possible to judge whether current management strategies are sustainable or whether fishing effort needs to be curtailed to facilitate rebuilding. The Council has specified management measures in this FMP and in other fisheries that enhance the probability of future stock increases, with the expectation that progressively more data will become available to continually evaluate management strategies and more reliably estimate SFA reference points over time. Therefore, the specification of MSY and OY would be items that the Council could adjust through a framework adjustment to the FMP, provided that the specifications would not require management adjustments that are outside of the range of management measures that may be changed under the framework adjustment process.

Management Area

The boundaries of the management area, also called the management unit, would be limited to the waters north of 35° 15.3′ N. lat., bounded by the coastline of the continental United States in the west and north, and the Hague Line and the seaward extent of the U.S. exclusive economic zone (EEZ) in the east. These boundaries for the management unit are consistent with other relevant NE FMPs.

Fishing Year

The skate fishing year would be the same as the NE multispecies fishing year, currently May 1 April 30. If the multispecies fishing year changes in the future, the skate fishing year would change automatically to remain consistent with the NE multispecies fishing year.

Essential Fish Habitat (EFH)

The Council proposes to use relative abundance data to differentiate areas with relatively greater abundance of a species to identify EFH in contrast to areas with relatively lower abundance. Typically, areas of relatively high abundance or density are indicative of more suitable habitats. Research has demonstrated that, as populations decline, their range contracts and they are most abundant in available areas of best suited habitat.

The Council proposes to use the best available information on the distribution and relative abundance of the skate species as reflected in the NMFS otter trawl survey data. There are data available from the Massachusetts Inshore Trawl Survey on all but barndoor skate, and there are data available from the Hudson-Raritan Trawl Survey for little and clearnose skates. The NOAA Estuarine Living Marine Resources Program (ELMR) information does not differentiate between different species of skates, but provides information on the occurrence of skate species in the estuaries and embayments of New England and the Mid-Atlantic for the skate complex (identified as *Raja* spp.) as a whole.

Permitting Requirements

The owners of any commercial vessel that intends to fish for, catch, possess, transport, land, sell, trade, or barter skates in or from the skate management unit would be required to obtain an annual Federal skate permit (open-access).

Dealers who purchase or receive skates or skate parts from any vessel would be required to obtain a Federal dealer permit on an annual basis. Skates harvested from the skate management unit could only be sold to federally permitted dealers.

Operators of vessels issued a Federal skate vessel permit would be required to obtain a Federal operator permit. An individual who already holds an operator permit for another federally managed fishery would not need to reapply, since there is no qualification or test for this permit.

Vessel and Dealer Reporting Requirements

The Council clearly recognizes the problems associated with skate species identification. Because species-specific information is critical to the long-term success of this FMP, the Council is working closely with NMFS and the NEFSC to develop a species identification guide for skate vessels and dealers, as well as sea samplers and enforcement agents. Vessels holding skate permits and dealers authorized to purchase skates would be required to report species-level information on skates in existing Vessel Trip Reports.

The Council recognizes that mandating the reporting of discards by individual species may not be practical and may actually increase discard mortality for some species of skates. It is likely that unwanted skates would stay on the deck of a fishing vessel longer if the crew is required to sort the bycatch and differentiate the species that are being discarded. For this reason, the Council proposes that vessels holding Federal permits (regardless of the fishery) report skate discards by size category only (i.e., large and small skates).

Skate Wing Possession Restrictions

The retention and landing of skate wings would be limited to 10,000 lb (4,536 kg) per trip of less than or equal to 24 hours duration (and a limit of one trip per day) and 20,000 lb (9,072 kg) per trip exceeding 24 hours. The days-at-sea (DAS) call-in programs (groundfish, scallop, and monkfish) would be used to determine whether a vessel's trip is less than or greater than 24 hours.

By discouraging large-scale directed fishing for skate wings, the possession limit is expected to reduce overall fishing mortality on winter skates. However, the benefits of a wing possession limit include not only fishing mortality reductions for winter skate, but also long-term benefits to the wing species if the possession limit can discourage expansion of the fishery and/or an influx of new entrants into the fishery.

Bait-only Letter of Authorization (LOA)

This action would allow vessel owners and operators that fish for skates as bait only to be exempt from the wing possession limits, provided they obtain an LOA from the Regional Administrator. Vessel owners/operators that fish for a combination of bait and wings and vessels that do not obtain the LOA would be subject to the wing possession limits.

Skate Possession Prohibitions

Barndoor and thorny skates are in an overfished condition, so, in addition to the benefits that are likely to accrue to these species as a result of the NE multispecies regulations (closed areas,

DAS reductions, mesh increases), this action proposes to prohibit the possession of thorny skates and barndoor skates on all vessels fishing from, and all dealers who would purchase skates caught in, the EEZ portion of the Skate Management Unit. Although no longer considered to be in an overfished condition, the smooth skate resource is depleted and still well below its target biomass level. Therefore, in addition to the benefits that are likely to accrue to this species as a result of the NE multispecies regulations, this action proposes a prohibition on possession of smooth skates in the GOM RMA to conserve the smooth skate resource and promote the rebuilding of its biomass to target levels.

Annual Monitoring and Framework Adjustment Measures

The skate fishery would be monitored on at least an annual basis starting 1 year after the implementation of the FMP. The status of the resource and the fishery would be reviewed by the Council, its Skate Oversight Committee and Advisory Panel, and the Skate PDT. The Council would prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. If the Council determined that an adjustment to the measures is needed, it would implement either a framework adjustment or an amendment to the FMP.

The framework adjustment process would be similar to that used in other NE Region fisheries. This process would allow changes to measures below, as appropriate, to be made to the FMP or regulations in a timely manner, without going through the plan amendment process. The framework adjustment process may not be appropriate when it is determined that a proposed change would not be within the scope of the FMP, or the amendment process would be better suited to implement the proposed change. The framework process would provide a formal opportunity for public comment to supplement the customary public comment period provided by publishing a proposed rule. If changes to the management measures were contemplated in the FMP, and if sufficient opportunity for public comment on the framework action existed, NMFS could bypass the proposed rule stage and publish a final rule in the **Federal Register**, provided such rule complies with the requirements of the Administrative Procedure Act. The management measures and/or changes to them that could be implemented and adjusted through the framework process include the following: (1) Skate permitting and reporting requirements; (2) overfishing definitions and related targets and thresholds; (3) prohibitions on possession and/or landing of individual skate species; (4) skate possession limits; (5) skate closed areas (and consideration of exempted gears and fisheries); (6) seasonal skate fishery restrictions and specifications; (7) target TACs for individual skate species; (8) hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or bycatch quotas for non-directed fisheries; (9) establishing a mechanism for TAC set-asides to mitigate bycatch, conduct scientific research, or for other reasons; (10) onboard observer requirements; (11) gear modifications, requirements, restrictions, and/or prohibitions; (12) minimum and/or maximum sizes for skates; (13) adjustments to exemption area requirements, area coordinates, and/or management lines established by the FMP; (14) measures to address protected species issues, if necessary; (15) description and identification of EFH; (16) description and identification of habitat areas of particular concern; (17) measures to protect EFH; (18) adjustments and or/resetting of the ''baseline'' of management measures in other fisheries; (19) OY and/or MSY specifications; and (20) any other measures contained in the FMP.

Baseline Trigger and Review

The FMP identifies and characterizes a ''baseline'' of management measures in other fisheries that provide conservation benefits to skate species. The FMP also establishes a process for reviewing changes to the management measures included in this baseline, particularly changes that make the measures less restrictive. This approach allows adjustments to management measures in other fisheries while ensuring that skate rebuilding is not compromised. The proposed baseline measures and review process are described in detail in the FMP and Classification section of this rule.

The baseline review is intended to address potential significant impacts to skate mortality. Total skate mortality should be considered, including mortality resulting in increased directed fishing effort on skates and mortality resulting from the bycatch of skates. Therefore, this approach addresses National Standard 9, as considerations of bycatch and bycatch mortality are incorporated into the assessment of whether or not changes to the baseline measures will result in significant changes to skate mortality.

The lack of fishery-specific data precludes a quantitative assessment of the impacts of current baseline measures on skates and is likely to preclude such an assessment of the impacts of changes to these measures, at least in the near future. Over time, as data are collected through the FMP permit and reporting requirements, increased observer coverage, study fleets, and efforts to collect better information in other fisheries, the Skate PDT's ability to quantify the impacts of management measures on skates should improve greatly. However, qualitative assessments must suffice in the short-term, as quantitative assessments cannot be completed at this time.

Classification

At this time, NMFS has not determined that the FMP, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Council prepared an FEIS for the FMP; a notice of availability for the DEIS was published on August 30, 2002 (67 FR 55858). A copy of the FEIS may be obtained from the Council (*see* **ADDRESSES**). The Council has selected a set of preferred alternatives intended to mitigate, to the extent possible, all possible social and economic adverse effects while minimizing risks to the skate resources and their environment. Overall, the proposed action is expected to have significant positive effects on the skate resources relative to the no action alternative.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for the action, are contained in the preamble to this rule and in the SUMMARY. This rule does not duplicate, overlap, or conflict with any relevant Federal rules.

Quantitative information is limited for the NE skate fisheries because the detailed reporting requirements necessary to collect sufficient quantitative information do not currently exist. When possible, the quantitative impacts of the alternatives were considered, but in many instances it was only possible to describe potential impacts qualitatively. Because

costs of individual vessel operations were not available, gross revenues were used as a proxy for vessel profitability.

The proposed measures, and the alternatives, for addressing management of the NE skate fisheries could affect any commercial vessel holding an active Federal NE fishing permit. Data from the NE permit application database show that 4,828 vessels are currently permitted to fish in Federal waters, with 1,722 vessels permitted to fish for NE multispecies, monkfish, and/or sea scallops. Of these vessels, the Council considered the economic impacts on 775 vessels that have reported landings of skates or skate parts at least once in the last 3 years, and on another 120 from which skates or skate parts were reported to have been purchased at least once in the last 3 years. These 895 vessels are considered the universe of vessels most likely to be directly affected by the proposed action. All of the federally permitted vessels considered in this analysis readily fall within the Small Business Administration's (SBA's) definition of small business and the RFA's definition of ''small entity.'' Therefore, there are no disproportionate economic impacts between large and small entities.

In addition to the proposed action, the Council considered alternatives to the management measures, including a ''no action'' alternative. The ''no action'' alternative represents the regulatory environment that would exist if the Council did not initiate management of the NE skate complex and develop an FMP. A summary of the IRFA follows:

The proposed action would establish a skate wing possession limit of 10,000 lb (4,536 kg) per day and 20,000 lb (9,072 kg) per trip. Possession limits of 10,000 lb (4,536 kg), 20,000 lb (9,072 kg), and 30,000 lb (13,608 kg) were considered for both daily and trip limits. Based on the average ex-vessel price received for wings in 2000 ($0.36/lb ($0.16/kg)), the expected per trip revenue loss for vessels that would have exceeded the limit would be approximately $2,500 with a 10,000–lb (4,536–kg) possession limit, $2,400 with a 20,000–lb (9,072–kg) possession limit, and $2,700 with a 30,000–lb (13,608–kg) possession limit. Per vessel, the expected revenue loss would be approximately $3,100/year with a 30,000–lb (13,608–kg) possession limit, approximately $5,000/year with a 20,000–lb (9,072–kg) possession limit, and approximately $8,500/year with a 10,000–lb (4,536–kg) possession limit. The Council chose a combination of the 10,000–lb (4,536–kg) and 20,000–lb (9,072–kg) options to provide limits on landings in the wing fishery and protect winter skate while minimizing economic impacts on the industry. Impacts on annual vessel revenues are likely to be even smaller than these data might suggest, once the landings of other species on the same trips and in other fisheries are considered. For example, the potential revenue loss for the 18 vessels that landed more than 20,000 lb (9,072 kg) of skate wings on at least one trip during 2000 was less than 5 percent of total annual revenues for each vessel; the impact was less than 1 percent for 14 of these vessels.

The Council rejected the 30,000–lb (13,608–kg) possession limit because the analysis showed that only a very small conservation benefit could be expected with such a high possession limit. Options 1 and 2, when combined, were shown to produce up to a 14–percent reduction in landings and yet maintain income for both nearshore and offshore fishermen.

The impacts of the prohibitions on possession of barndoor skate, thorny skate, and smooth skate in the GOM cannot be quantified, but the status of these resources and information provided by industry suggest little, if any, impact would be expected on fishermen.

The options to prohibit either the landing or sale of these skate species, rather than the proposed prohibition on possession, would not be expected to make any difference from an economic perspective, as under all three options, the sale of these species would be prohibited and any potential revenue from these species would be foregone. Only the no action alternative could mitigate any adverse economic impacts, but this option was not acceptable from a conservation perspective.

The proposed action would also establish a geographical limit for the prohibition on possession of smooth skate. The overlap of the smooth skate resource with the skate bait fishery is unknown; for this reason, the prohibition would be limited to the GOM RMA. The majority of smooth skates are distributed in the GOM, so the geographical limitation should not compromise the conservation benefits of this action. Because smooth skates are not targeted in the GOM/GB skate fishery and are therefore not a significant component of the skate landings, this is expected to have only minimal economic impacts on vessels fishing in the GOM.

The proposed action would require Federal open-access skate permits for vessels, operators, and dealers engaged in any aspect of the skate fisheries. Some vessels, operators, and dealers are currently issued permits as a result of their participation in other managed fisheries. For these entities, the skate fishery would be added to an existing permit and there would be no additional impacts. Some vessel owners, operators, and dealers may have to obtain Federal permits for the first time. In these instances, the estimated costs associated with completing the necessary applications would be: Vessel permit, $4.50/applicant; dealer permit, $2.00/applicant; and operator permit, $30.00/applicant.

In order to collect information necessary to monitor the effectiveness of the FMP and to better understand the skate species and the skate fisheries, vessels landing skates or skate parts would need to submit logbook reports, and dealers purchasing skates or skate parts would need to submit dealer reports. Annual costs associated with completing vessel trip reports are estimated at $30.00/vessel. Annual costs associated with dealer reporting are estimated at $13.00/dealer.

The proposed action would allow vessels that fish for skates as bait only to obtain an LOA from NMFS so as to be exempt from the skate wing possession limits, but would require these vessels to only land whole skates smaller than 23 inches (58.42 cm) total length. This action would not have an economic impact on fishing vessels. The only significant alternative to this measure considered by the Council was to not implement the LOA program. This would have resulted in adverse economic impacts because bait-only vessels would have been subject to the potentially restrictive skate wing possession limit.

The FMP and FEIS discuss alternatives to the proposed action, including those considered by the Council but ultimately not recommended. The potential impacts of several of the proposed measures were mitigated by the Council's recommendations, as follows:

1.The proposed prohibition on possession of smooth skates was restricted to the GOM RMA, thus mitigating the potential adverse economic impact to vessels participating in the southern New England bait fishery.

2.The Council combined two of the possession limit options for the skate wing fishery. The 10,000–lb (4,536–kg) limit applies to short trips (24 hours or less) where it would be much less likely to result in adverse economic impacts to fishermen.

3.Requirements to land skates whole for identification purposes would create significant amounts of shoreside waste for processors. The additional cost

borne by dealers and processors would reduce dockside prices for fishermen. For these reasons, the Council did not recommend this measure.

4.The Council recommended against restricting the bait fishery to little skates only (as a method of protecting small winter skates) because it is too difficult to tell the two species apart. The time required to differentiate these two species in the high-volume bait fishery would have resulted in an adverse economic impact on fishing operations.

5.Potential possession limits in the bait-only fishery were rejected due to potential adverse economic impacts on the lobster fishery, which utilizes skates as bait.

6.A proposal to require heavier twine in sink gillnet fisheries to reduce incidental catches of skates was rejected because gillnet fishermen land only about 20 percent of total skates and the added costs to gillnet fisheries were perceived to be out of proportion with the expected conservation benefits.

Collection-of-Information Requirements

This rule contains eight collection-of-information requirements, which have been submitted to OMB for approval. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new and revised reporting requirements and the estimated time for a response are as follows: 8 minutes for a vessel trip report; 3 minutes for a dealer purchase report; 15 minutes for an open access vessel permit; 5 minutes for a dealer permit; 60 minutes for an operator permit; 2 minutes for a notification for observer deployment; 2 minutes for a bait-only fishery exemption notification (Letter of Authorization); and 2 minutes for bait transfer-at-sea documentation.

Public comment is sought regarding: 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; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (*see* **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection-of-information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Vessel permits, Reporting and recordkeeping requirements.

Dated: May 23, 2003.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); the tilefish fishery (Tilefish FMP); and the NE skate complex fisheries (Skate FMP). * * *

* * * * *

3. In § 648.2, the definitions of ''Council'' and ''fishing year'' and ''skate'' are revised, and new definitions for ''NE skate complex (skates)'', and ''Skate Management Unit'' are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, NE multispecies and monkfish fisheries; and NE skate fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; Atlantic surf clam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish.

* * * * *

Fishing year means: (1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year. (2) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year. (3) For all other fisheries in this part, from January 1 through December 31.

* * * * *

NE Skate Complex (skates) means *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

* * * * *

Skate means members of the Family Rajidae, including: *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

* * * * *

Skate Management Unit means an area of the Atlantic Ocean from 35°15.3′ N. Lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the EEZ and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all skates fished for, possessed, caught or retained in or from such area.

* * * * *

4. In § 648.4, paragraph (a)(14) is added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(14) *Skate vessels.* Any vessel of the United States must have been issued and have on board a valid skate vessel permit to fish for, possess, transport, sell, or land skates in or from the EEZ portion of the Skate Management Unit.

5. In § 648.5, the first sentence in paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) * * * Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. * * *

* * * * *

6. In § 648.6, paragraph (a)(1) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

* * * * *

7. In 648.7, paragraphs (a)(1)(iii) and (b)(1)(iii) are added, and the last sentence of paragraph (b)(1)(i) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(a) * * *

(1) * * *

(iii) *Dealer reporting requirements for skates.* In addition to the requirements under paragraph (i) of this section, dealers shall report the species of skates received. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Dealers will be provided with a skate species identification guide.

* * * * *

(b) * * *

(1) * * *

(i) * * * With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and in the case of skate discards, ''small'' (i.e., less than 23 inches (58.42 cm), total length) or ''large'' (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

(iii) *Vessel reporting requirements for skates.* In addition to the requirements under paragraph (b)(2)(i) of this section, the owner or operator of any vessel issued a skate permit shall report the species of all skates landed. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Discards of skates shall be reported according to two size classes, large skates (greater than or equal to 23 inches (58.42 cm) in total length) and small skates (less than 23 inches (58.42 cm) in total length). All other vessel reporting requirements remain unchanged. Vessel owners or operators that intend to land skates will be provided with a skate identification guide to assist in this data collection program.

* * * * *

8. In § 648.11, paragraphs (a) and (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-approved sea sampler/observer.

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, a skate permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, skates (including discards) or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, skates, tilefish, or other specimens taken by the vessel.

* * * * *

9. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), and O (skates) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such

exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

* * * * *

10. In § 648.13, paragraph (h) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(h) *Skates.* (1) Except as provided in paragraph (h)(2) of this section, all persons or vessels issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea any skates to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, or at sea to any vessel any skates while in the EEZ, or skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Vessels and vessel owners or operators issued Federal skate permits under § 648.4(a)(14) may transfer at sea skates taken in or from the EEZ portion of the Skate Management Unit provided:

(i) The transferring vessel possesses on board a letter of authorization issued by the Regional Administrator as specified under § 648.322(b);

(ii) The vessel and vessel owner or operator comply with the requirements specified at § 648.322(b);

(iii) The transferring vessel maintains a record of the quantity of skates transferred according to the requirements at § 648.7; and

(iv) The transferring vessel provides the receiving vessel documentation showing the date and the amount of skates transferred, whether or not a monetary exchange is involved in the transfer, and the transferring vessel maintains onboard, for a minimum of one year from the date of the transfer, a copy of said documentation.

11. In § 648.14, paragraphs (x)(13), (ee), and (ff) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(x) * * *

(13) *Skates.* All skates retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of all submitted evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion of the Skate Management Unit or only in state waters.

* * * * *

(ee) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to fish for, possess, or land skates in or from the EEZ portion of the Skate Management Unit, unless in possession of a valid Federal skate vessel permit or onboard a federally permitted lobster vessel in possession of whole skates less than the maximum size specified at § 648.322(b)(2) for use as bait only.

(ff) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid Federal skate permit to do any of the following:

(1) Fail to comply with the conditions of the skate wing possession and landing limits for winter skates specified at § 648.322, unless holding a letter of authorization to fish for and land skates as bait only at § 648.322(b).

(2) Fail to comply with the recordkeeping and reporting requirements of § 648.7(a)(1)(iii) and (b)(1)(iii).

(3) Transfer at sea or attempt to transfer at sea to any vessel, any skates taken in or from the EEZ portion of the Skate Management Unit, unless in compliance with the provisions of §§ 648.13(b) and 648.322(b).

(4) Purchase, possess, trade, barter or receive skates caught in the EEZ portion of the Skate Management Unit by a vessel that has not been issued a valid Federal skate permit under this part.

(5) Fail to comply with the provisions of the DAS notification program specified in §§ 648.82, 648.53, and 648.92, for the multispecies, scallop, and monkfish fisheries, respectively, when issued a valid skate permit and fishing under the skate wing possession limits at § 648.322.

(6) Fish for, catch, possess, transport, land, sell, trade, or barter whole skates and skate wings in excess of the possession limits specified at § 648.322.

(7) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit specified at § 648.322(c).

(8) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

(9) Fail to comply with the restrictions under the SNE Trawl and Gillnet Exemption areas for the NE skate fisheries at §§ 648.80(b)(5)(i)(B) and 648.80(b)(6)(i)(B).

12. In § 648.80, paragraphs (b)(5)(i)(C) and (b)(6)(i)(D) are added and paragraphs (b)(5) introductory text, (b)(5)(i)(A), (b)(6) introductory text, (b)(6)(i)(A), and (h)(2)(i)(8) are revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section and the monkfish and skate regulations, as applicable under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10′ N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) * * * (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section;

* * * * *

(C) A vessel not operating under a multispecies DAS may fish for, possess on board or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322; or

(*2*) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at § 648.80(b)(3).

* * * * *

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section, the monkfish regulations, as applicable under §§ 648.91 through 648.94, and the skate regulations, as applicable under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the

outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) * * * (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

* * * * *

(D) A vessel not operating under a multispecies DAS may fish for, possess on board or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322; or

(*2*) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at § 648.80(b)(3).

* * * * *

(h) * * *

(2) * * *

(i) * * *

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent by weight of all other species on board.

* * * * *

13. Subpart O is added to read as follows:

Subpart O—Management Measures for the NE Skate Complex Fisheries

Sec.

648.320 Skate FMP review and monitoring.
648.321 Framework adjustment process.
648.322 Skate possession and landing restrictions.

§ 648.320 Skate FMP review and monitoring.

(a) *Annual review.* The Council, its Skate Plan Development Team (PDT), and its Skate Advisory Panel shall monitor the status of the fishery and the skate resources following implementation of the Skate FMP.

(1) Starting 1 year after implementation of the Skate FMP, the Skate PDT shall meet at least annually to review the status of the species in the skate complex. At a minimum, this review shall include annual updates to survey indices and a re-evaluation of stock status based on the updated survey indices and the FMP's overfishing definitions.

(2) If new and/or additional information becomes available, the PDT shall consider it during this annual review. Based on this review, the Skate PDT may provide guidance to the Skate Committee and the Council regarding the need to adjust measures in the Skate FMP to better achieve the FMP's objectives. Any suggested revisions to management measures may be implemented through the framework process specified in § 648.321, or through an amendment to the FMP.

(b) *Biennial review.* The Skate PDT shall prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE skate complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(c) *Baseline review*—(1) *Baseline review process.* If the Council initiates an action in another FMP that may make less restrictive one or more of the baseline measures described in paragraph (c)(2) of this section and as identified in the Skate FMP, or may change one or more of the baseline measures such that the change is likely to have an effect the overall mortality for a species of skate subject to a formal rebuilding program, the Skate PDT shall take the following action prior to the Council's final decision on the initiating action:

(i) Evaluate the potential impacts of the proposed changes on rebuilding skate populations and overall mortality for the skate species subject to a formal rebuilding program, and develop, if the action would be inconsistent with the rebuilding plans, management measures (or modifications to the proposed action) to mitigate the impacts of the changes to the baseline measure(s) on rebuilding skates.

(ii) If the Skate PDT recommends management measures to mitigate impacts, the Council shall include in the initiating action management measures to offset the changes to the baseline measures. The management measures recommended by the Council may be one or more of the measures recommended by the Skate PDT, or other suitable measures developed by the Council.

(iii) If the Council fails to include in the initiating action management measures to offset the changes to the baseline measures when the Skate PDT recommends action, and cannot justify this lack of action, the Regional Administrator may implement one or more of the measures recommended by the Skate PDT through rulemaking consistent with the Administrative Procedure Act.

(2) *Baseline measures.* The baseline review process, as described in paragraph (c)(1) of this section, is initiated by changes to any of the following management measures:

(i) Multispecies year-round closed areas (§ 648.81);

(ii) Multispecies DAS restrictions (§ 648.82);

(iii) Gillnet gear restrictions (§ 648.82(k));

(iv) Lobster restricted gear areas (§ 697.23);

(v) Gear restrictions for small mesh fisheries (§ § 648.80(a)(5), (a)(9), and (a)(15));

(vi) Monkfish DAS restrictions for Monkfish-Only permit holders (§ 648.92); or

(vii) Scallop DAS restrictions (§ 648.53).

§ 648.321 Framework adjustment process.

(a) *Adjustment process.* To implement a framework adjustment for the Skate FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings (the initial meeting agenda must include notification of the impending proposal for a framework adjustment) and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) *Council review and analyses.* In response to the annual review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Skate FMP. After a framework action has been initiated, the Council will develop and analyze appropriate management actions within the scope of measures specified at § 648.312(b). The Council will publish notice of its intent to take action and provide the public with any

relevant analyses and opportunity to comment on any possible actions. Documentation and analyses for the framework adjustment shall be available at least 1 week before the final meeting.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the **Federal Register**. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the **Federal Register**.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(5) The Regional Administrator may approve, disapprove, or partially approve the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) *Possible framework adjustment measures.* Measures that may be changed or implemented through framework action, provided that any corresponding management adjustments can also be implemented through a framework adjustment, include:

(1) Skate permitting and reporting requirements;

(2) Overfishing definitions and related targets and thresholds;

(3) Prohibitions on possession and/or landing of individual skate species;

(4) Skate possession limits;

(5) Skate closed areas (and consideration of exempted gears and fisheries);

(6) Seasonal skate fishery restrictions and specifications;

(7) Target TACs for individual skate species;

(8) Hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or bycatch quotas for non-directed fisheries;

(9) Establishing a mechanism for TAC set-asides to mitigate bycatch, conduct scientific research, or for other reasons;

(10) Onboard observer requirements;

(11) Gear modifications, requirements, restrictions, and/or prohibitions;

(12) Minimum and/or maximum sizes for skates;

(13) Adjustments to exemption area requirements, area coordinates and/or management lines established by the FMP;

(14) Measures to address protected species issues, if necessary;

(15) Description and identification of EFH;

(16) Description and identification of habitat areas of particular concern;

(17) Measures to protect EFH;

(18) Adjustments and or/resetting of the ''baseline'' of management measures in other fisheries, described in § 648.320(c);

(19) OY and/or MSY specifications; and

(20) Any other measures contained in the FMP.

(c) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

§ 648.322 Skate possession and landing restrictions.

(a) *Skate wing possession and landing limit.* A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, provided the vessel fishes under a multispecies, scallop, or monkfish DAS as specified at §§ 648.82, 648.53, and 648.92, respectively, unless otherwise exempted under paragraph (b) of this section, may fish for, possess, and/or land up to the allowable daily and per trip limits specified as follows:

(1) Possess up to 20,000 lb (9,072 kg) of skate wings (45,400 lb (20,593 kg) whole weight) per trip of greater than 24 hours in duration; or

(2) Land up to 10,000 lb (4,536 kg) of skate wings (22,700 lb (10,296 kg) whole weight) per trip of 24 hours or less in duration.

(b) *Bait Letter of Authorization (LOA).* A skate vessel owner or operator under this part may request and receive from the Regional Administrator an exemption from the skate wing possession limit restrictions, provided that the following requirements and conditions are met:

(1) The vessel owner or operator obtains an LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner/operator possesses and/or lands only whole skates less than 23 inches (58.42 cm) total length.

(3) The vessel owner or operator fishes for, possesses, or lands skates only for use as bait.

(4) Vessels that fish for, possess, and/or land any combination of skate wings and whole skates less than 23 inches (58.42 cm) total length must comply with the possession limit restrictions under paragraph (a) of this section for all skates or skate parts on board.

(5) Any vessel owner/operator meets the requirements at § 648.13(h).

(6) The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 1 month.

(c) *Prohibitions on possession of skates.* All vessels fishing in the EEZ portion of the Skate Management Unit are subject to the following prohibitions:

(1) A vessel may not retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit.

(2) A vessel may not retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

[FR Doc. 03–13726 Filed 6–3–03; 8:45 am]

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Notices

Federal Register
Vol. 68, No. 107
Wednesday, June 4, 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

Office of the Secretary

Forest Land Enhancement Program; Determination of Primary Purpose of Certain Payments for Federal Tax Purposes

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made to individuals under the Forest Land Enhancement Program (FLEP) are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. This determination permits recipients to exclude certain payments under FLEP from gross income for Federal income tax purposes to the extent allowed by the Internal Revenue Service.

DATES: The Secretary's determination was signed May 21, 2003.

ADDRESSES: Questions may be addressed to Hal Brockman, Program Manager, Forest Land Enhancement Program, Cooperative Forestry Staff, Forest Service, USDA, 1400 Independence Avenue, SW., Mail Stop 1123, Washington, DC 20250–1123. A copy of the determination is available upon request. Information about the Forest Land Enhancement Program may also be obtained from the World Wide Web/Internet at *http://www.fs.fed.us/spf/coop/flep.htm.*

FOR FURTHER INFORMATION CONTACT: Hal Brockman, Cooperative Forestry Staff, USDA Forest Service, (202) 205–1694.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code (26 U.S.C. 126, as amended) provides that all or part of payments made to persons under certain cost-sharing programs in 26 U.S.C. (a)(1) through (10) may be excluded from the recipient's gross income for Federal income tax purposes under two conditions: (1) If the Secretary of Agriculture determines that the payments are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife (the criteria for making such a determination are set forth in 7 CFR part 14, Determining the Primary Purpose of Certain Payments for Federal Tax Purposes), and (2) If the payments are determined by the Secretary of the Treasury as not increasing substantially the annual income derived from the property.

To make such a determination, the Secretary of Agriculture evaluates a cost-share conservation program based on the criteria set out in 7 CFR part 14. Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury must determine that payments made under the cost-share conservation program do not substantially increase the annual income derived from the property benefited by the payments.

Therefore, having carefully examined the authorizing legislation for the Forest Land Enhancement Program (FLEP) (Title VIII of the Farm Security and Rural Investment Act of 2002; Pub. L. 107–171) and the planned operating procedures, the Secretary of Agriculture has determined, according to the criteria set forth in 7 CFR part 14, that the cost-share payments for implementing approved practices under FLEP are made primarily for the purpose of conserving soil and water resources, improving forests, protecting and restoring the environment, and providing a habitat for wildlife.

Subject to further determination by the Secretary of the Treasury that payments made under FLEP do not substantially increase the annual income derived from the property benefited by these payments, this determination by the Secretary of Agriculture permits payment recipients to exclude from gross income for Federal income tax purposes, all or part of the cost-share payments made under this program to the extent allowed by the Internal Revenue Service.

Dated: May 21, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–13928 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Texas Oak Wilt Suppression Program; Determination of Primary Purpose of Certain Payments for Federal Tax Purposes

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made to individuals under the State of Texas, Forest Service, Oak Wilt Suppression Program, are made primarily for the purpose of protecting and restoring the environment and improving forests. This determination permits recipients to exclude all or part of certain cost-share payments under this program from gross income for Federal income tax purposes to the extent allowed by the Internal Revenue Service.

DATES: The Secretary's determination was signed on May 22, 2003.

ADDRESSES: Questions may be addressed to Dr. Linda Wang, Texas Forest Service, John B. Connally Bldg., 301 Tarrow, Suite 364, College Station, TX 77840–78796. A copy of the determination is available upon request.

FOR FURTHER INFORMATION CONTACT: Dr. Linda Wang, Texas Forest Service, (979) 458–6650.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code (26 U.S.C. 126, as amended) provides that all or part of certain payments made to persons under State programs may be excluded from the receipient's gross income for Federal income tax purposes under two conditions: (1) If the Secretary of Agriculure determines that the payments are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing habitat for wildlife (the criteria for making such a determination are set forth in 7 CFR part 14, Determining the Primary Purpose of Certain Payments for Federal Tax Purposes), and (2) If the payments are determined by the Secretary of the Treasury as not increasing substantially the annual income derived from the property.

To make such a determination, the Secretary of Agriculture evaluates a

cost-share conservation program based on the criteria set forth in 7 CFR part 14. Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury must determine that payments made under the conservation program do not substantially increase the annual income derived from the property benefited by the payments.

Therefore, having carefully examined the authorizing legislation, regulations, and operating procedures regarding the Texas Oak Wilt Suppression Program, the Secretary of Agriculture, according to the criteria set forth in 7 CFR part 14, has determined that the cost-share payments made for planning and implementation of projects under the Texas Oak Wilt Suppression Program are made primarily for the purpose of conserving soil and water resources, improving forests, and protecting and restoring the environment.

Subject to further determination by the Secretary of the Treasury that payments made under the Texas Oak Wilt Suppression Program do not substantially increase the annual income derived from the property benefited by these payments, this determination by the Secretary of Agriculture permits payment recipients to exclude from gross income for Federal income tax purposes all or part of the cost-share payments made under this program to the extent allowed by the Internal Revenue Service.

Dated: May 22, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–13929 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Wisconsin Forest Landowner Grant Program; Determination of Primary Purpose of Certain Payments for Federal Tax Purposes

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made to individuals under the State of Wisconsin, Department of Natural Resources, Forest Landowner Grant Program (WFLGP) are made primarily for the purpose of conserving soil and water resources, improving forests, and protecting and restoring the environment. This determination permits recipients to exclude all or part of certain cost-share payments under WFLGP from gross income for Federal income tax purposes to the extent allowed by the Internal Revenue Service.

DATES: The Secretary's determination was signed on May 22, 2003.

ADDRESSES: Questions may be addressed to Linda DePaul, Wisconsin Department of Natural Resources, Bureau of Forestry, PO Box 7921, 101 Webster St., Madison, WI 53707–7921. A copy of the determination is available upon request.

FOR FURTHER INFORMATION CONTACT: Linda DePaul, Wisconsin Department of Natural Resources, Bureau of Forestry, (608) 266–2388.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code (26 U.S.C. 126, as amended) provides that all or part of certain payments made to persons under State programs may be excluded from the recipient's gross income for Federal income tax purposes under two conditions: (1) If the Secretary of Agriculture determines that the payments are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing wildlife habitat (the criteria for making such a determination are set forth in 7 CFR part 14, Determining the Primary Purpose of Certain Payments for Federal Tax Purposes), and (2) If the payments are determined by the Secretary of the Treasury as not increasing substantially the annual income derived from the property.

To make such a determination, the Secretary of Agriculture evaluates a cost-share conservation program based on the criteria set forth in 7 CFR part 14. Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury must determine that payments made under the conservation program do not substantially increase the annual income derived from the property benefited by the payments.

Therefore, having carefully examined the authorizing legislation for the Wisconsin Forest Landowner Grant Program (WFLGP) and the planned operating procedures, the Secretary of Agriculture, according to the criteria set forth in 7 CFR part 14, has determined that the cost-share payments for implementing approved practices under WFLGP are made primarily for the purpose of conserving soil and water resources, improving forests, protecting and restoring the environment, and providing a habitat for wildlife.

Subject to further determination by the Secretary of the Treasury that payments made under WFLGP do not substantially increase the annual income derived from the property benefited by these payments, this determination by the Secretary of Agriculture permits payment recipients to exclude from gross income for Federal income tax purposes, all or part of the cost-share payments made under the program to the extent allowed by the Internal Revenue Service.

Dated: May 22, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–13930 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–006N]

International Standard-Setting Activities

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (Codex), in accordance with section 491 of the Trade Agreements Act of 1979, as amended, and the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4809. This notice also provides a list of other standard-setting activities of Codex, including commodity standards, guidelines, codes of practice, and revised texts. This notice, which covers the time periods from June 1, 2002, to May 31, 2003, and June 1, 2003, to May 31, 2004, seeks comments on standards currently under consideration and recommendations for new standards.

ADDRESSES: Submit any written comments to: FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, Washington, DC 20250–3700. Please state that your comments refer to Codex and, if your comments relate to specific Codex committees, please identify those committees in your comments and submit a copy of your comments to the delegate from that particular committee. All comments submitted will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., United States Manager for Codex, U.S. Department of Agriculture, Office of the Undersecretary for Food Safety, Room 4861, South Agriculture Building, 1400

Independence Avenue, SW., Washington, DC 20250–3700; (202) 205–7760. For information pertaining to particular committees, the delegate of that committee may be contacted. (A complete list of U.S. delegates and alternate delegates can be found in Attachment 2 to this notice.) Documents pertaining to Codex are accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net.* The U.S. Codex Office also maintains a Web site at *http://www.fsis.usda.gov/OA/Codex/index.htm.*

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institutional framework for the conduct of trade relations among its members in matters related to the Uruguay Round Trade Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade (GATT). U.S. membership in the WTO was approved and the Uruguay Round Agreements Act was signed into law by the President on December 8, 1994. The Uruguay Round Agreements became effective, with respect to the United States, on January 1, 1995. Pursuant to section 491 of the Trade Agreements Act of 1979, as amended, the President is required to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization, Codex, International Office of Epizootics, and the International Plant Protection Convention. The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the U.S. Department of Agriculture as the agency responsible for informing the public of sanitary and phytosanitary standard-setting activities of each international standard-setting organization. The Secretary of Agriculture has delegated to the Administrator, Food Safety and Inspection Service (FSIS), the responsibility to inform the public of the SPS standard-setting activities of Codex. The FSIS Administrator has, in turn, assigned the responsibility for informing the public of the SPS standard-setting activities of Codex to the U.S. Codex Office, FSIS.

Codex was created in 1962 by two U.N. organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the principal international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, the United States Department of Agriculture (USDA); the Food and Drug Administration (FDA), Department of Health and Human Services (HHS); and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

As the agency responsible for informing the public of the sanitary and phytosanitary standard-setting activities of Codex, FSIS publishes this notice in the **Federal Register** annually. Attachment 1 (Sanitary and Phytosanitary Activities of Codex) sets forth the following information:

1. The sanitary or phytosanitary standards under consideration or planned for consideration; and
2. For each sanitary or phytosanitary standard specified:
   a. A description of the consideration or planned consideration of the standard;
   b. Whether the United States is participating or plans to participate in the consideration of the standard;
   c. The agenda for United States participation, if any; and
   d. The agency responsible for representing the United States with respect to the standard.

To obtain copies of those standards listed in Attachment 1 that are under consideration by Codex, please contact the Codex delegate or the U.S. Codex Office. This notice also solicits public comment on those standards that are under consideration or planned for consideration and recommendations for new standards. The delegate, in conjunction with the responsible agency, will take the comments received into account in participating in the consideration of the standards and in proposing matters to be considered by Codex.

The United States' delegate will facilitate public participation in the United States Government's activities relating to Codex Alimentarius. The United States' delegate will maintain a list of individuals, groups, and organizations that have expressed an interest in the activities of the Codex committees and will disseminate information regarding United States' delegation activities to interested parties. This information will include the current status of each agenda item; the United States Government's position or preliminary position on the agenda items; and the time and place of planning meetings and debriefing meetings following Codex committee sessions. In addition, the U.S. Codex Office makes much of the same information available through its web page, *http://www.fsis.usda.gov/OA/Codex.* Please visit the web page or notify the appropriate U.S. delegate or the Office of U.S. Codex Alimentarius, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, if you would like to access or receive information about specific committees.

The information provided in Attachment 1 describes the status of Codex standard-setting activities by the Codex Committees for the time periods from June 1, 2002 to May 31, 2003, and June 1, 2003 to May 31, 2004. In addition, the following attachments are included:

Attachment 2; List of U.S. Codex Officials (includes U.S. delegates and alternate delegates).

Attachment 3; Timetable of Codex Sessions (June 2002 through June 2004)

Attachment 4; Definitions for the Purpose of Codex Alimentarius

Attachment 5; Part 1—Uniform Procedure for the Elaboration of Codex Standards and Related Texts

Part 2—Uniform Accelerated Procedure for the Elaboration of Codex Standards and Related Texts

Attachment 6; Nature of Codex Standards

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on line through the FSIS web page, located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the ''Constituent Update'' page on the Internet at *http://www.fsis.usda.gov/oa/update/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC on: May 28, 2003.

F. Edward Scarbrough,

United States Manager for Codex.

Attachment 1: Sanitary and Phytosanitary Activities of Codex, Codex Alimentarius Commission and Executive Committee

The Codex Alimentarius Commission will hold its Twenty-sixth Session June 30–July 7, 2003, in Rome, Italy. At that time it will consider the standards, codes of practice, and related matters brought to its attention by the general subject committees, commodity committees, *ad hoc* Task Forces and member delegations. It will also consider options or strategies regarding the recent Joint FAO/WHO Evaluation of the Codex Alimentarius and Other FAO and WHO Work on Food Standards. At this Session, the Commission will elect a Chair, three Vice Chairs, and Regional Members of the Executive Committee as well as appoint Regional Coordinators.

Prior to the Commission meeting, the Executive Committee will meet at its Fifty-second Session on June 26–27, 2003. It is composed of the chairperson, vice-chairpersons and seven members elected from the Commission, one from each of the following geographic regions: Africa, Asia, Europe, Latin America and the Caribbean, Near East, North America, and South-West Pacific. It will consider matters arising from reports of Codex Committees including review of standards at step 5, requests for new work, and other items brought to its attention. It will also hear a report on, and make recommendations concerning, the Trust Fund for the Participation of Developing Countries and Countries in Transition in the Work of the Codex Alimentarius.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Residues of Veterinary Drugs in Foods

The Codex Committee on Residues of Veterinary Drugs in Foods determines priorities for the consideration of residues of veterinary drugs in foods and recommends Maximum Residue Limits (MRLs) for veterinary drugs. A veterinary drug is defined as any substance applied or administered to a food producing animal, such as meat or dairy animals, poultry, fish or bees, for therapeutic, prophylactic or diagnostic purposes or for modification of physiological functions or behavior.

A Codex Maximum Limit for Veterinary Drugs (MRLVD) is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or ug/kg on a fresh weight basis) that is adopted by the Codex Alimentarius Commission to be permitted or recognized as acceptable in or on a food. An MRLVD is based on the Acceptable Daily Intake (ADI) and indicates the amount of residue in food that is considered to be without appreciable toxicological hazard. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical analytical methods are available.

*Acceptable Daily Intake (ADI): An estimate by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) of the amount of a veterinary drug, expressed on a body weight basis, that can be ingested daily over a lifetime without appreciable health risk (standard man = 60 kg).

The following matters, contained in ALINORM 03/31 and ALINORM 03/31A, will be considered by the Codex Alimentarius Commission at its 26th Session:

To be considered at Step 8:

- Abemectin
- Carazolol
- Chlortetracycline/oxytetracycline/tetracycline
- Clenbuterol
- Cyfluthrin
- Deltamethrin
- Eprinomectrin
- Phoxim
- Porcine somatotropin

To be considered at Step 5/8:

- Cyhalothrin
- Dihydrostreptomycin/Streptomycin
- Ivermectin
- Lincomycin

To be considered for final adoption at Step 5 Accelerated Procedure:

- Draft amendments to the Glossary of Terms and Definitions

To be considered at Step 5:

- Cefuroxime

Other Work of the Committee:

- Proposed Draft Code of Practice to Minimize and Contain Antimicrobial Resistance
- Proposed Draft Revised Guidelines for the Establishment of a Regulatory Program for Control of Veterinary Drug Residues in Foods.
- Risk Analysis Principles and Methodologies, including Risk Assessment Policies in the Codex Committee on Residues of Veterinary Drugs in Foods
- Proposed Draft Appendix on the Prevention and Control of Veterinary Drug Residues in Milk and Milk Products
- Priority List of Veterinary Drugs Requiring Evaluation or Reevaluation
- Methods of Analysis and Sampling Issues
- Performance-based Criteria
- Identification of Routine Methods of Analysis

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Additives and Contaminants

The Codex Committee on Food Additives and Contaminants (CCFAC) (a) establishes or endorses permitted maximum or guideline levels for individual food additives, contaminants, and naturally occurring toxicants in food and animal feed; (b) prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); (c) recommends specifications of identity and purity for food additives for adoption by the Commission; (d) considers methods of analysis for food additives and contaminants; and (e) considers and elaborates standards and codes for related subjects such as labeling of food additives when sold as such and food irradiation. The following matters are under consideration by the Commission at its 26th Session in July 2003. The relevant documents are ALINORM 03/12 and ALINORM 03/12A.

Risk Analysis

To be considered at Step 5:

- Proposed Draft Risk Analysis Principles Applied by the Codex Committee on Food Additives and Contaminants

Food Additives

To be considered at Step 8:

- Codex General Standard for Food Additives: Draft Food Additive Provisions in Table 1 and Table 2
- General Standard for Food Additives: Draft Revisions to the Annex to Table 3
- Draft Revised Codex General Standard for Irradiated Foods

• Codex Advisory Specifications for the Identity and Purity of Food Additives arising from the 57th and 59th meetings of the Joint FAO/WHO Expert Committee on Food Additives (JECFA)

• Draft Revisions to the INS for Food Additives

To be considered at Step 5/8 of the Accelerated Procedure:

• Proposed Draft Revised Recommended International Code of Practice for Radiation Processing of Food

• Draft Revisions to the Codex International Numbering System for Food Additives

• Codex General Standard for Food Additives: Proposed Draft Food Additive Provisions in Table 1 and Table 2

To be considered at Step 5:

• Proposed Draft Revised Food Category System of the Codex General Standard for Food Additives

Proposed New Work:

• Proposed Draft Revised Preamble to the Codex General Standard for Food Additives

• Proposed Draft Code of Practice for the Safe Use of Active Chlorine

The Committee is continuing work on:

• General Standard for Food Additives: Draft Food Additive Provisions (in Tables 1, 2 and 3)

• International Numbering System

• Specifications for the Identity and Purity of Food Additives

• Discussion paper on Processing Aids and Carriers

• Discussion paper on the Harmonization of Terms Used by Codex and JECFA for Sub-Classes and Technological Functions

Contaminants

To be considered at Step 8:

• Codex General Standard for Contaminants and Toxins: Maximum Level for Patulin in Apple Juice and Apple Juice Ingredients in Other Beverages

• Codex General Standard for Contaminants and Toxins: Maximum Level for Ochratoxin A in Wheat, Barley, Rye and Derived Products

• Draft Code of Practice for the Prevention and Reduction of Patulin Contamination in Apple Juice and Apple Juice Ingredients in Other Beverages

• Draft Code of Practice for the Prevention and Reduction of Mycotoxin Contamination in Cereals, Including Annexes on Ochratoxin A, Zearalenone, Fumonisins, and Trichothecenes

• Codex General Standard for Contaminants and Toxins: Revocation of maximum level for lead in milkfat.

To be considered at Step 5:

• Proposed Draft Principles for Exposure Assessment of Contaminants and Toxins in Foods

• Proposed Draft Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Peanuts

• Proposed Draft Code of Practice for the Prevention and Reduction of Lead Contamination in Foods

• Proposed Draft Maximum Levels for Cadmium

Proposed New Work:

• Proposed Draft Maximum Levels for Aflatoxins in Tree Nuts (Almonds, Hazelnuts and Pistachios)

• Proposed Draft Code of Practice for the Prevention and Reduction of Tin Contamination in Foods

• Proposed Draft Maximum Levels for Deoxynivalenol

• Proposed Draft Revised Guideline Levels for Radionuclides in Foods following Accidental Nuclear Contamination for Use in International Trade (CAC/GL 5–1989), including Guideline Levels for Long-Term Use

• Discussion Paper on Acrylamide

The Committee is continuing work on:

• Proposed Draft Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Tree Nuts (Almonds, Hazelnuts and Pistachios)

• Proposed Draft Code of Practice for Source Directed Measures to Reduce Dioxin and Dioxin-like PCB Contamination of Foods

• Codex General Standard for Contaminants and Toxins: Draft Maximum Levels for Lead in Fish

• Codex General Standard for Contaminants and Toxins: Proposed Draft Maximum Levels for Cadmium in Rice, Soybeans, Peanuts, and Mollusks (including cephalopods)

• Codex General Standard for Contaminants and Toxins: Proposed Draft Maximum Levels for Tin in Liquid Canned Foods Other Than Beverages and in Canned Beverages

• Schedule 1 of the Proposed Draft Codex General Standard for Contaminants and Toxins in Foods

• Codex General Standard for Contaminants and Toxins: Maximum Level for Patulin in Apple Juice Ingredients in other beverages. The CCFAC is collecting data on the level of patulin in apple juice and apple juice ingredients for other beverages with the intent of reconsidering the maximum level once the Code of Practice had been implemented (*i.e.*, after four years)

• Position Paper on Dioxins and Dioxin-like PCBs

• Position Paper on Chloropropanols

• Position Paper on Aflatoxin in Tree Nuts

• Mycotoxin Contamination in Sorghum

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Pesticide Residues

The Codex Committee on Pesticide Residues recommends to the Codex Alimentarius Commission establishment of maximum limits for pesticide residues for specific food items or in groups of food. A Codex Maximum Residue Limit for Pesticide (MRLP) is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. Foods derived from commodities that comply with the respective MRLPs are intended to be toxicologically acceptable, that is, consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI*, should indicate that foods complying with Codex MRLPs are safe for human consumption.

Codex MRLPs are primarily intended to apply in international trade and are derived from reviews conducted by the Joint Meeting on Pesticide Residues (JMPR) following:

(a) review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices (GAP). Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices, and;

(b) toxicological assessment of the pesticide and its residue.

The following items will be considered by the Commission at its 26th Session in July 2003. The relevant documents are ALINORM 03/24 and ALINORM 03/24A.

To be considered at Step 8:

• Draft Amendments to the Guidelines on Good Laboratory Practice in Pesticide Residue Analysis and the Introduction Section of the Recommended Methods of Analysis for Pesticide Residues

• Draft and Draft Revised Maximum Residue Limits

To be considered at Step 5/8:

• Proposed Draft and Proposed Draft Revised Maximum Residue Limits

To be considered at Step 5:

• Proposed Draft and Proposed Draft Revised Maximum Residue Limits

The committee is continuing work on:

• Consideration of Draft and Proposed Draft Residue Limits in Foods and Feeds

• Paper on Pilot Project for the Examination of National MRLs as Interim Codex MRLs for Safer Alternative Pesticides

• Paper on Acute Dietary Risk Assessment

• Revision of Regional Diets and Information on Processing

• Revision of the List of Recommended Methods of Analysis for Pesticide Residues

• Revision of the Codex Classification of Foods and Animal Feeds

• Consideration of Elaboration of MRLs for Spices

• Revision of Codex Priority Lists of Pesticides for review by JMPR

• Paper on the establishment of MRLs for processed commodities.

• Paper on the elimination of environmental fate data review from the work of JMPR

*Acceptable Daily Intake (ADI) of a chemical is the daily intake which, during an entire lifetime, appears to be without appreciable risk to the health of the consumer on the basis of all the known facts at the time of the evaluation of the chemical by the Joint FAO/WHO Meeting on Pesticide Residues. It is expressed in milligrams of the chemical per kilogram of body weight.

Responsible Agency: EPA; USDA/AMS.

U.S. Participation: Yes.

Codex Committee on Methods of Analysis and Sampling

The Codex Committee on Methods of Analysis and Sampling:

(a) Defines the criteria appropriate to Codex Methods of Analysis and Sampling;

(b) Serves as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories;

(c) Specifies, on the basis of final recommendations submitted to it by the other bodies referred to in (b) above, Reference Methods of Analysis and Sampling appropriate to Codex Standards which are generally applicable to a number of foods;

(d) Considers, amends, if necessary, and endorses, as appropriate, methods of analysis and sampling proposed by Codex (Commodity) Committees, except that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives do not fall within the terms of reference of this Committee;

(e) Elaborates sampling plans and procedures, as may be required;

(f) Considers specific sampling and analysis problems submitted to it by the Commission or any of its Committees; and

(g) Defines procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The following guidelines and proposed amendments to the procedural manual will be considered by the 26th Commission in July 2003. The relevant document is ALINORM 03/23.

To be considered at Step 5:

• Proposed Draft General Guidelines on Sampling

• Proposed Draft Guidelines on Measurement Uncertainly

For consideration by the Commission:

• IUPAC Guidelines for Single-Laboratory Validation of Methods of Analysis (for adoption by reference)

• Proposed amendments to the Procedural Manual:

• Amendment to the General Criteria for the Selection of Methods of Analysis Using the Criteria Approach

• New section on Working Instructions for the Implementation of the Criteria Approach in Codex New Work:

• Review current Analytical Terminology for Codex

The Committee will continue work on:

• Proposed Draft Guidelines for Evaluating Acceptable Methods of Analysis

• Validation of methods

• Single Laboratory Validation

• Use of Proficiency Testing Schemes

• Endorsement of Methods of Analysis and Sampling Provisions in Codex Standards

• Proposed Draft Guidelines for Settling of Disputes on Analytical (test) Results

• Criteria for Methods of Analysis for Foods derived from Biotechnology

Responsible Agency: HHS/FDA; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Food Import and Export Certification and Inspection Systems

The Codex Committee on Food Import and Export Inspection and Certification Systems is charged with developing principles and guidelines for food import and export inspection and certification systems to protect consumers and to facilitate trade. Additionally, the Committee develops principles and guidelines for the application of measures by competent authorities to provide assurance that foods comply with essential requirements, especially statutory health requirements. This encompasses work on: equivalence of food inspection systems including equivalence agreements, processes and procedures to ensure that sanitary measures are implemented; guidelines on food import control systems; and guidelines on food product certification and information exchange. The development of guidelines for the appropriate utilization of quality assurance systems to ensure that foodstuffs conform to requirements and to facilitate trade also are included in the Committee's terms of reference.

The following guidelines, found in ALINORM 03/30 and 03/30A, will be considered for adoption by the Codex Alimentarius Commission at its 26th Session in July 2003:

To be considered at Step 8:

• Draft Guidelines for Food Import Control Systems

• Draft Guidelines on the Judgement of Equivalence on Sanitary Measures Associated with Food Inspection and Certification Systems

The committee is continuing work on:

• Proposed Revised Draft Guidelines for the Exchange of Information in Food Control Emergency Situations

• Discussion paper on the Judgement of Equivalence of Technical Regulations Associated with Food Inspection and Certification Systems

• Discussion paper on ''traceability/product tracing'' in the context of inspection and certification systems

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on General Principles

The Codex Committee on General Principles deals with procedure and general matters as are referred to it by the Codex Alimentarius Commission. The relevant documents are ALINORM 03/33 and ALINORM 03/33A. The following items will be considered at the 26th Session of the Commission in July 2003:

To be considered at Step 8:

• Draft Working Principles for Risk Analysis for Application within the Framework of Codex

The Committee continues to work on:

• Proposed Draft Working Principles for Risk Analysis as Guidance to National Governments

• Proposed Draft Revised Code of Ethics for International Trade in Foods

• Guidelines for Cooperation with International Intergovernmental Organizations

• Membership in the Codex Alimentarius Commission of Regional Economic Integration Organizations

• Consideration of a Definition for ''Traceability''/product tracing

• The role of the Committee in implementation of recommendations from the Joint FAO/WHO Evaluation of Codex Alimentarius and Other FAO and WHO Work on Food Standards

Responsible Agency: USDA/FSIS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Food Labelling

The Codex Committee on Food Labelling is responsible for drafting provisions on labelling issues assigned by the Codex Alimentarius Commission. The reference documents are ALINORM 03/22 and ALINORM 03/22A. The Committee held its Thirty-First Session in Ottawa, Canada, on April 28–May 2, 2003. It considered the following items:

• Draft Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods Proposed Revised Sections: Section 5—Criteria and Annex 2—Permitted Substances

• Draft Amendment to the General Standard for the Labelling of Prepackaged Foods—(Draft Recommendations for the Labelling of Foods Obtained through Certain Techniques of Genetic Modification/Genetic Engineering) Section 4.2.2 (allergenicity) and Section 2. (Definitions)

• Proposed Draft Amendment to the General Standard for the Labelling of Prepackaged Foods (Class Names) (Milk Protein/Milk Protein Products)

• Proposed Draft Amendment to the Guidelines on Nutrition Labelling

• Proposed Draft Recommendations for the Use of Health Claims: Proposed Draft Guidelines for the use of Nutrition and Health Claims

• Proposed Draft Amendment to the General Standard for the Labelling of Prepackaged Foods: Quantitative Declaration of Ingredients

• Discussion paper on Misleading Claims

• Discussion paper on Country of Origin Labelling

• Discussion paper on ''Traceability''/Product Tracing

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Hygiene

The Codex Committee on Food Hygiene has four primary responsibilities. First, the Committee drafts basic provisions on food hygiene applicable to all food. These provisions normally take the form of Codes of Hygienic Practice for a specific commodity (*e.g.* bottled water) or group of commodities (*e.g.*, milk and milk products). Second, the Committee suggests and prioritizes areas where there is a need for microbiological risk assessment at the international level and considers microbiological risk management matters in relation to food hygiene and in relation to the risk assessment activities of FAO and WHO. This often takes the form of developing general guidance documents such as the Principles and Guidelines for the Conduct of Microbiological Risk Assessment and the proposed draft Principles and Guidelines for the Conduct of Microbiological Risk Management, but can also take the form of developing microbiological risk management guidance documents for the control of specific microbial pathogens in food. Third, the Committee considers, amends if necessary, and endorses food hygiene provisions that are incorporated into specific Codex commodity standards by the Codex commodity committees. These provisions normally contain generic wording referencing the Recommended Code of Hygienic Practice: General Principles for Food Hygiene (ref: CAC/RCP 1–1969, Rev. 3–1997) and the Principles for the Establishment and Application of Microbiological Criteria for Foods (CAC/GL 21–1997), but may also include other provisions. Fourth, the Committee provides such other general guidance to the Commission on matters relating to food hygiene as is necessary. The following items will be considered by the Codex Alimentarius Commission at its 26th Session in July 2003. The relevant documents are ALINORM 03/13 and ALINORM 03/13A.

To be considered at Step 8:

• Draft Code of Hygienic Practice for Fresh Fruits and Vegetables

• Draft Revised Guidelines for the Application of HACCP System

To be considered at Step 5:

• Proposed Draft Code of Hygienic Practice for Milk and Milk Products

The committee continues to work on:

• Proposed Draft Principles and Guidelines for the Conduct of Microbiological Risk Management

• Proposed Draft Guidelines on the Application of the General Principles of Food Hygiene to the [management] of Listeria monocytogenes in Foods

• Proposed Draft Guidelines for Validation of Food Hygienic Control Measures

• Proposed Draft Revision of the Code of Hygienic Practice for Egg Products

• Discussion paper on Risk Management Strategies for *Salmonella* spp. in Poultry

• Discussion paper on Risk Management Strategies for *Campylobacter* spp. in Poultry

• Risk Profile for Enterohemorrhagic *E. coli* Including the Identification of Commodities of Concern, including Sprouts, Ground Beef and Pork

• Proposed Draft Process by Which the Committee on Food Hygiene Could Undertake its Work in Microbiological Risk Assessment/Risk Management

• Discussion Paper on the Proposed Draft Revision of the Recommended International Code of Practice for Foods for Infants and Children

• Discussion Paper on Development of Process, Procedures and Criteria to Establish Priorities for the Work of the Codex Committee on Food Hygiene

• Discussion Paper on the Development of Options for a Cross-Committee Interaction Process

Responsible Agency: HHS/FDA; FSIS/USDA.

U.S. Participation: Yes.

Codex Committee on Fresh Fruits and Vegetables

The Codex Committee on Fresh Fruits and Vegetables is responsible for elaborating world-wide standards and codes of practice for fresh fruits and vegetables. The following standards will be considered by the 26th Session of the Commission in July 2003. The relevant document is ALINORM 03/35.

To be considered at Step 8:

• Draft Standard for Sweet Cassava

• Draft Standard for Pitahayas

• Section 3—Provisions concerning sizing and Section 6.2.4—Commercial Identification in the grapefruit, lime and pummelo standards.

To be considered at Step 5:

• Proposed Draft Standard for Table Grapes

The Committee continues work on:

• Draft Standard for Oranges retained at Step 7

• Proposed Draft Standard for Tomatoes

• Proposed Draft Standard for Apples

• Proposed Draft Guide for the Quality Control of Fresh Fruits and Vegetables

New work subject to approval by 26th CAC:

• Proposed Draft Standard for Rambutan

Responsible Agency: USDA/AMS.

U.S. Participation: Yes.

Codex Committee on Nutrition and Foods for Special Dietary Uses

The Codex Committee on Nutrition and Foods for Special Dietary Uses is responsible for studying nutritional problems referred by the Codex Alimentarius Commission. The Committee also drafts general provisions, as appropriate, on nutritional aspects of all foods and develops standards, guidelines, or related texts for foods for special dietary uses. A request for new work will be made to the 26th Session of the Commission in July 2003. The relevant documents are ALINORM 03/26 and ALINORM 03/26A.

The committee continues work on:

- Proposed Draft Revised Standard for Processed Cereal-Based Foods for Infants and Young Children
- Proposed Draft Revised Standard for Infant Formula
- Proposed Draft Guidelines for Vitamin and Mineral Supplements
- Proposed Draft Revision of the Advisory Lists of Nutrient Compounds for Use in Foods for Special Dietary Uses intended for use by Infants and Young Children

New Work:

- Proposed Draft Recommendations on the Scientific Basis of Health Claims

When new scientific information becomes available, the committee plans to resume work on:

- Guidelines for Use of Nutrition Claims—Draft Table of Conditions for Nutrient Contents Claims (Part B containing Provisions on Dietary Fibre)
- Proposed Draft Revised Standards for Gluten-Free Foods
- Discussion Paper on Energy Conversion Factors

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Fish and Fishery Products

The Fish and Fishery Products Committee is responsible for elaborating standards for fresh, frozen and otherwise processed fish, crustaceans and mollusks. The following will be considered by the 26th Session of the Commission when it meets in July 2003. The relevant document is ALINORM 03/18.

To be considered at Step 8:

- Draft Standard for Dried Salted Anchovies
- Draft Code of Practice for Fish and Fishery Products (specific sections 1, 2, 3, 4, 5, 8, and 16)

To be considered at Step 5/8:

- Draft Code of Practice for Fish and Fishery Products (section 9, Surimi)

To be considered at Step 5:

- Proposed Draft Model Certificate for Fish and Fishery Products (sanitary certificate)
- Proposed Draft Amendment to the Standard for Quick Frozen Lobsters (inclusion of the species *Pleurooncondes monodon* and *Cervimundia johni*)

New Work:

- Proposed Draft Standard for Sturgeon Caviar
- Proposed Draft Amendment to the Standard for Salted Fish and Dried Salted Fish of the *Gadidae* family (Determination of water and salt by selecting certain sections of the fish)

The Committee continues work on the following:

- Proposed Draft Standard for Salted Atlantic Herring and Salted Sprats at Step 6
- Proposed Draft Code of Practice for Fish and Fishery Products (other sections 2, 6, 7, 10, 11, 12, 13, 14, 15, 17, and 18) at Step 3
- Proposed Draft Standard for Live and Processed Bivalve Mollusks
- Proposed Draft Standard for Smoked Fish
- Proposed Draft Standard for Quick Frozen Scallop Adductor Muscle Meat
- Fish Content Definition and its Method of Determination in Fish Sticks
- Revision of the Procedure for the Inclusion of Species
- Proposed Draft Model Certificate for Fish and Fishery Products (other than sanitary)

Responsible Agency: HHS/FDA; USDC/NOAA/NMFS.

U.S. Participation: Yes.

Codex Committee on Milk and Milk Products

The Codex Committee on Milk and Milk Products is responsible for establishing international codes and standards for milk and milk products. The following will be considered by the 26th Session of the Commission when it meets in July 2003. The relevant document is ALINORM 03/11.

To be considered at Step 8:

- Proposed Draft Revised Standard for Cream and Prepared Creams
- Proposed Draft Revised Standard for Fermented Milk Products
- Proposed Draft Revised Standard for Whey Powders

To be considered at Steps 5/8:

- Proposed Draft Amendment to the Codex General Standard for Cheese (Appendix on cheese rind, surface, and coating)

The Committee continues work on:

- Proposed Draft Standard for Products in Which Milk Components are Substituted by Non-Milk Components
- Evaporated Skimmed Milk with Vegetable Fat
- Sweetened Condensed Skimmed Milk with Vegetable Fat
- Skimmed Milk Powder with Vegetable Fat
- Proposed Draft Amendment to Section 3.3 (Composition) of the Codex General Standard for Cheese
- Proposed Draft Model Export Certificate for Milk and Milk Products
- Methods of Analysis and Sampling for Milk Products
- Draft Revised Standards for Individual Cheeses
- Draft Revised Standard for Processed Cheese
- Draft Revised Standard for Dairy Spreads
- Proposed Draft Revised Standard for Whey Cheese

Responsible Agency: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Fats and Oils

The Codex Committee on Fats and Oils is responsible for elaborating standards for fats and oils of animal, vegetable, and marine origin. The relevant document is ALINORM 03/17. The following will be considered by the Commission at its 26th Session in July 2003.

To be considered at Step 8:

- Draft Revised Standard for Olive Oils and Olive Pomace Oils
- Draft Amendment to the Standard for Named Vegetable Oils
- Palm superolein
- Mid-oleic sunflower oil
- Inclusion of new desmethysterol data and tocopherol and tocotrienol data for palm olien, palm stearin

New Work:

- Amendment to the Standard for Named Vegetable Oils: Rice Bran Oil

The Committee continues work on:

- Draft Standard for Fat Spreads and Blended Spreads
- Proposed Draft Amendments to the List of Acceptable Previous Cargoes

Responsible Agency: HHS/FDA; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Cocoa Products and Chocolate

The Codex Committee on Cocoa Products and Chocolate is responsible for elaborating world-wide standards for cocoa products and chocolate. The following standard will be considered by the 26th Session of the Commission in July 2003. The relevant document is ALINORM 03/14.

To be considered at Step 8:

- Draft Revised Standard for Chocolate and Chocolate Products

The Committee agreed to adjourn *sine die* as it had completed its program of work.

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Processed Fruits and Vegetables

The Codex Committee on Processed Fruits and Vegetables is responsible for elaborating standards for Processed Fruits and Vegetables. After having been adjourned *sine die*, the Committee reconvened in Washington, DC, in March 1998 to begin work revising the standards. The following standards will be considered by the 26th Session of the Commission in July 2003. The relevant document is ALINORM 03/27.

To be considered at step 8:

- Draft Standard for Bamboo Shoots
- Draft Revised Standard for Canned Stone Fruits
- Draft Codex Guidelines for Packing Media for Canned Fruit
- Draft Codex Standard for Aqueous Coconut Products—Coconut Milk and Coconut Cream

The committee is continuing work on:

- Draft Codex Standard for Pickled Products
- Proposed Draft Revised Standards for:
- Processed Tomato Concentrates
- Canned Tomatoes
- Canned Vegetables including Guidelines for Packing Media for Canned Vegetables
- Jams, Jellies and Marmalades
- Soy Sauce
- Canned Citrus Fruits

Other work:

- Methods of Analysis for Processed Fruits and Vegetables
- Proposed Draft Code of Practice for the Processing and Handling of Quick Frozen Foods
- Priority List for the Standardization of Processed Fruits and Vegetables

Responsible Agency: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Meat and Poultry Hygiene

The 24th Session of the Commission decided to reactivate the Codex Committee on Meat Hygiene and agreed to rename it the Codex Committee on Meat and Poultry Hygiene, with New Zealand as Host Government. The Terms of Reference were amended to reflect the inclusion of poultry in its mandate. The following, contained in ALINORM 03/16 and ALINORM 03/16A, will be considered by the Codex Alimentarius Commission at its 26th Session in July 2003.

To be considered at Step 8:

- Draft General Principles of Meat Hygiene

Other:

- Request to change the name back to the Codex Committee on Meat Hygiene

To be considered at Step 5:

- Proposed Draft Code of Hygienic Practice for Meat
- Requested the Commission to change the name back to the Codex Committee on Meat Hygiene

The Committee continues to work on:

- Proposed Draft Annex on Risk-Based Post-Mortem Examination Procedures for Meat
- Proposed Draft Annex on Microbiological Verification of Process Control of Meat Hygiene
- Discussion paper on Hygiene Provisions for Processed Meat

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Certain Codex Commodity Committees [1]

Several Codex Alimentarius Commodity Committees have adjourned *sine die.* The following Committees fall into this category:

- *Cereals, Pulses and Legumes*

  Responsible Agency: HHS/FDA, USDA/GIPSA

  U.S. Participation: Yes
- *Natural Mineral Water*

  Responsible Agency: HHS/FDA

  U.S. Participation: Yes
- *Sugars*

  Responsible Agency: USDA/ARS; HHS/FDA

  U.S. Participation: Yes
- *Vegetable Proteins*

  Responsible Agency: USDA/ARS, HHS/FDA

  U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on Foods Derived from Biotechnology

The Commission established this task force to develop standards, guidelines, or recommendations, as appropriate, for foods derived from biotechnology or traits introduced into foods by biotechnology, on the basis of scientific evidence, risk analysis and having regard, where appropriate, to other legitimate factors relevant to the health of consumers and the promotion of fair trade practices. The Task Force, established by the 23rd (1999) Session of the Codex Alimentarius Commission for a four year period of time, has completed its work. The following, contained in ALINORM 03/34 and ALINORM 03/34A, will be considered by the Codex Alimentarius Commission at its 26th Session in July 2003.

To be considered at Step 8:

- Draft General Principles for the Risk Analysis of Foods Derived from Modern Biotechnology
- Draft Guidelines for the Conduct of Safety Assessment of Foods Derived from Recombinant-DNA Plants
- Draft Guidelines for the Conduct of Food Safety Assessment of Recombinant-DNA Microorganisms

Responsible Agency: HHS/FDA; USDA/APHIS.

U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on Animal Feeding

The Commission at its 23rd Session established the *Ad Hoc* Intergovernmental Task Force on Animal Feeding to develop guidelines or standards, as appropriate, on good animal feeding practices. An Interim Report of the work of the Task Force, as required under its Terms of Reference, was presented to the 24th Commission by Denmark, the host government. The Task Force held its 4th Session on March 25–28, 2003. The following will be considered by the Commission at its 26th Session in July 2003:

To be considered at Step 5/8:

- Revised Draft Code of Practice for Good Animal Feeding

Responsible Agency: HHS/FDA/CVM; USDA/APHIS.

U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices

The Commission at its 23rd Session established this Task Force to revise and consolidate the existing Codex standards and guidelines for fruit and vegetable juices and related products, giving preference to general standards. These standards were originally developed by the Joint UNECE/Codex Group of Experts on the Standardization of Fruit Juices which had been abolished by its parent organizations. The Task Force held its third session in Brasilia, Brazil, on May 6–9, 2003. The reference documents are ALINORM 03/39 and 03/39A.

The committee is discussing:

- Proposed Draft Codex General Standard for Fruit Juices and Nectars
- Proposed Draft Revised Codex General Standard for Vegetable Juices
- Methods of Analysis and Sampling for Fruit and Vegetable Juices and Nectars

Responsible Agency: HHS/FDA; USDA/AMS.

U.S. Participation: Yes.

FAO/WHO Regional Coordinating Committees

The Codex Alimentarius Commission is made up of an Executive Committee,

[1] *Adjourned sine die.* The main tasks of these Committees are completed. However, the committees may be called to meet again if required.

as well as approximately 30 subsidiary bodies. Included in these subsidiary bodies are coordinating committees for groups of countries located in proximity to each other who share common concerns. There are currently six Regional Coordinating Committees:

- Coordinating Committee for Africa
- Coordinating Committee for Asia
- Coordinating Committee for Europe
- Coordinating Committee for Latin America and the Caribbean
- Coordinating Committee for the Near East
- Coordinating Committee for North America and the South-West Pacific

The United States participates as an active member of the Coordinating Committee for North America and the South-West Pacific, and is informed of the other coordinating committees through meeting documents, final reports, and representation at meetings. Each regional committee:

- Defines the problems and needs of the region concerning food standards and food control;
- Promotes within the committee contacts for the mutual exchange of information on proposed regulatory initiatives and problems arising from food control and stimulates the strengthening of food control infrastructures;
- Recommends to the Commission the development of world-wide standards for products of interest to the region, including products considered by the committee to have an international market potential in the future; and
- Exercises a general coordinating role for the region and such other functions as may be entrusted to it by the Commission.

Codex Coordinating Committee for North America and the South-West Pacific

The Coordinating Committee is responsible for defining problems and needs concerning food standards and food control of all Codex member countries of the region. The Seventh Session of the Committee was hosted by Canada October 29–November 1, 2002. Items on the agenda included:

- Trust Fund for the Participation of Developing Countries in Codex Standard Setting Procedures
- Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards
- Consideration of the Draft Medium-Term Plan 2003–2007
- Consideration of Traceability/Product Tracing
- Strategic Plan for the Coordinating Committee for North America and the Southwest Pacific
- Nomination of Samoa as the next Coordinator for the Region

Responsible Agency: USDA/FSIS.
U.S. Participation: Yes.

Attachment 2

U.S. Codex Alimentarius Officials Codex Committee Chairpersons

Codex Committee on Food Hygiene

Dr. Karen Hulebak, Senior Advisor for Scientific Affairs, Office of the Administrator, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue, SW., Room 3130, South Building, Washington, DC 20250–3700, Phone #: 202–720–8609, Fax #: 202–720–9893, E-mail: *karen.hulebak@fsis.usda.gov*

Codex Committee on Processed Fruits and Vegetables,

Mr. David L. Priester, International Standards Coordinator, Fruit & Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2049, South Building, Stop 0140, 1400 Independence Avenue, SW., Washington, DC 20250–0240, Phone #: (202) 720–2185, Fax #: (202) 720–8871, E-mail: *david.priester@usda.gov*

Codex Committee on Residues of Veterinary Drugs in Foods

Dr. Stephen F. Sundlof, Director, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place (HFV–1), Rockville, MD 20855, Phone #: (301) 827–2950, Fax #: (301) 827–8401, E-mail: *ssundlof@cvm.fda.gov*

Codex Committee on Cereals, Pulses and Legumes (adjourned *sine die*)

Mr. Steven N. Tanner, Director, Technical Services Division, Grain Inspection, Packers & Stockyards Administration, U.S. Department of Agriculture, 10383 N. Executive Hills Boulevard, Kansas City, MO 64153–1394, Phone #: (816) 891–0401, Fax #: (816) 891–0478, E-mail: *stanner@tsd.fgiskc.usda.gov*

Listing of U.S. Delegates and Alternates Worldwide General Subject Codex Committees

Codex Committee on Residues of Veterinary Drugs in Foods (Host Government—United States)

U.S. Delegate
Dr. Pamela L. Chamberlain, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Place HFV–130, Rockville, MD 20855, Phone #: (301) 827–8566, FAX #: (301) 827–4299, E-mail: *pchambe1@cvm.fda.gov*

Alternate Delegate
Dr. Alice Thaler, Staff Director, Animal and Egg Production Food Safety Staff, Food Safety and Inspection Service, 1400 Independence Avenue, SW., Washington, DC 20250–3700, Phone #: (202) 690–2683, Fax #: (202) 720–8213, E-mail: *alice.thaler@fsis.usda.gov*

Codex Committee on Food Additives and Contaminants (Host Government—The Netherlands)

U.S. Delegate
Dr. Terry C. Troxell, Director, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–1700, Fax #: (301) 436–2632, E-mail: *Terry.Troxell@cfsan.fda.gov*

Alternate Delegate
Dr. Dennis M. Keefe, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (202) 418–3113, Fax #: (202) 418–3131, E-mail: *dennis.keefe@cfsan.fda.gov*

Codex Committee on Pesticide Residues (Host Government—the Netherlands)

U.S. Delegate
Edward Zager, Associate Director, Health Effects Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Phone #: (703) 305–5035, Fax #: (703) 305–5147, E-mail: *Zager.Ed@epamail.epa.gov*

Alternate Delegate
Dr. Robert Epstein, Associate Deputy Administrator, Science and Technology, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 3522S, Mail Stop 0222, 1400 Independence Avenue, SW., Washington, DC 20090, Phone #: (202) 720–2158, Fax #: (202) 720–1484, E-mail: *Robert.Epstein@usda.gov*

Codex Committee on Methods of Analysis and Sampling (Host Government—Hungary)

U.S. Delegate

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Codex Committee on General Principles (Host Government—France)

U.S. Delegate

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Codex Committee on Food Labeling (Host Government—Canada)

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Codex Committee on Food Hygiene (Host Government—United States)

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Worldwide Commodity Codex Committees

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Codex Committee on Fish and Fishery Products (Host Government—Norway)

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Alternate Delegate

Vacant

Codex Committee on Cereals, Pulses and Legumes (Host Government—United States)

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Codex Committee on Milk and Milk Products (Host Government—New Zealand)

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Ad Hoc Intergovernmental Task Forces

Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices (Host government—Brazil)

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Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology (Host government—Japan)

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There are six regional coordinating committees:

Coordinating Committee for Africa

Coordinating Committee for Asia

Coordinating Committee for Europe

Coordinating Committee for Latin America and the Caribbean

Coordinating Committee for the Near East

Coordinating Committee for North America and the South-West Pacific

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ATTACHMENT 3.—TIMETABLE OF CODEX SESSIONS

[June 2002 through June 2004]

2002:			
CX 702–50	Executive Committee of the Codex Alimentarius Commission (50th Session).	26–28 June	Rome.
CX 706–23	FAO/WHO (Codex) Regional Coordinating Committee for Europe (23th Session).	10–13 September	Bratislava.
CX 727–13	FAO/WHO (Codex) Regional Coordinating Committee for Asia (13th Session).	17–20 September	Kuala Lumpur.
CX 713–21	Codex Committee on Processed Fruits and Vegetables (21st Session).	23–27 September	San Antonio, TX.
CX 732–7	FAO/WHO (Codex) Regional Coordinating Committee for North America and the South-West Pacific (7th Session).	29 October–1 November	Vancouver, BC.
CX 720–24	Codex Committee on Nutrition and Foods for Special Dietary Uses (24th Session).	4–8 November	Berlin.
CX 715–24	Codex Committee on Methods of Analysis and Sampling (24th Session).	18–22 November	Budapest.
CX–707–15	FAO/WHO (Codex) Regional Coordinating Committee for Africa (15th Session).	25–29 November	Kampala.
CX 725–13	FAO/WHO (Codex) Regional Committee for Latin America and the Caribbean (13th Session).	3–6 December	Santo Domingo.
2003:			
CX–734–2	FAO/WHO (Codex) Regional Coordinating Committee for the Near East (2nd Session).	20–23 January	Cairo.
CX 712–35	Codex Committee on Food Hygiene (35th Session)	27 January–1 February	Orlando, FL.
CX 709–18	Codex Committee on Fats and Oils (18th Session)	3–7 February	London.
CX–702–51	Executive Committee of the Codex Alimentarius Commission (51st [Extraordinary] Session).	10–11 February	Geneva.
CX–701–25	Codex Alimentarius Commission (25th [Extraordinary] Session)	12–15 February	Geneva.
CX 723–9	Codex Committee on Meat Hygiene (9th Session)	17–21 February	Wellington.
CX 730–14	Codex Committee on Residues of Veterinary Drugs in Foods (14th Session).	4–7 March	Arlington, VA.

ATTACHMENT 3.—TIMETABLE OF CODEX SESSIONS—Continued

[June 2002 through June 2004]

CX 802–4	*Ad hoc* Intergovernmental Task Force on Biotechnology (4th Session).	10–14 March	Yokohama.
CX 711–35	Codex Committee on Food Additives and Contaminants (35th Session).	17–21 March	Arusha.
CX 803–4	*Ad hoc* Intergovernmental Task Force on Animal Feeding (4th Session).	24–26 March	Copenhagen.
CX 718–35	Codex Committee on Pesticide Residues (35th Session)	31 March–4 April	Rotterdam.
CX 716–18	Codex Committee on General Principles (18th Session)	7–11 April	Paris.
CX 714–31	Codex Committee on Food Labelling (31st Session)	28 April–2 May	Ottawa.
CX 801–3	*Ad hoc* Intergovernmental Task Force on Fruit and Vegetable Juices (3rd Session).	6–9 May	Brasilia.
CX 702–52	Executive Committee of the Codex Alimentarius Commission (52st Session).	26–27 June	Rome.
CX 701–26	Codex Alimentarius Commission (26th Session)	30 June–5 July	Rome.
CX 731–11	Codex Committee on Fresh Fruits and Vegetables	8–12 September	Mexico City.
CX 722–26	Codex Committee on Fish and Fishery products	13–17 October	Aalesund, Norway.
CX–720–25	Codex Committee on Nutrition and Foods for Special Dietary Uses.	3–7 November	Berlin.
CX–733–123	Codex Committee on Food Import and Export Inspection and Certification.	1–5 December	TBA.
2004:			
CX 702–53	Executive Committee of the Codex Alimentarius Commission (53rd Session).	4–6 February	Geneva.
CX–723–10	Codex Committee on Meat and Poultry Hygiene (10th Session).	16–20 February	Auckland.
CX 715–25	Codex Committee on Methods of Analysis and Sampling (25th Session).	7–14 March	Budapest.
CX 711–36	Codex Committee on Food Additives and Contaminants (36th Session).	22–26 March	Rotterdam.
CX 712–36	Codex Committee on Food Hygiene (36th Session)	29 March–3 April	Washington, DC.
CX 718–36	Codex Committee on Pesticide Residues (36th Session)	19–24 April	New Delhi.
CX–703–06	Codex Committee on Milk and Milk Products (6th Session)	26–30 April	Auckland.
CX 716–19	Codex Committee on General Principles (19th Session)	3–7 May	Paris.
CX 714–32	Codex Committee on Food Labelling (32nd Session)	10–14 May	Ottawa.
CX–702–54	Executive Committee (54th Session)	24–26 June	Geneva.
CX–701–27	Codex Alimentarius Commission (27th Session)	28 June–2 July	Geneva.

Attachment 4

Definitions for the Purpose of Codex Alimentarius

Words and phrases have specific meanings when used by the Codex Alimentarius. For the purposes of Codex, the following definitions apply:

1. *Food* means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum, and any substance which has been used in the manufacture, preparation or treatment of ''food'' but does not include cosmetics or tobacco or substances used only as drugs.

2. *Food hygiene* comprises conditions and measures necessary for the production, processing, storage and distribution of food designed to ensure a safe, sound, wholesome product fit for human consumption.

3. *Food additive* means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport, or holding of such food results, or may be reasonably expected to result, (directly or indirectly) in it or its by-products becoming a component of or otherwise affecting the characteristics of such foods. The food additive term does not include ''contaminants'' or substances added to food for maintaining or improving nutritional qualities.

4. *Contaminant* means any substance not intentionally added to food, which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry, and veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination. The term does not include insect fragments, rodent hairs and other extraneous matters.

5. *Pesticide* means any substance intended for preventing, destroying, attracting, repelling, or controlling any pest including unwanted species of plants or animals during the production, storage, transport, distribution and processing of food, agricultural commodities, or animal feeds or which may be administered to animals for the control of ectoparasites. The term includes substances intended for use as a plant-growth regulator, defoliant, desiccant, fruit thinning agent, or sprouting inhibitor and substances applied to crops either before of after harvest to protect the commodity from deterioration during storage and transport. The term pesticides excludes fertilizers, plant and animal nutrients, food additives, and animal drugs.

6. *Pesticide residue* means any specified substance in food, agricultural commodities, or animal feed resulting from the use of a pesticide. The term includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products, and impurities considered to be of toxological significance.

7. *Good Agricultural Practice in the Use of Pesticides (GAP)* includes the nationally authorized safe uses of pesticides under actual conditions necessary for effective and reliable pest control. It encompasses a range of levels of pesticide applications up to the

highest authorized use, applied in a manner that leaves a residue, which is the smallest amount practicable.

Authorized safe uses are determined at the national level and include nationally registered or recommended uses, which take into account public and occupational health and environmental safety considerations.

Actual conditions include any stage in the production, storage, transport, distribution and processing of food commodities and animal feed.

8. *Codex Maximum Limit for Pesticide Residues (MRLP)* is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. MRLPs are based on their toxological effects and on GAP data and foods derived from commodities that comply with the respective MRLPs are intended to be toxologically acceptable.

Codex MRLPs, which are primarily intended to apply in international trade, are derived from reviews conducted by the JMPR following:

(a) toxological assessment of the pesticide and its residue, and

(b) review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices. Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices.

Consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI, should indicate that foods complying with Codex MRLPs are safe for human consumption.

9. *Veterinary Drug* means any substance applied or administered to any food-producing animal, such as meat or milk-producing animals, poultry, fish or bees, whether used for therapeutic, prophylactic or diagnostic purposes or for modification of physiological functions or behavior.

10. *Residues of Veterinary Drugs* include the parent compounds and/or their metabolites in any edible portion of the animal product, and include residues of associated impurities of the veterinary drug concerned.

11. *Codex Maximum Limit for Residues of Veterinary Drugs (MRLVD)* is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or μg/kg on a fresh weight basis) that is recommended by the Codex Alimentarius Commission to be legally permitted or recognized as acceptable in or on food.

An MRLVD is based on the type and amount of residue considered to be without any toxological hazard for human health as expressed by the Acceptable Daily Intake (ADI), or on the basis of a temporary ADI that utilizes an additional safety factor. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical and analytical methods are available.

12. *Good Practice in the Use of Veterinary Drugs* (GPVD) is the official recommended or authorized usage including withdrawal periods approved by national authorities, of veterinary drugs under practicable conditions.

13. *Processing Aid* means any substance or material, not including apparatus or utensils, not consumed as a food ingredient by itself, intentionally used in the processing of raw materials, foods or its ingredients, to fulfill a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product.

Definitions of Risk Analysis Terms Related to Food Safety

Hazard: A biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect.

Risk: A function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard(s) in food.

Risk analysis: A process consisting of three components: risk assessment, risk management and risk communication.

Risk assessment: A scientifically based process consisting of the following steps: (i) hazard identification, (ii) hazard characterization, (iii) exposure assessment, and (iv) risk characterization.

Hazard identification: The identification of biological, chemical, and physical agents capable of causing adverse health effects and which may be present in a particular food or group of foods.

Hazard characterization: The qualitative and/or quantitative evaluation of the nature of the adverse health effects associated with biological, chemical and physical agents that may be present in food. For chemical agents, a dose-response assessment should be performed. For biological or physical agents, a dose-response assessment should be performed if the data are obtainable.

Dose-response assessment: The determination of the relationship between the magnitude of exposure (dose) to a chemical, biological or physical agent and the severity and/or frequency of associated adverse health effects (response).

Exposure assessment: The qualitative and/or quantitative evaluation of the likely intake of biological, chemical, and physical agents via food as well as exposures from other sources if relevant.

Risk characterization: The qualitative and/or quantitative estimation, including attendant uncertainties, of the probability of occurrence and severity of known or potential adverse health effects in a given population based on hazard identification, hazard characterization and exposure assessment.

Risk management: The process, distinct from risk assessment, of weighing policy alternatives, in consultation with all interested parties, considering risk assessment and other factors relevant for the health protection of consumers and for the promotion of fair trade practices, and, if needed, selecting appropriate prevention and control options.

Risk communication: The interactive exchange of information and opinions throughout the risk analysis process concerning risk, related risk factors and risk perceptions, among risk assessors, risk managers, consumers, industry, the academic community and other interested parties, including the explanation of risk assessment findings and the basis of risk management decisions.

Attachment 5

Part 1

Uniform Procedure for the Elaboration of Codex Standards and Related Texts

Steps 1, 2 and 3

(1) The Commission decides, taking into account the ''Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies,'' to elaborate a Worldwide Codex Standard and also decides which

subsidiary body or other body should undertake the work. A decision to elaborate a Worldwide Codex Standard may also be taken by subsidiary bodies of the Commission in accordance with the above-mentioned criteria, subject to subsequent approval by the Commission or its Executive Committee at the earliest possible opportunity. In the case of Codex Regional Standards, the Commission shall base its decision on the proposal of the majority of members belonging to a given region or group of countries submitted at a session of the Codex Alimentarius Commission.

(2) The Secretariat arranges for the preparation of a proposed draft standard. In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues (JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to members of the Commission and interested international organizations for comment on all aspects including possible implications of the proposed draft standard for their economic interests.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5

The proposed draft standard is submitted through the Secretariat to the Commission or to the Executive Committee with a view to its adoption as a draft standard. When making any decision at this step, the Commission or the Executive Committee will give due consideration to any comments that may be submitted by any of its members regarding the implications which the proposed draft standard or any provisions of the standard may have for their economic interests. In the case of Regional Standards, all members of the Commission may present their comments, take part in the debate and propose amendments, but only the majority of the Members of the region or group of countries concerned attending the session can decide to amend or adopt the draft. When making any decisions at this step, the members of the region or group of countries concerned will give due consideration to any comments that may be submitted by any of the members of the Commission regarding the implications which the proposed draft standard or any provisions of the proposed draft standard may have for their economic interests.

Step 6

The draft standard is sent by the Secretariat to all members and interested international organizations for comment on all aspects, including possible implications of the draft standard for their economic interests.

Step 7

The comments received are sent by the Secretariat to the subsidiary body or other body concerned, which has the power to consider such comments and amend the draft standard.

Step 8

The draft standard is submitted through the Secretariat to the Commission together with any written proposals received from members and interested international organizations for amendments at Step 8 with a view to its adoption as a Codex Standard. In the case of Regional standards, all members and interested international organizations may present their comments, take part in the debate and propose amendments but only the majority of members of the region or group of countries concerned attending the session can decide to amend and adopt the draft.

Part 2

Uniform Accelerated Procedure for the Elaboration of Codex Standards and Related Texts

Steps 1, 2 and 3

(1) The Commission or the Executive Committee between Commission sessions, on the basis of a two-thirds majority of votes cast, taking into account the ''Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies'', shall identify those standards which shall be the subject of an accelerated elaboration process. The identification of such standards may also be made by subsidiary bodies of the Commission, on the basis of a two-thirds majority of votes cast, subject to confirmation at the earliest opportunity by the Commission or its Executive Committee by a two-thirds majority of votes cast.

(2) The Secretariat arranges for the preparation of a *proposed draft standard.* In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues (JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to Members of the Commission and interested international organizations for comment on all aspects including possible implications of the proposed draft standard for their economic interests. When standards are subject to an accelerated procedure, this fact shall be notified to the Members of the Commission and the interested international organizations.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5

In the case of standards identified as being subject to an accelerated elaboration procedure, the draft standard is submitted through the Secretariat to the Commission together with any written proposals received from Members and interested international organizations for amendments with a view to its adoption as a Codex standard. In taking any decision at this step, the Commission will give due consideration to any comments that may be submitted by any of its Members regarding the implications which the proposed draft standard or any provisions thereof may have for their economic interests.

Attachment 6

Nature of Codex Standards

Codex standards contain requirements for food aimed at ensuring for the consumer a sound, wholesome food product free from adulteration, and correctly labelled. A Codex standard for any food or foods should be drawn up in accordance with the Format for Codex Commodity Standards and contain, as appropriate, the criteria listed therein.

Format for Codex Commodity Standards Including Standards Elaborated under the Code of Principles Concerning Milk and Milk Products

Introduction

The format is also intended for use as a guide by the subsidiary bodies of the Codex Alimentarius Commission in presenting their standards, with the object of achieving, as far as possible, a uniform presentation of commodity standards. The format also indicates the statements which should be included in standards as appropriate under the relevant headings of the standard. The sections of the format required to be completed for a standard are only those provisions that are appropriate to an international standard for the food in question.

Name of the Standard
Scope
Description
Essential Composition and Quality Factors
Food Additives
Contaminants
Hygiene
Weights and Measures
Labelling
Methods of Analysis and Sampling

Format for Codex Standards

Name of the Standard

The name of the standard should be clear and as concise as possible. It should usually be the common name by which the food covered by the standard is known or, if more than one food is dealt with in the standard, by a generic name covering them all. If a fully informative title is inordinately long, a subtitle could be added.

Scope

This section should contain a clear, concise statement as to the food or foods to which the standard is applicable unless the name of the standard clearly and concisely identifies the food or foods. A generic standard covering more than one specific product should clearly identify the specific products to which the standard applies.

Description

This section should contain a definition of the product or products with an indication, where appropriate, of the raw materials from which the product or products are derived and any necessary references to processes of manufacture. The description may also include references to types and styles of product and to type of pack. The description may also include additional definitions when these additional definitions are required to clarify the meaning of the standard.

Essential Composition and Quality Factors

This section should contain all quantitative and other requirements as to composition including, where necessary, identity characteristics, provisions on packing media and requirements as to compulsory and optional ingredients. It should also include quality factors that are essential for the designation, definition, or composition of the product concerned. Such factors could include the quality of the raw material, with the object of protecting the health of the consumer, provisions on taste, odor, color, and texture which may be apprehended by the senses, and basic quality criteria for the finished products, with the object of preventing fraud. This section may refer to tolerances for defects, such as blemishes or imperfect material, but this information should be contained in appendix to the standard or in another advisory text.

Food Additives

This section should contain the names of the additives permitted and, where appropriate, the maximum amount permitted in the food. It should be prepared in accordance with guidance given on page 84 of the Codex Procedural Manual and may take the following form:

''The following provisions in respect of food additives and their specifications as contained in section * * * of the Codex Alimentarius are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants.''

A tabulation should then follow, viz.:

''*Name of additive, maximum level* (in percentage or mg/kg).''

Contaminants

(a) *Pesticide Residues:* This section should include, by reference, any levels for pesticide residues that have been established by the Codex Committee on Pesticide Residues for the product concerned.

(b) *Other Contaminants:* In addition, this section should contain the names of other contaminants and where appropriate the maximum level permitted in the food, and the text to appear in the standard may take the following form:

''The following provisions in respect of contaminants, other than pesticide residues, are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants.''

A tabulation should then follow, viz.:

''*Name of contaminant, maximum level* (in percentage or mg/kg).''

Hygiene

Any specific mandatory hygiene provisions considered necessary should be included in this section. They should be prepared in accordance with the guidance given in the Codex Procedural Manual. Reference should also be made to applicable codes of hygienic practice. Any parts of such codes, including in particular any end-product specifications, should be set out in the standard, if it is considered necessary that they should be made mandatory. The following statement should also appear:

''The following provisions in respect of the food hygiene of the product are subject to endorsement [have been endorsed] by the Codex Committee on Food Hygiene.''

Weights and Measures

This section should include all provisions, other than labelling provisions, relating to weights and measures, *e.g.,* where appropriate, fill of container, weight, measure or count of units determined by an appropriate method of sampling and analysis. Weights and measures should be expressed in S.I. units. In the case of standards which include provisions for the sale of products in standardized amounts, *e.g.* multiples of 100 grams, S.I. units should be used, but this would not preclude additional statements in the standards of these standardized amounts in approximately similar amounts in other systems of weights and measures.

Labelling

This section should include all the labelling provisions contained in the standard and should be prepared in accordance with the guidance given in the Codex Procedural Manual. Provisions should be included by reference to the General Standard for the Labelling of Prepackaged Foods. The section may also contain provisions which are exemptions from, additions to, or which are necessary for the interpretation of the General Standard in respect of the product concerned provided that these can be justified fully. The following statement should also appear:

''The following provisions in respect of the labelling of this product are subject to endorsement [have been endorsed] by the Codex Committee on Food Labelling.''

Methods of Analysis and Sampling

This section should include, either specifically or by reference, all methods of analysis and sampling considered necessary and should be prepared in accordance with the guidance given in the Codex Procedural Manual. If two or more methods have been proved to be equivalent by the Codex Committee on Methods of Analysis and Sampling, these could be regarded as alternatives and included in this section either specifically or by reference. The following statement should also appear:

''The methods of analysis and sampling described hereunder are to be endorsed [have been endorsed] by the Codex Committee on Methods of Analysis and Sampling.''

[FR Doc. 03–13771 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, Grasslands, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after June 1, 2003. The list of newspapers will remain in effect until another notice is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Appeals and Litigation Group Leader; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3696.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review.

Regional Forester decisions in North Dakota: Bismarck Tribune.

Regional Forester decisions in South Dakota: Rapid City Journal.

Beaverhead/Deerlodge—Montana Standard
Bitterroot—Ravalli Republic
Clearwater—Lewiston Morning Tribune
Custer—Billings Gazette (Montana); Rapid City Journal (South Dakota)
Dakota Prairie National Grasslands—Bismarck Tribune (North and South Dakota)
Flathead—Daily Inter Lake
Gallatin—Bozeman Chronicle
Helena—Independent Record
Idaho Panhandle—Spokesman Review
Kootenai—Daily Inter Lake
Lewis & Clark—Great Falls Tribune
Lolo—Missoulian
Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: May 28, 2003.

Kathleen A. McAllister,

Deputy Regional Forester.

[FR Doc. 03–13966 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Land Between The Lakes National Recreation Area; Land and Resources Management Plan; Trigg and Lyon Counties, KY, Stewart County, TN

AGENCY: Forest Service, USDA.

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

SUMMARY: The USDA Forest Service intends to prepare an environmental impact statement (EIS) in conjunction with development of a Land and Resources Management Plan (hereafter, ''LRMP'' or ''Area Plan'') for Land Between The Lakes National Recreation Area (hereafter ''LBL'' or ''Area''). The Area Plan will be prepared pursuant to requirements of 16 U.S.C. 1600 *et seq.;* the planning process will be initiated under the 1982 version of the Forest Service planning regulations (36 Code of Federal Regulations 219 *et seq.,* as is provided for at 36 CFR 219.35(b) of the current regulations). The EIS will be prepared pursuant to requirements of 42 U.S.C. 4321 *et seq.* and 40 CFR 1500–1508. This notice identifies topics that will help focus our planning effort, displays the estimated dates for filing a Draft Environmental Impact Statement (DEIS), provides information concerning public participation, and provides the names and addresses of the responsible agency official and the individuals who can provide additional information.

DATES: Comments concerning the scope of the analysis must be received in writing on or before July 21, 2003. The draft environmental impact statement is expected by March, 2004 and the final environmental impact statement is expected by November, 2004.

ADDRESSES: Send written comments to Area Planner, Land Between The Lakes National Recreation Area, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Information also will be posted on the LBL Web page at *http://www2.lbl.org/lbl/ADMIN/plan.htm.* Electronic mail should be sent to *focuslbl@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Barbara Wysock, Area Planner, at (270) 924–2161.

SUPPLEMENTARY INFORMATION:

Background—The Setting: Located in western Kentucky and Tennessee, LBL encompasses 170,000 acres of rolling forested hills abundant with wildlife; more than 300 miles of undeveloped shoreline; 281 miles of trails, campgrounds, interpretive and educational facilities, and numerous lake access areas. Annual visitation to the Area averages around two million people. About 30 million people can reach LBL within 5–6 hours, and one-third of the population of the United States is only a day's drive away. LBL is bounded on the west by Kentucky Lake (an impoundment of the Tennessee River) and on the east by Lake Barkley (an impoundment of the Cumberland River). A canal that constitutes LBL's northern boundary connects the two lakes; the southern boundary is located just north of the community of Dover, Tennessee. President Kennedy established LBL by Executive Order in 1963.

Title V of Public Law 105–277 (commonly known as the ''LBL Protection Act of 1998'', enacted October 28, 1998) transferred administrative jurisdiction of LBL from the Tennessee Valley Authority (TVA) to the United States Forest Service. The purposes for LBL as set forth in the Act include the following: (a) To protect and

manage the resources of the National Recreation Area for optimum yield of outdoor recreation and environmental education through multiple use management; (b) to authorize, research, test, and demonstrate innovative programs and cost-effective management; (c) and to help stimulate the development of the surrounding region and extend the beneficial results as widely as practicable.

Current LBL Management Plan and Planning Regulations: The LBL Protection Act of 1998 directed the Forest Service to prepare an LRMP for LBL that conforms to the National Forest Management Act of 1976 (NFMA). The Act also provided that the Forest Service could continue to use the existing TVA Natural Resources Management Plan as appropriate to provide management direction for LBL until such time as an LRMP is adopted. By virtue of this fact, the preparation of the Area Plan is thus subject to the planning regulations contained in 36 CFR 219 *et seq.*

On May 20, 2002 the Department issued an interim final rule to extend the date by which LRMPs would otherwise be subject to the November 2000 regulations (67 FR 35431). The interim final rule allows units of the National Forest System to continue to use the 1982 version of the 36 CFR 219 regulations until such time as a revision to the November 2000 rule is adopted. Accordingly, LBL will develop the Area plan under the 1982 regulations.

The Role of the Area Plan: The Area Plan will guide the overall management of LBL to achieve Area-wide goals and objectives (or desired conditions). The Area Plan will be analogous to a county or municipal zoning plan. The results of these management goals will contribute to ecological sustainability, as well as to stimulate the development of local communities affected by LBL management activities. By direction of the LBL Protection Act of 1998, the Plan will have these emphases: Public recreational opportunities; conservation of fish and wildlife and their habitat; provision for diversity of native and desirable non-native plants, animals; opportunities for hunting and fishing; and environmental education. Decisions made in the Area Plan do not compel the agency to undertake particular site-specific projects and, thus, do not normally make any irreversible or irretrievable commitment of resources. The Area Plan, however, will strive to achieve these provisions; establish limitations on what actions may be authorized; prescribe the general distribution of activities across the landscape; and provide standards for conditions project decisions will meet. The following six decisions will be made in the Area Plan:

- *Area-wide multiple-use goals and objectives.* Goals describe a condition to be achieved sometime in the future. Objectives are concise, time-specific statements of measurable planned results that respond to the goals.
- *Area-wide management requirements.* These are standards for management activities, or advisable courses of action that apply across the entire area.
- *Management area direction applying to future activities in each management area.* This is the desired condition specified for certain portions of the Area, and the standards to help achieve that condition.
- Lands suited and not suited for natural resource management.
- Monitoring and evaluation requirements to gauge how well the plan is being implemented.
- Recommendations to Congress, such as wilderness designation, if any. It should be noted that these requirements are cited from the 1982 36 CFR 219 planning regulations.

Purpose and Need for Action

As discussed above, both the National Forest Management Act and the LBL Protection Act of 1998 require that an LRMP be prepared for the Area. The Area Plan will provide a blueprint to guide management decisions within the Area for a period of 10–15 years after the Plan is developed and approved. In addition to satisfying legal requirements, the Area Plan is necessary because:

1. TVA's 1994 Natural Resources Management Plan for LBL does not fully address planning regulations and policy required of the Forest Service. The plan also does not provide adequate guidance on some of the issues discussed below.

2. Certain resource conditions, trends, and visitor use patterns have changed during the past nine years. The new Area Plan will provide a conduit to incorporate new information and to address the changed conditions.

Proposed Action

Develop an Area plan that will meet the requirements of the National Forest Management Act and address the public issues.

Possible Alternatives

The actual alternatives presented in the DEIS will portray a full range of responses to the significant issues. The DEIS will examine the effects of implementing strategies to achieve desired conditions and will develop management objectives that would move LBL toward those desired conditions. A preferred alternative will be identified in the DEIS. The range of alternatives presented in the DEIS will include one that continues current management direction (that is, a ''no action'' alternative) and others that will address the range of issues developed in the scoping process.

Responsible Official

The Regional Forester for the Southern Region, located at 1720 Peachtree Street, NW., Atlanta, Georgia 30309, is the Responsible Official.

Nature of Decision To Be Made

The decision to be made and documented in a Record of Decision will be an Area plan that will meet the requirements of the National Forest Management Act and address all of the significant public issues developed through scoping.

Scoping Process

Public participation will be sought throughout the revision process, but will be particularly important at specific points along the way. The first formal opportunity to comment is during the scoping process. Scoping for the LBL Area Plan/EIS will include identifying visions for the future of the Area, as well as issues that should be addressed in the Area Plan/EIS. Scoping for the LBL Area Plan/EIS will be conducted in phases. The first phase is intended to encourage the public to describe their vision for the future of the Area. The following five public workshops are scheduled during this phase. Background information or announcements of additional meetings will be issued in news releases and on the LBL Web site. Requests to be added to the project mailing list can be directed to the Area Planner at the address above.

Date	Time	Location
Saturday, June 28, 2003	1 p.m. to 5 p.m	Lakeland Jamboree, Cadiz, Kentucky.
Monday, June 30, 2003	6:30 p.m. to 9:30 p.m	Weaks Community Center, Murray, Kentucky.

Date	Time	Location
Tuesday, July 1, 2003	6:30 p.m. to 9:30 p.m	Mayfield Extension Office, Benton, Kentucky.
Thursday, July 10, 2003	6:30 p.m. to 9:30 p.m	Dover Elementary School, Dover, Tennessee.
Saturday, July 12, 2003	1 p.m. to 5 p.m	Lee S. Jones Community, Bldg, 304, Lee S. Jones Park Road (In The Park).

Preliminary Issues

The following is a summary of the preliminary issues. They are the product of the deliberations of Forest Service staff, historical input received from users of LBL, interested groups, and government agencies; as well as reviews of laws, regulations, policies, existing LBL plans, and scientific information. Additional information on these topics may be found by contacting LBL as stated above.

The following issues will evolve based on public input received through the scoping process. Some issues identified during scoping may not be appropriate for decision at the Plan level. Some may be more appropriate for project level decisions or be addressed through other processes outside of the land management planning process.

1. Recreation and Environmental Education

A primary part of the mission of LBL is to protect and manage the resources of LBL for optimum yield of outdoor recreation and environmental education for the American people. The 1994 NRMP addresses program objectives and guidelines for the management of natural resources, but does not adequately address the strategies for recreation and environmental education. These strategies must be articulated to accomplish the emphases of the LBL Protection Act and the requirements of NFMA. LBL receives over two million visits annually. Sightseeing is the primary attraction for visitors (33%), followed by fishing (19%), camping (12%), and hunting (10%). (TVA 1987) Less than 4%, or 6,400 acres, of LBL is developed with facilities for recreation, environmental education, or administration. Examples of special interest areas in LBL include Turkey Bay Off Highway Vehicle (OHV) area, Elk & Bison Prairie, Wranglers Campground, and Brandon Spring Group Center.

Issue: Management direction for the recreation resource must be added to the area plan. Should the current recreation-related services be maintained, increased, or decreased in the new plan to provide optimum yield of outdoor recreation, environmental education, and stimulation of regional economies?

2. Vegetation Management Practices

Forests: The current condition of LBL's 151,550 acres of forestland is largely the oak/hickory cover type (80%). The remaining 20% include cover types of maple/beech, pine and others.

LBL currently manages for a predominantly oak/hickory forest for these purposes: wildlife habitat; enhanced visual quality; increased environmental awareness about the use of environmentally responsible management practices; research methods and techniques in ecosystem management; and demonstration of sustainable forest management's compatibility with other uses.

The following methods are currently used to achieve these stated objectives: even-aged management; uneven-aged management; timber stand improvement; passive forest management for the biosphere reserve core areas; and deferred management where the determination of a management category has not been made.Open Lands: Approximately 12,050 acres (7%) of the land at LBL is in open land. LBL currently manages the open land to enhance viewing of the forest and lakes, provide early successional habitat for wildlife, and provide for native species restoration.

Issue: How will the vegetation on LBL be managed and what desired conditions would contribute best to the optimum yield of outdoor recreation, environmental education, and stimulation of regional economies?

3. Special Designations

LBL will evaluate areas for possible addition to a roadless inventory. This inventory would contain any areas that are suitable for recommendation in the Plan and subsequent Wilderness designation by Congress. NFMA requires that the Area conduct an inventory of these suitable areas and consider making recommendations in the Plan for Wilderness.

LBL currently maintains specially designated wildlife refuge areas and biosphere reserve core areas. Bear Creek (180 acres), Long Creek (40 acres), and Prior Creek (5 acres) Waterfowl Management Units are wetlands to provide habitat for shorebirds and migrating waterfowl. Approximately 42,500 acres of LBL land is placed in protected status under the UNESCO international biosphere reserve designation. Wildlife refuges and no-hunting areas are maintained on approximately 12,250 acres.

Issue: Should areas with special management designation continue to be managed under these designations or be changed? Should additional areas be designated for special management?

Comment Requested

This notice of intent initiates the scoping proces which guides the development of the environmental impact statement. The public involvement process creates an atmosphere of openness where all members of the public are free to share information with the Forest Service on a regular basis. The Forest Service is seeking information, ideas, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies that may be interested or affected by the proposed action. Public participation will be solicited by notifying (in person, by mail, and/or by e-mail) known interested and affected publics. News releases will be used to inform the public of various steps of the planning process and locations of public involvement opportunities. This information also will be listed on the LBL Web site. Public participation opportunities include written comments, open houses, focus groups, and collaborative forums.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions.

Vermont Yankee Nuclear Power Corp. v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

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

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

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

Dated: May 29, 2003.

Roberta A. Moltzen,

Deputy Regional Forester, NR.

[FR Doc. 03–13964 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Missionary Ridge Burned Area Timber Salvage and Public Scoping; San Juan National Forest, CO

AGENCY: U.S. Forest Service, USDA.

ACTION: Revision of Notice of Intent to Prepare an Environmental Impact Statement (EIS) and conduct public scoping; San Juan National Forest, Colorado.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the U.S. Forest Service (USFS), is revising the Notice of Intent For the Missionary Ridge Burned area Timber Salvage Published in the **Federal Register** September 26, 2002 (volume 67 Number 187) page 60640. The revision changes the Deciding official on Page 60640 from the Regional Forester, USDA Forest Service Rock Mountain Region, PO Box 25127, Lakewood CO 80225.] TO [the Forest Supervisor, San Juan National Forest, USDA Forest Service, 15 Burnett Court Durango CO 81301.]

FOR FURTHER INFORMATION CONTACT: Dave Dallison or Jim Powers, (970) 247–4874.

Dated: May 27, 2003.

Mark Stiles,

Forest Supervisor, San Juan National Forest, USFS, Colorado.

[FR Doc. 03–13955 Filed 6–3–03; 8:45 am]

BILLING CODE 3410●–BS–M

DEPARTMENT OF AGRICULTURE

Forest Service

Colville Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Colville Resource Advisory Committee will meet on Thursday, June 19, 2003 at the Spokane Community College, Colville Campus, Monumental Room, 985 South Elm Street, Colville, Washington. The meeting will begin at 9 a.m. and conclude at 4 p.m. Agenda items include: (1) RAC officer (chair) election; (2) RAC budget, expenses, and communication strategies; (3) Bylaws and Charter Review and Update; (4) Fiscal Year 2004 Title II projects review and recommendation to the forest designated official; and, (5) Public Forum.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to designated federal official, Rolando Ortegon or Cynthia Reichelt, Public Affairs Officer, Colville National Forest, 765 S. Main, Colville, Washington 99114: (509) 684–7000.

Dated: May 28, 2003.

Rolando Ortegon,

Acting Forest Supervisor.

[FR Doc. 03–13965 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, New York State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the New York State Field Office Technical Guide (FOTG) for review and comment.

SUMMARY: It is the intention of NRCS to issue a revised conservation practice standard in its National Handbook of Conservation Practices. This standard is: Pest Management (NY595).

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Paul W. Webb, Resource Conservationist, Natural Resources Conservation Service (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York 13202–2450.

A copy of this standard is available from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made to the NRCS regarding disposition of those comments and final determination of change will be made.

Dated: May 15, 2003.

Steven L. Machovec,

Asst. State Conservationist, Natural Resources Conservation Service, Syracuse, NY.

BILLING CODE 3410–16–P

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NY595 - 1

NATURAL RESOURCES CONSERVATION SERVICE
CONSERVATION PRACTICE STANDARD
PEST MANAGEMENT
NEW YORK
(Acre)

CODE NY595

DEFINITION

Utilizing environmentally sensitive prevention, avoidance, monitoring and suppression strategies, to manage weeds, insects, diseases, animals and other organisms (including invasive and non-invasive species), that directly or indirectly cause damage or annoyance.

PURPOSES

This practice is applied as part of a Resource Management System (RMS) to support one or more of the following purposes:

- Enhance quantity and quality of commodities.
- Minimize negative impacts of pest management on soil, water, air, plants, and animal resources and/or human considerations.

CONDITIONS WHERE PRACTICE APPLIES

Wherever pests will be managed.

CRITERIA

General Criteria Applicable to All Purposes

A pest management plan shall be a component of an overall conservation plan.

All methods of pest management must comply with Federal, State, and local regulations, including management plans for invasive pest species, noxious weeds and disease vectors. Compliance with the Food Quality Protection Act (FQPA); Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Worker Protection Standard (WPS); and Interim Endangered Species Protection Program (H7506C) is required for chemical pest control.

Integrated pest management (IPM) that strives to balance economics, efficacy and environmental risk, where available, shall be incorporated into planning alternatives. IPM is a sustainable approach to pest control that combines the use of prevention, avoidance, monitoring and suppression strategies, to maintain pest populations below economically damaging levels, to minimize pest resistance, and to minimize harmful effects of pest control on human health and environmental resources. The IPM strategy includes biological controls, cultural controls, mechanical and physical controls, the use of pest resistant cultivars, and the judicious use of chemical controls when needed.

As a minimum, the following core pest management elements will be applied:

- Scouting for economically important pests at the appropriate times of year.
- Development of site-specific pest management recommendations based on scouting results. Use of local history of pest outbreaks, grower experience,

and professional judgement of pest management advisors will increase efficacy of pest management control measures and adoption of IPM techniques.

- Record keeping consistent with conservation practice standard NY748.
- Calibrating of sprayer/planter at least once per year

All methods of pest management must be integrated with other components of the conservation plan.

Clients shall be instructed to pay special attention to all environmental hazards and site-specific application criteria listed on pesticide labels and contained in Cornell Cooperative Extension and Crop Consultant recommendations.

Pest management environmental risks, including the impacts of pesticides in ground and surface water on humans and non-target plants and animals, must be evaluated for all identified water resource concerns. For analysis of individual fields, use the NRCS' Windows Pesticide Screening Tool (WIN-PST). When developing Comprehensive Watershed Plans the National Agricultural Pesticide Risk Analysis (NAPRA) tool shall be employed in addition to WIN-PST.

When a chosen alternative has significant potential to negatively impact the environment, mitigation is required. Additionally, if the evaluated site is in the drainage area of a priority water body, a water supply reservoir, or wellhead area, mitigation may be required.

If the Soil - Pesticide Interactions Report for WIN-PST indicates a "Very High", or "High" risk rating, an appropriate set of mitigation techniques or conservation practices must be put into place to address risks to humans and non-target plants and animals.

Additionally, if the Soil – Pesticide Interactions Report from WIN-PST indicates an "Intermediate" risk rating, and the site evaluated is in a drainage area of a priority water body, a water supply reservoir, or wellhead area, the mitigation requirements from a "Very High" or "High" rating , as outlined above, must be followed.

Cornell Cooperative Extension develops and maintains guidelines for IPM for specific crops. These are called IPM Elements. Mitigation techniques will be considered adequate when a rating of 80% of Cornell Cooperative Extension IPM elements is achieved.

Where crop specific IPM guidelines have not been developed, use professional judgement to mitigate the adverse impact(s) of pesticides. Refer to the Field Office Technical Guide, Section I, General References, Water Quality and Quantity Technical Note Pesticide Mitigation Effectiveness Guide. This document provides guidance for Conservation Practice selection and management techniques that may provide a mitigatory effect on pesticide loss pathways.

Additional Criteria to Protect Quantity and Quality of Commodities

As an essential component of both commodity-specific IPM and IPM general principles, clients shall be encouraged to use the minimum level of pest control necessary to meet their objectives for commodity quantity and quality.

Additional Criteria to Protect Soil Resources

In conjunction with other conservation practices, the number, sequence and timing of tillage operations shall be managed to maintain soil quality and maintain soil loss at or below the soil loss tolerance (T), as predicted by using the current NRCS approved soil and water erosion prediction equation.

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Additional Criteria to Protect Water Resources

If the area is irrigated, the Irrigation Water Management standard shall be employed.

The number, sequence and timing of tillage operations shall be managed in conjunction with other sediment control tactics and practices, in order to minimize sediment losses to nearby surface water bodies.

CONSIDERATIONS

If commodity-specific IPM is not available, the following IPM principles should be considered:

- Prevention, such as using pest-free seeds and transplants, treated seed, cleaning tillage and harvesting equipment between fields, irrigation scheduling to avoid situations conducive to disease development, etc.
- Avoidance, such as using pest resistant varieties, crop rotation, trap crops, etc.
- Monitoring, such as pest scouting, soil testing, weather forecasting, disease risk models, degree day models, etc., to help target suppression strategies and avoid routine preventative pest control.
- Suppression, such as cultural, biological and chemical controls, that can reduce a pest population or its impacts. Chemical controls should be used judiciously in order to minimize environmental risk, human exposure, and pest resistance.

Adequate plant nutrients and soil moisture, including favorable pH and soil conditions, should be implemented to reduce plant stress, improve plant vigor and increase the plant's overall ability to tolerate and resist pests.

On irrigated land, irrigation water management should be designed to minimize pest management environmental risk.

PLANS AND SPECIFICATIONS

The pest management component of a conservation plan shall be prepared in accordance with the criteria of this standard and shall describe the requirements for applying the practice to achieve its intended purpose(s).

As a minimum, the pest management component of a conservation plan shall include:

- Plan map and soil map of managed site, if applicable (use RMS plan maps if available).
- Location of sensitive resources and setbacks, if applicable (use RMS plan maps if available).
- Environmental risk analysis, with approved tools and/or procedures, for probable pest management recommendations by crop (if applicable) and pest.
- Interpretation of the environmental risk analysis and identification of appropriate mitigation techniques.
- Operation and maintenance requirements.

OPERATION AND MAINTENANCE

The pest management component of a conservation plan shall include appropriate operation and maintenance items for the client. These may include:

- Review and update the plan periodically in order to incorporate new IPM technology, respond to cropping system and pest complex changes, and avoid the development of pest resistance.
- Maintain mitigation techniques identified in the plan in order to ensure continued effectiveness.

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- Develop a safety plan for individuals exposed to chemicals, including telephone numbers and addresses of emergency treatment centers for individuals exposed to chemicals and the telephone number for the nearest poison control center. The National Pesticide Information Center (NPIC) telephone number in Corvallis, Oregon may also be given for non-emergency information:

1-800-858-7384

Monday - Friday
6:30 a.m. to 4:30 p.m. Pacific Time

Additionally, the NPIC supports a website:

http://npic.orst.edu

For advice and assistance with emergency spills that involve agrichemicals, the local emergency telephone number should be provided. The national 24-hour CHEMTREC telephone number may also be given:

1-800-424-9300

CHEMTREC also supports a website:

www.chemtrek.org

- Follow label requirements for mixing/loading setbacks from wells, intermittent streams and rivers, natural or impounded ponds and lakes, or reservoirs. (State or local regulations may be more restrictive).
- Post signs according to label directions and/or Federal, State, and local laws around sites that have been treated. Follow restricted entry intervals.
- Dispose of pesticides and pesticide containers in accordance with label directions and adhere to Federal, State, and local regulations.
- Read and follow label directions and maintain appropriate Material Safety Data Sheets (MSDS).
- Calibrate application equipment according to Extension and/or manufacturer recommendations before each seasonal use and with each major chemical change.
- Replace worn nozzle tips, cracked hoses, and faulty gauges.
- Maintain records of pest management activities, such as scouting records, calibration rates, etc., for at minimum of three years. Refer to Conservation Standard NY748 for additional criteria.
- Pesticide application records shall also be in accordance with USDA Agricultural Marketing Service's Pesticide Record Keeping Program.

REFERENCES

Pesticide Mitigation Effectiveness Guide. Section I, USDA-NRCS Field Office Technical Guide. Syracuse, NY, 2003.

Resource Management System Guide Sheets. Section III, USDA-NRCS Field Office Technical Guide. Syracuse, NY. 1998.

Cornell Guide for Integrated Field Crop Management. Cornell Cooperative Extension. Ithaca, NY. Updated yearly.

Cornell Pest Management Guidelines for Commercial Tree Fruit Production. Cornell Cooperative Extension. Ithaca, NY. Updated yearly.

Cornell Pest Management Guidelines for Berry Crops. Cornell Cooperative Extension. Ithaca, NY. Updated yearly.

New York and Pennsylvania Pest Management Recommendations for Grapes. Cornell Cooperative Extension. Ithaca, NY. Updated yearly.

Cornell Guide for the Integrated Management of Greenhouse Florist Crops. Cornell Cooperative Extension, Ithaca, NY. Updated yearly.

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Cornell Pest Management Guide for Commercial Production and Maintenance of Trees and Shrubs. Cornell Cooperative Extension. Ithaca, NY. Updated yearly.

Cornell Cooperative Extension Pest Management Guidelines for Vegetables. Cornell Cooperative Extension. Ithaca, NY. Updated yearly.

WIN-PST: A Windows Based Pesticide Screening Tool. USDA-NRCS. Amherst, MA. 2000.

National Agricultural Pesticide Risk Analysis (NAPRA). USDA-NRCS. Amherst, MA. 1995.

Core 4. Conservation Tillage Information Center. West Lafayette, IN. 1998

Pesticides Management Program. Division of Solid & Hazardous Materials, New York State Department of Environmental Conservation. Albany, NY. Updated periodically.

New York State IPM Program, Elements of IPM. Cornell Cooperative Extension. Ithaca, NY. Updated periodically.

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[FR Doc. 03–14043 Filed 6–3–03; 8:45 am]
BILLING CODE 3410–16–C

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service—Tennessee; Notice of Proposed Changes to Section IV of the Tennessee Field Office Technical Guide (FOTG)

AGENCY: Natural Resources Conservation Service (NRCS) in Tennessee, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Tennessee NRCS Field Office Technical Guide, Section IV, for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Tennessee that changes must be made in the NRCS Field Office Technical Guide, specifically in practice standard Cover Crop (Code 340) to account for improved technology. These practice standards can be used in systems that treat highly erodible cropland.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to James W. Ford, State Conservationist, Natural Resources Conservation Service (NRCS), 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee, 37203, telephone number (615) 277–2531. Copies of the practice standard will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to perform highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Tennessee will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Tennessee regarding disposition of those comments and a final determination of change will be made to the subject practice standard.

Dated: May 8, 2003.

James W. Ford,

State Conservationist.

[FR Doc. 03–14044 Filed 6–3–03; 8:45 am]
BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Agencies to request an extension for a currently approved information collection in support of compliance with the National Environmental Policy Act and other applicable environmental requirements.

DATES: Comments on this notice must be received by August 4, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Richard A. Davis, Director, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, Stop 0761, 1400 Independence Ave., SW., Washington, DC 20250–0761, Telephone (202) 720–9619.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1940 Subpart G, ''Environmental Program.''

OMB Number: 0575–0094.

Expiration Date of Approval: August 31, 2003.

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

Abstract: The information collection under OMB Number 0575–0094 enables the Agencies to effectively administer the policies, methods, and responsibilities for compliance with the National Environmental Policy Act and other applicable environmental laws, executive orders, and regulations.

The National Environmental Policy Act (NEPA) requires Federal agencies to consider the potential environmental impacts of proposed major federal actions in Agency planning and decision-making processes. For the Agencies to comply, it is necessary that they have information on the types of environmental resources on site or in the vicinity that might be impacted by the proposed action, as well as information on the nature of the project selected by the applicant (the activities to be carried out at the site; any air, liquid and solid wastes produced by these activities, etc.). The applicant is the only logical source for providing this information. In fact, the vast majority of Federal Agencies that assist non-Federal applicants in sponsoring projects require these applicants to submit such environmental data.

The Agencies provide forms and/or other guidance to assist in the collection and submission of information. The information is usually submitted via hand delivery or U.S. Postal Service to the appropriate Agency office.

The information is used by the Agency officer who is processing the application for financial assistance or request for approval. Having environmental information on the proposed project site and the activities to be conducted there enables the Agency official to determine the magnitude of the potential environmental impacts and to take such impacts into consideration in Agency planning and decision-making as required by NEPA. The analysis of the potential environmental impacts of a proposed action is considered to be a full disclosure process, and therefore, can involve public information meetings and public notification.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.94 hours per response.

Respondents: Individuals or households, local governments, farms, business or other for-profit, non-profit institutions, and small businesses and organizations.

Estimated Number of Respondents: 3050.

Estimated Number of Responses per Respondent: 1.71.

Estimated Total Annual Burden on Respondents: 15,320 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of Agencies estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of 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.

Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 22, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

Dated: May 22, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

Dated: May 28, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

Dated: May 28, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–13998 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Utilities Service

Rural Business-Cooperative Service Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection: comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection in support of compliance with applicable acts for planning and performing construction and other development work.

DATES: Comments on this notice must be received by August 4, 2003 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Samuel J. Hodges III, Architect, Program Support Staff, RHS, U.S. Department of Agriculture, Stop 0761, 1400 Independence Avenue, SW., Washington, DC 20250–0761, Telephone (202) 720–9653.

SUPPLEMENTARY INFORMATION:

Title: RD 1924–A, ''Planning and Performing Construction and Other Development''.

OMB Number: 0575–0042.

Expiration Date of Approval: October 31, 2003.

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

Abstract: The information collection under OMB Number 0575–0042 enables the Agencies to effectively administer the policies, methods, and responsibilities in the planning and performing of construction and other development work for the related construction programs.

Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, repair, replace, or rehabilitate dwellings; farm buildings; and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas.

Section 506 of the act requires that all new buildings and repairs shall be constructed in accordance with plans and specifications as required by the Secretary and that such construction be supervised and inspected.

Section 509 of the act grants the Secretary the power to determine and prescribe the standards of adequate farm housing and other buildings. The Housing and Urban-Rural Recovery Act of 1983 amended section 509 (a) and section 515 to require residential buildings and related facilities comply with the standards prescribed by the Secretary of Agriculture, the Secretary of Housing and Urban Development, or in any of the nationally recognized model building codes.

Similar authorizations are contained in sections 303, 304, 306, and 339 of the Consolidated Farm and Rural Development Act, as amended.

In several sections of both acts, loan limitations are established as percentages of development cost, requiring careful monitoring of those costs. Also, the Secretary is authorized to prescribe regulations to ensure that Federal funds are not wasted or dissipated and that construction will be undertaken economically and will not be of elaborate or extravagant design or materials.

Other information collection is required to conform to numerous Public Laws applying to all Federal agencies, such as: Civil Rights Acts of 1964 and 1968, Davis-Bacon Act, Historic Preservation Act, Environmental Policy Act; and to conform to Executive Orders governing use of Federal funds. This information is cleared through the appropriate enforcing Agency or other executive Department.

The Agencies provide forms and/or guidelines to assist in the collection and submission of information; however, most of the information may be collected and submitted in the form and content which is accepted and typically used in normal conduct of planning and performing development work in private industry when a private lender is financing the activity. The information is usually submitted via hand delivery or U.S. Postal Service to the appropriate Agency office.

The information is used by the Agencies to determine whether a loan/grant can be approved, to ensure that the Agency has adequate security for the loans financed, to provide for sound construction and development work, and to determine that the requirements of the applicable acts have been met. The information is also used to monitor compliance with the terms and conditions of the Agencies' loan/grant programs and to monitor the prudent use of Federal funds.

If the information were not collected and submitted, the Agencies would not have control over the type and quality of construction and development work planned and performed with Federal funds. The Agencies would not be assured that the security provided for loans is adequate, nor would the Agencies be certain that decent, safe, and sanitary dwelling or other adequate structures were being provided to rural residents as required by the different acts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .33 hours per response.

Respondents: Individuals or households, farms, business or other for-profit, non-profit institutions, and small businesses or organizations.

Estimated Number of Respondents: 25,340.

Estimated Number of Responses per Respondent: 12.00.

Estimated Total Annual Burden on Respondents: 94,924 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, at (202) 692–0042.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of 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. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 23, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

Dated: May 6, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

Dated: April 30, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

Dated: May 7, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–14031 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Prepayment and Displacement Prevention of Multiple Family Housing Loans.

DATES: Comments on this notice must be received by August 4, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese-Foxworth, Senior Loan Officer, Office of Rural Housing Preservation, Multi-Family Housing Portfolio Management Division, Rural Housing Service, U.S. Department of Agriculture, Ag Box 0782, Washington, DC 20250, Telephone (202) 720–1940.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1965–E, ''Prepayment and Displacement Prevention of Multiple Family Housing Loans.''.

OMB Number: 0575–0155.

Expiration Date of Approval: October 31, 2003.

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

Abstract: The rural Housing Service (RHS) is authorized under section 514, 515, 516 and 521 of Title V of the Housing Act of 1949, as amended, to provide loans and grants to eligible recipients for the development of rural rental housing. Such multiple family housing projects are intended to meet the housing needs of persons or families have with low-to moderate-incomes, senior citizens, the handicapped, and domestic farm laborers.

RHS has the responsibility of assuring the public that the housing projects financed are owned and operated as mandated by Congress. RD Instruction 1965–E was issued to insure proper servicing actions are accomplished for projects financed with multiple family housing loan and grant funds. Minimal requirements have been established as deemed necessary to assure that applicable laws and authorities are carried out as intended and to improve the Agency's ability to assure the continued availability of the facilities financed under RHS multiple housing programs to eligible users.

Without the provisions of this regulation, RHS would be unable to provide the necessary guidance to the RHS field staff to assist borrowers in processing servicing actions affecting their projects. RHS also would not be able to quickly respond to servicing requests from borrowers, initiate servicing actions or establish a uniform procedure for processing such requests from borrowers. RHS must be able to assure Congress and the general public that all projects financed with multiple family housing funds will be maintained for the purposes for which they are intended and for the benefit of those they are mandated to serve.

The Housing and Community Development Act of 1987 required that rural rental housing borrowers wishing to prepay their RHS financed loans must be offered a fair incentive to not prepay the loan when RHS makes the decision that the housing continues to be needed to serve low- and moderate-income tenants. If the borrower rejects the incentive, the housing must be offered for sale to a non-profit organization or public agency. Prepayment can only be accepted if RHS decides there is no need for the housing or if no nonprofit organization or public agency can be found to purchase the project at fair market value.

The information required is collected on a project-by-project basis and is in accordance with the Housing Act of 1949, as amended, so that RHS can provide guidance and be assured of compliance with the terms and conditions of loan, grant, and subsidy agreements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.6 hours per response.

Respondents: Individuals or households, State or local governments, farms, businesses or other for-profits, non-profit institutions, existing borrowers, transferors and/or transferees.

Estimated Number of Respondents: 800.

Estimated Number of Responses per Respondent: 1.15.

Estimated Total Annual Burden on Respondents: 587 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, Support Services Division, Branch, at (202) 692–0042.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of [Agency], including whether the information will have practical utility; (b) the accuracy of [Agency's] estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of 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. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 14, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–14030 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the California State Advisory Committee will convene at 4 p.m. (PDT) and adjourn at 5:30 p.m., Monday, June 2, 2003. The purpose of the conference call is to plan future SAC activities.

This conference call is available to the public through the following call-in number: 1–800–473–8693, access code number 17051391. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Friday, May 30, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 30, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–14079 Filed 5–30–03; 4:56 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–822]

Certain Helical Spring Lock Washers from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Ninth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the ninth administrative review of the antidumping duty order on certain helical spring lock washers from the People's Republic of China. The period of review is October 1, 2001 through September 30, 2002.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Geoffrey Craig, Office of AD/CVD Enforcement I, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3464 or (202) 482–5256, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner, Shakeproof Assembly Components Division of Illinois Tool Works, and the respondent, Hang Zhou Spring Washer Co., Ltd., also known as Zhejiang Wanxin Group Co., Ltd., (Hangzhou), requested an administrative review of the antidumping duty order on certain helical spring lock washers for the period from October 1, 2001 to September 30, 2002, on October 21, 2002 and October 31, 2002, respectively. Hangzhou also requested revocation of the order with respect to itself. The Department initiated the ninth antidumping duty administrative review of certain helical spring lock washers from the People's Republic of China, covering the period from October 1, 2001 to September 30, 2002, and on the request for revocation of the antidumping duty order in part on November 22, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 70402 (November 22, 2002). The preliminary results are currently due on July 3, 2002.

Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results within 245 days after the last day of the anniversary month of the order for which a review is requested. However, if it is not practicable to issue the preliminary results within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 365 days.

We are currently developing factor value information. In addition, we plan to verify Hangzhou's response, in accordance with 19 CFR 351.307(b)(1)(iii). Accordingly, the Department has determined that it is not practicable to issue the preliminary results within the 245-day time period. Therefore, we are extending the time limit for completion of the preliminary results of this administrative review for 120 days, until no later than October 31, 2003.

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 29, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–14038 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

Preliminary Rescission of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the Preliminary Rescission of Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Taiwan.

SUMMARY: On June 25, 2002, the Department of Commerce (''Department'') published a notice of initiation of an antidumping duty administrative review on stainless steel plate in coils from Taiwan. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part* (''*Notice of Initiation*'') 67 FR 42753 (June 25, 2002). This review covers two manufacturers/exporters of the subject merchandise, Yieh United Steel

Corporation (''YUSCO''), a Taiwan producer and exporter of subject merchandise, and Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen''), a Taiwan producer and exporter of subject merchandise. The period of review (''POR'') is May 1, 2001 through April 30, 2002. We are preliminarily rescinding this review based on evidence on the record indicating that there were no entries into the United States of subject merchandise during the POR from the respondents.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone 202–482–3207.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1999, the Department of Commerce (''Department'') published the antidumping duty order on stainless steel plate in coils from Taiwan. *See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 64 FR 27756 (May 21, 1999). On May 6, 2002, the Department published a notice of opportunity to request an administrative review of this order for the period May 1, 2001 through April 30, 2002. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 30356 (May 6, 2002). On May 7, 2002, Petitioners[1] timely requested that the Department conduct an administrative review of sales by YUSCO, a Taiwan producer and exporter of subject merchandise, and Ta Chen, a Taiwan producer and exporter of subject merchandise. On June 25, 2002, in accordance with section 751(a) of the Tariff Act of 1930 as amended (''the Act''), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by YUSCO and Ta Chen for the period May 1, 2001 through April 30, 2002. *See Notice of Initiation.*

On July 10, 2002, the Department issued its antidumping duty questionnaire to YUSCO and Ta Chen. On July 15, 2002, Ta Chen stated that it did not have any U.S. sales, shipments or entries of subject merchandise during the POR, and requested that it not be required to answer the Department's questionnaire. On July 18, 2002, YUSCO stated that it did not have any U.S. sales, shipments or entries of subject merchandise during the POR. On October 8, 2002, we sent an inquiry to the U.S. Customs Service (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) (''BCBP'') to confirm that YUSCO and Ta Chen had no shipments of subject merchandise into the United States during the POR. On October 29, 2002, BCBP responded to the inquiry. BCBP determined that there were no entries of subject merchandise by Ta Chen during the POR. However, BCBP informed the Department that potential shipment(s) of subject merchandise from YUSCO to the United States during the POR existed. On January 15, 2003, the Department requested that YUSCO explain the potential shipment(s). See letter from the Department to YUSCO, dated January 15, 2003. On January 16, 2003, Petitioners requested that the Department place the proprietary information regarding the potential shipment(s) on the record. *See* Petitioners letter to the Department, dated January 16, 2003. On January 22, 2003, YUSCO informed the Department that it would like the Department to place proprietary information on the record so that YUSCO may be able to identity the potential shipment(s). *See* YUSCO's letter to the Department, dated January 22, 2003. On January 27, 2003, the Department placed certain proprietary information on the record regarding the potential shipment(s) of subject merchandise from YUSCO. See Department's letter to YUSCO, dated January 27, 2003. Additionally, during the months of January and February 2003, the Department contacted BCBP to confirm that no shipments from Ta Chen entered the United States during the POR. During that time, BCBP provided the Department with information regarding the potential Ta Chen shipments. See Department's letter to BCBP on February 3, 2003, and Memorandum to the File on February 25, 2003, in which the Department determined that each potential shipment from Ta Chen that we analyzed was not subject merchandise.

On February 5, 2003, we extended the preliminary results by sixty days. *See Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 5869 (February 5, 2003). On March 21, 2003, we extended the preliminary results by sixty days. *See Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 13897 (March 21, 2003).

On February 11, 2003, the Department sent BCBP a letter to inquire about a possible discrepancy in the documentation sent to the Department by BCBP relating to YUSCO and the existence/non-existence of entries of subject merchandise during the POR. On March 19, 2003, BCBP sent the Department a response to its February 11, 2003 letter, in which BCBP stated that it was re-classifying the material in question and that, upon review of its records, it no longer considered the material to be subject merchandise.

Petitioners have placed various submissions on the record alleging that Ta Chen and YUSCO are affiliated with other companies that may have shipped subject merchandise to the United States during the POR. Respondent YUSCO has denied Petitioner's allegations. *See e.g.*, Petitioners' March 30, 2003 and Respondent's April 16, 2003 submissions.

Scope of the Review

For purposes of this review, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this review are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process. The merchandise subject to this review is currently classifiable in the HTS at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.0070, 7219.12.00.80, 7219.31.00.10,

[1] Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization are collectively ''Petitioners'' for this review.

7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and BCBP purposes, the written description of the merchandise under investigation is dispositive.

Period of Review

The POR is May 1, 2001 through April 30, 2002.

Preliminary Rescission of Review in Part

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Both Ta Chen and YUSCO certified on the record that they did not export subject merchandise to the United States during the POR. The Department then conducted a BCBP inquiry and pursued additional questions following the BCBP inquiry pertaining to Ta Chen and YUSCO. In response to our requests, BCBP supplied further information to the Department. For Ta Chen, all the documentation provided to the Department by BCBP indicates that there were no shipments of subject merchandise during the POR. *See* Memorandum to the File dated February 25, 2003.

Petitioners allege Ta Chen was affiliated with other Taiwanese companies during the POR. *See* Petitioners submission to the Department, dated April 4, 2003. Absent entries of subject merchandise produced and exported to the Unites States by Ta Chen during the POR, however, the Department has preliminarily determined to rescind this administrative review. *See* Memorandum to the File on February 25, 2003. The parties being reviewed in this case are Ta Chen and YUSCO, *not* the other parties which have been alleged to be affiliated with Ta Chen and YUSCO. Neither the Petitioners nor any other party requested an administrative review of Ta Chen's alleged affiliates. As it is, Ta Chen has been found preliminarily to have exported no subject merchandise to the Unites States during the POR. Therefore, absent entries, there is no reason for the Department to conduct an affiliation analysis. If the Petitioners believe other parties potentially affiliated with Ta Chen and YUSCO are exporting subject merchandise to the United States, then a review in subsequent periods of reviews for those companies should be requested. However, for purposes of *this* administrative review, the Department preliminarily finds that Ta Chen had no entries of subject merchandise in the United States during the POR. *See* 19 CFR 351.213(b) providing that the domestic industry must specify the exporter or producer it wishes the Department to review in its request for an administrative review.

For YUSCO, the Department found a discrepancy in the BCBP database and contacted BCBP on this matter. BCBP agreed that a discrepancy existed and resolved it. *See* BCBP letter to Edward Yang from Alfred Morawski, placed on the record of this proceeding on March 20, 2003. As a result of BCBP's efforts, the BCBP's database now confirms that YUSCO had no shipments of subject merchandise to the Unites States during the POR.

Petitioners provided affiliation arguments for YUSCO as well, but again, absent entries to the United States by YUSCO during the POR, the Department has preliminarily determined to rescind this administrative review. Petitioners did not request a review of the alleged affiliated parties. Had they made such an allegation, we would have conducted a review accordingly. The record indicates YUSCO had no entries to the United States of subject merchandise during the POR. Thus, the Department has preliminarily determined to rescind this administrative review. *See* 19 CFR 351.213(b).

As discussed above, in this case the Department is satisfied, after a review of information on the record, certification from YUSCO and Ta Chen of no exports to the United States during the POR, the inquiry on data from BCBP, and further communications with BCBP, that there were no entries of stainless steel plate in coils produced or exported from Ta Chen or YUSCO during the POR to the United States. Therefore, the Department is preliminarily rescinding this administrative review. The cash deposit rate for YUSCO will remain at 8.02 percent, for Ta Chen the cash deposit rate will remain at 10.20 percent, and for ''all other'' producers/exporters of the subject merchandise the cash deposit rate will remain at 7.39 percent, the rates established in the most recently completed segment of this proceeding. *See Notice of Final Results and Rescission in Part of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils From Taiwan*, 67 FR 40914 (June 14, 2002).

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to this preliminary rescission. Case briefs must be submitted within 30 days after the date of publication of this notice and rebuttal briefs, limited to arguments raised in the case briefs, must be submitted no later than 7 days after the time limit for filing case briefs. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

This administrative review and notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14039 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052303E]

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

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

ACTION: Notice.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces that lobster trap/pot and anchored gillnet fishermen are requested to remove on a voluntary basis their gear from an area totaling approximately 925 square nautical miles (nm2) (1,714 km2), northeast of Cape Cod, MA, for 15 days. These fishermen are also asked not to set additional gear during this period. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours May 29, 2003, through 2400 hours June 13, 2003.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation

of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

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

Background

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

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

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

On May 18, 2003, NMFS Aerial Survey Team reported a sighting of 3 right whales in the proximity of 42° 13′ N latitude and 69° 37′ W longitude. This position lies northeast of Cape Cod, MA, in an area called Wilkinson Basin. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

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

Because the Seasonal Area Management (SAM) East zone overlaps a portion of the DAM zone, this area is excluded the DAM zone.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. NMFS requests the voluntary removal of lobster trap/pot and anchored gillnet gear and asks lobster trap/pot and anchored gillnet fishermen not to set any new gear in this area during the 15–day restricted period. The DAM zone is bound by the following coordinates:

42°33′N, 69°56′W (NW Corner)
42°33′N, 69°24′W
41°55′N, 69°24′W
41°55′N, 69°56′W

NMFS requests voluntary action within the DAM zone because of the minimal amount of fishing gear in these waters during this time of year and, based on what we know about right whale migration, the animals should be moving into other protected areas such as the SAM East zone and the Great South Channel Critical Habitat. The request for removal of gear and no setting of additional gear will be in effect beginning at 0001 hours May 29, 2003, through 2400 hours June 13, 2003, unless terminated sooner or extended by NMFS, through another notification in the **Federal Register**.

The request for voluntary action will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

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

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

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

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

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

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

Dated: May 28, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–13913 Filed 5–29–03; 4:39 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Adminisration

[I.D. 052803D]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that an authorization for June 1, 2003 through December 31, 2003 to take small numbers of seals and sea lions has been issued to the 30th Space Wing, U.S. Air Force.

ADDRESSES: The letter of authorization and supporting documentation are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, or Christina Fahy, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA were published on March 1, 1999 (64 FR 9925), and remain in effect until December 31, 2003.

Issuance of this letter of authorization is based on a finding that the total takings will have no more than a negligible impact on the seal and sea lion populations off the Vandenberg coast and on the Northern Channel Islands.

Dated: May 28, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 03–13919 Filed 6–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053003A]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on June 18–20, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Buccaneer Hotel, #7 Estate Shoys, Christiansted, St. Croix, USVI.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will convene on Wednesday, June18th, 2003, from 9 a.m. to 4 p.m., and the Administrative Committee will meet from 4:15 p.m. to 5:30 p.m. The Council will reconvene on Thursday, June 19, 2003, from 9 a.m. to 5 p.m., approximately, and Friday, June 20, 2003, from 9 a.m. to 5 p.m. The Council will hold its 112th regular public meeting to discuss the items contained in the following agenda:

June 28, 2003

9 a.m. - 4 p.m.

Call to Order
Adoption of Agenda
Consideration of 111th Council Meeting Verbatim Minutes
Executive Director's Report
Queen Conch Geographic Information System (GIS) - Dr. M. Barreto
Culebra's Marine Reserve Survey - Dr. Edwin Hernandez
Updates
-Marine Conservation District (MCD) Mapping Project - Jose Rivera
-MCD Photographic Survey - Graciela Garcia-Moliner
-Hydro-acoustic Survey - Jose Rivera and Aida Rosario
-West Coast of Puerto Rico Side Scan Sonar Projects - Aida Rosario
Essential Fish Habitat- Draft Environmental Impact Statement (EFH-DEIS) - Bob Trumble

4:15 p.m. - 5:30 p.m.

Administrative Committee Meeting
-Advisory Panel (AP)/Scientific and Statistical Committee/Habitat AP Membership
-Budget: 2002, 2003, 2004–5
-Queen Conch Initiative—Projects for Education and Scientific Literature
-Personnel Issues and Statement of Organization Practices and Procedures
-Other Business

June 19, 2003

9 a.m. - 5 p.m.

EFH/DEIS Continuation of Discussio
-Schedule for the submission of EFH/DEIS

June 20, 2003

9 a.m. - 12 noon

NOAA Fisheries 2003 Constituents Session - Dr. W. Hogarth

1 p.m. to 5 p.m.

Enforcement
-Federal Government
-Puerto Rico
-U.S. Virgin Islands

-U.S. Coast Guard
Administrative Committee Recommendations
Meetings Attended by Council Members and Staff
Other Business
Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: May 30, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–14042 Filed 6–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052703E]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Mid-Atlantic Plans and Habitat Oversight Committee in June, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on June 17 and 18, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at The Village Inn, 1 Beach Street, Narragansett, RI 02882; telephone: (401) 783–6767.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, June 17, 2003 at 9:30 a.m.–Mid-Atlantic Plans Committee Meeting.

The committee will review and develop a position to be taken by the New England Council regarding upcoming amendments in the Mid-Atlantic region. They will recommend measures for Amendment 9 and Amendment 10 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan (FMP).

Wednesday, June 18, 2003 at 9:30 a.m.–Habitat Oversight Committee Meeting.

The Committee will review the gear specific alternatives for minimizing adverse effects on monkfish Essential Fish Habitat (EFH) in Amendment 2 to the Monkfish FMP. They will review the information prepared by the EFH Technical Team on the presence of deep-sea corals in the North Atlantic region and the possible interaction between the monkfish fishery. Also on the agenda will be the review the draft workplan for the Omnibus Habitat Amendment #2.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 29, 2003.

Matteo J. Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–13920 Filed 6–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052703G]

Marine Mammals; File Nos. 782–1702, 782–1708, 782–1719, and 358–1585–02

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

ACTION: Receipt of applications for permits and application for permit amendment.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit or permit amendment to take marine mammals for purposes of scientific research:

File Nos. 782–1702, –1708, and –1719 - National Marine Fisheries Service [NMFS], National Marine Mammal Laboratory [NMML], 7600 Sand Point Way, N.E. Seattle, WA 98115; and

File No. 358–1585–02 - Alaska Department of Fish and Game [ADF&G], Division of Wildlife Conservation, P.O. Box 25536, Juneau, AK 99802–5526.

DATES: Written or telefaxed comments on the new applications and amendment request must be received on or before July 7, 2003.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Assistant Regional Administrator for Protected Resources, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7235; fax (907)586–7012;

Assistant Regional Administrator for Protected Resources, Southwest Region,

NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4020; fax (562)980–4027. Only Files 782–1708 and 782–1719 are available in the Southwest Region.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, Carrie Hubard, or Amy Sloan 301/713–2289, or email: Ruth.Johnson@noaa.gov.

SUPPLEMENTARY INFORMATION: The subject permits and amendment are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–227), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Applications for Permit

The NMML has submitted three applications to take marine mammals for scientific research.

(1) Application 782–1702 - NMML proposes to conduct aerial, ground and boat surveys of pinnipeds; capture and release of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and northern elephant seals (*Mirounga angustirostris*). Aerial, ground and boat surveys are proposed annually for stock assessment of these species. Capture and release of harbor seals will include tagging and branding for long term identification of individuals for information on reproductive success, survival, and longevity; blood sampling for disease screening; blubber biopsy for contaminant analysis; tissue sampling for genetics and for fatty acid analysis; some seals will be instrumented with VHF radio transmitters and/or Time-Depth Recorders (TDR) or satellite tags or sonic tags to document movements, activity and foraging patterns. Capture and release of California sea lions will include tagging and branding for long-term identification of individuals to determine predation rates on endangered salmonids; blood sampling for disease screening; blubber biopsy for contaminant analysis; and instrumentation with VHF radio transmitters, TDRs, or satellite tags to document movements and migration rates. Capture and release of Steller sea lions will include tagging and branding for long-term identification of individuals to determine predation rates on endangered salmonids; blood sampling for disease screening; tissue sampling for genetic analysis and instrumentation with VHF radio transmitters, TDRs, or satellite tags to document movements and migration rates. Tagging of northern elephant seals will document survival, movements, and site fidelity. In addition, scat will be collected from harbor seal, California sea lion, and Steller sea lion haulout areas for food habits analysis. Activities will occur in the States of Washington, Oregon and California.

(2) Application 782–1708 - NMML proposes to take Northern fur seals during scientific research. Seals will be captured, tagged, sampled and annual censuses will be conducted. All of this work is essential for: (1) monitoring the status and trends of the northern fur seal population, (2) evaluating the condition of animals from each cohort (health and strength of year-class), (3) monitoring the diet, and (4) documenting the movement patterns, foraging behavior, and essential foraging habitat of various age and sex classes of fur seals. This is a continuation of work authorized in Permit No. 782–1455. The information collected under this permit will be important for assessing the recovery of this depleted species and for evaluating management actions.

(3) Application 782–1719 - NMML is requesting authority to take marine mammals during-MMPA mandated stock assessment activities. NMML proposes to conduct Level B harassment during overflights, vessel-based observations, and approaches for photography, and by Level A harassment when doing biopsy sampling or tagging. This permit application is divided into three Projects: Project I is specifically for aerial surveys, including circling animals for making identifications, counts, or photography; Project II covers vessel surveys, including transects and approaches for photography and biopsies; Project III is in regard to tagging through remote deployment (via crossbow, gun, or pole) or capture, holding and release.

Amendment request

The ADF&G requests an amendment to permit 358–1585–02 to conduct the following activities on harbor seals: (1) permanently mark (hot brand) all female seals that receive VHF implants to enable identification from a distance, without disturbance, to determine whether a radio-tagged female has a pup; (2) place PIT tags in all live-captured seals to identify recaptured individuals while in the field to ensure that historic data are compared with subsequent samples for those individuals to assess changes in health or contaminant loads over time; (3) conduct transrectal ultrasound to diagnose pregnancy in seals, a technique that has been safely used in domestic and wild ungulates for several decades; (4) attach small sonic depth tags to seal pelage to facilitate real-time tracking of seal foraging behavior while simultaneously conducting acoustical surveys of prey availability; and (5) attach an Underwater Timed Picture Recorder (UTPR), equipped with a time depth recorder, to some seals for 24–hour periods. These data will be used in a study of optimal foraging behavior under predation risk and will allow acquisition of detailed dive data to predict the probability of encounter with predators for different age classes of seals; from the video data, prey selection, and pursuit and handling times can be readily calculated.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 30, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–14041 Filed 6–3–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0019, Stocks of Grain in Licensed Warehouses

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity futures Trading Commission (''the Commission'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), *44 U.S.C. 3501 et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

DATES: Comments must be submitted on or before August 4, 2003.

ADDRESSES: Comments may be mailed to Judith E. Payne, Division Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Judith E. Payne, (202) 418–5268; FAX (202) 418–5527; email: *jpayne@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 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, the Commission is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the Commission invites comments on:

• 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;

• 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;

• Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Stocks of Grain in Licensed Warehouses, OMB Control No. 3038–0019—Extension

Under Commission Rule 1.44, 17 CFR 1.44, contract markets must require operators of warehouses regular for delivery to keep records on stocks of commodities and make reports on call by the Commission. The rule is designed to assist the Commission in prevention of market manipulation and is promulgated pursuant to the Commission's rulemaking authority contained in section 5a of the Commodity Exchange Act, 7 U.S.C. 7a.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 1.42 & 1.43	3	Weekly	156	1.0	156

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of exchanges providing such weekly data to the Commission and the number of elevator operators from which the exchanges collect the data.

Dated: May 29, 2003.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–13984 Filed 6–3–03; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0031, Procurement Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''the Commission'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), *44 U.S.C. 3501 et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

DATES: Comments must be submitted on or before August 4, 2003.

ADDRESSES: Comments may be mailed to Steven A. Grossman, Office of Financial Management, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Steven A. Grossman, (202) 418–5192; FAX (202) 418–5529; e-mail: *sgrossman@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 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, the Commission is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the Commission invites comments on:

• 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;

• 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;

• Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic; mechanical, or other technological collection techniques or other forms of

information technology; *e.g.,* permitting electronic submission of responses.

Procurement Contracts, OMB Control No. 3038–0031—Extension

The information collection consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contractors engaged in providing supplies or services.

The Commission estimates the burden of the collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
180	Annually	180	2	360

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of exchanges providing such weekly/data to the Commission and the number of elevator operators from which the exchanges collect the data.

Dated: May 29, 2003.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–13985 Filed 6–3–03; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 68, No. 77, Tuesday, April 22, 2003, pages 19789–19790.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Monday, June 9, 2003.

CHANGES IN MEETING: The public hearing on Commission Agenda and Priorities/Government Performance and Results Act (GPRA) for fiscal year 2005 is canceled.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–7923.

Dated: June 2, 2003.

Todd A. Stevenson,

Secretary.

[FR Doc. 03–14227 Filed 6–2–03; 3:06 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent Number 6,375,726 entitled ''Corrosion Resistant Coatings for Aluminum and Aluminum Alloys'', Navy Case No. 82512, Inventors Matzdorf *et al.*, Issue Date 23 April 2002, Patent Cooperation Treaty (PCT) filing.//U.S. Patent Number 6,511,532 entitled ''Post Treatment for Anodized Aluminum'', Navy Case No.83248, Inventors Matzdorf *et al.*, Issue Date 28 January 2003, PCT filing.//U.S. Patent Number 6,521,029 entitled ''Pretreatment for Aluminum and Aluminum Alloys'', Navy Case No. 83393, Inventors Matzdorf *et al.*, Issue Date 18 Feb 2003.//U.S. Patent Number 6,527,841 entitled ''Post Treatment for Metal Coated Substrates'', Navy Case No. 83075, Inventors Matzdorf *et al.*, Issue Date 4 March 2003, PCT filing.

ADDRESSES: Requests for data, samples of Trivalent Chromium Pre/Post-Treatment (TCP), panels treated with TCP, and inventor interviews should be directed to David Weston (406) 994–7477, *dweston@montana.edu;* or Dan Swanson (406) 994–7736, *dds@montana.edu,* TechLink, 900 Technology Blvd., Suite A, Bozeman, MT, 59718. TechLink is an authorized DOD partnership intermediary. Requests should be made prior to July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Hans Kohler, Office of Research and Technology Applications, Building 150/2, Naval Air Warfare Center, Lakehurst, NJ 08733–5000, telephone (732) 323–2948, E-Mail: *Hans.Kohler@navy.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these patents. Licensing application packages are available from TechLink and all applications and commercialization plans must be returned to TechLink by August 15, 2003. Additional information and revisions to applications may be requested by TechLink through August 30, 2003. TechLink will turn over all completed applications to the U.S. Navy for evaluation, final negotiation and award during the month of September 2003.

The Navy, in its decisions concerning the granting of licenses, will give special consideration to small business firms, and consortia involving small business firms.

The Navy intends to insure that its licensed inventions are broadly commercialized throughout the United States.

PCT applications have been filed for each of the patents as noted above. The Navy intends that licensees interested in a license in Europe, Canada, China, and Japan will assume foreign prosecution and pay the costs of such prosecution.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: May 29, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–13967 Filed 6–3–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory 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 July 7, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, 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 *Karen_F._Lee@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 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: May 30, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Talent Search and EOC Programs Annual Performance Report Form (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary), State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 3690.

Abstract: Talent Search and EOC grantees must submit the report annually. The report provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collected is also aggregated to provide national information on project participants and program outcomes.

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 2244. 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 Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Free Application for Federal Student Aid (FAFSA) (JS).

Frequency: Annually.

Affected Public: Individuals or household (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 13985297.

Burden Hours: 7770355.

Abstract: Collects identifying and financial information from students applying for Federal student aid for postsecondary education. Used to calculate Expected Family Contribution and determine eligibility for grants and loans, under title IV of the HEA.

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 2223. 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 Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–14045 Filed 6–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice provides the schedule and a summary of the agenda for an upcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act. This notice is published less than 15 days prior to the date of the meeting due to unexpected delays in finalizing arrangements for the meeting.

DATE AND TIME: June 9, 2003, 9 a.m. to 3:30 p.m.

ADDRESSES: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036. Telephone: (202) 530–3600.

FOR FURTHER INFORMATION CONTACT: Donald Fischer, U.S. Department of Education, 1990 K Street NW., Washington, DC 20006–8544; telephone (202) 502–7500; e-mail *donald.fischer@ed.gov.*

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in the preceding paragraph as soon as possible.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 742 of the Higher Education Act of 1965 (20 U.S.C. 1138a). The Board is authorized to advise the Director of the Fund and the Assistant Secretary for Postsecondary Education on (1) priorities for the improvement of postsecondary education, including recommendations for the improvement of postsecondary education and for the evaluation, dissemination, and adaptation of demonstrated improvements in postsecondary educational practice; and (2) the operation of the Fund, including advice on planning documents, guidelines, and procedures for grant competitions prepared by the Fund.

On Monday, June 9, 2003, from 9 a.m. to 11 a.m. and from 12 p.m. to 3:30 p.m., the Board will meet in open session. The proposed agenda for the open portion of the meeting will include discussions of the Fund's programs and special initiatives. A special topic of discussion will be costs of higher education.

On Monday, June 9, 2003, from 11 a.m. to 12 p.m., the meeting will be closed to the public for the purpose of discussing personnel matters associated with the work of the Board. This portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and exemptions (2) and (6) of the Government in the Sunshine Act, 5 U.S.C. 552b (c)(2) and (6). The review and discussion of Board personnel matters will relate solely to the internal personnel rules and practices of an agency, and may disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

Records are kept of all Board proceedings and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 6th Floor, 1990 K Street NW., Washington, DC 20006–8544 from the hours of 8 a.m. to 4:30 p.m.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–13963 Filed 6–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Cooper Environmental Services, LLC

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to Cooper Environmental Services, LLC, of Portland, Oregon, an exclusive license to practice the invention described in U.S. Patent No. 6,200,816 B1, entitled ''Method For Measuring Particulate And Gaseous Metals In A Fluid Stream; Device For Measuring Particulate And Gaseous Metals In A Fluid Stream.'' The invention is owned by the United States of America, as represented by the Department of Energy (DOE).

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than June 19, 2003.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(a) provides the Department with authority to grant exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that granting the license is a reasonable and necessary incentive to call forth the investment capital and expenditures needed to bring the invention to practical application, or to otherwise promote the invention's utilization by the public. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Cooper Environmental Systems, LLC, of Portland, Oregon, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 6,200,816 B1, and has a plan for commercialization of the invention.

The exclusive license will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209, unless, within 15 days of this notice, the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, DC. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all timely written responses to this notice, and will grant the license if, after consideration of written responses to this notice, a determination is made, that the license grant is in the public interest.

Issued in Washington, DC, on May 30, 2003.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 03–14027 Filed 6–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–302–000, CP03–303–000, and CP03–304–000]

Cheyenne Plains Gas Pipeline Company; Notice of Application

May 28, 2003.

Take notice that on May 20, 2003, Cheyenne Plains Gas Pipeline Company (Cheyenne Plains), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP03–302–000, CP03–303–000 and CP03–304–000, an application pursuant to section 7 of the Natural Gas Act (NGA), as amended, and parts 157 and 284 of the regulations of the Federal Energy Regulatory Commission (Commission) for: (1) A certificate of public convenience and necessity authorizing the construction, ownership, and operation of new interstate natural gas pipeline facilities; (2) a blanket certificate of public convenience and necessity authorizing Cheyenne Plains to provide open-access transportation services, with pre-granted abandonment approval; and (3) a blanket certificate of public convenience and necessity to construct, operate and/

or abandon certain eligible facilities, and services related thereto. Cheyenne Plains is also requesting approval for its proposed recourse rates for transportation service and its Pro Forma Tariff, which includes the authority to enter into negotiated rate agreements. In addition, Cheyenne Plains requests that the Commission make a Preliminary Determination on Non-Environmental Issues by November 20, 2003, that includes the review and preliminary approval of various financing, rate and tariff provisions, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Cheyenne Plains, a proposed natural gas pipeline company, states that it has been formed to construct, own, and operate approximately 380 miles of 30'' O.D. pipeline that extends southeastward from interconnections with Colorado Interstate Gas Company (CIG) and Wyoming Interstate Company, Ltd. at the Cheyenne Hub, located near the Colorado/Wyoming border, to new interconnections with six interstate and one intrastate transmission pipeline systems located toward the eastern portion of the pipeline in Kansas. Cheyenne Plains states that CIG is filing a companion section 7(c) application with the Commission seeking authorization to install a jumper compressor unit at its Cheyenne Compressor Station in order to provide a compression service. Installation of this jumper compressor unit will permit gas being delivered from CIG to meet the minimum suction pressure requirements of the Cheyenne Plains compressors. Accordingly, following an open season, Cheyenne Plains executed an agreement with CIG for this compression service.

Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Cheyenne Plains Gas Pipeline Company, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–3788 or fax (719) 667–7534; or to Judy A. Heineman, Vice President and General Counsel, Cheyenne Plains Gas Pipeline Company, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–4829 or fax (719) 520–4898.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: June 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13988 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–301–000]

Colorado Interstate Gas Company; Notice of Application

May 28, 2003.

Take notice that on May 20, 2003, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP03–301–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for a certificate of public convenience and necessity authorizing the construction, ownership, and operation of additional compressor facilities at its Cheyenne Compressor Station located in Weld County, Colorado. CIG states that these facilities will serve as ''jumper'' compression between CIG's existing transmission system and the future transmission system of Cheyenne Plains Gas Pipeline Company (Cheyenne Plains).[1] CIG further explains that, pursuant to part 154 of the regulations, CIG seeks approval of its proposed firm Cheyenne Compression Service Rate Schedule CS–1 which details the service to be provided by the proposed jumper compressor. This project is referred to as the Cheyenne Plains Jumper Compressor Project (Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

In addition, CIG states that it is requesting the Commission make a Preliminary Determination on Non-Environmental Issues by November 20, 2003, that includes the review and preliminary approval of new firm compression service, rate and tariff provisions.

Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs,

[1] Contemporaneously with CIG's filing, Cheyenne Plains is submitting its section 7(c) application requesting the Commission's authority to construct, own and operate its natural gas transmission system.

Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–3788 or fax (719) 667–7534; or to Judy A. Heineman, Vice President and General Counsel, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–4829 or fax (719) 520–4898.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: June 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13987 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–127–000]

Commonwealth Edison Company, Complainant, v. Midwest Generation, L.L.C., Respondent; Notice of Complaint

May 28, 2003.

Take notice that on May 27, 2003, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Complaint and Request for Fast Track Processing against Midwest Generation, L.L.C. (MWGen) pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e, and rule 206 of the Commission's rules of practice and procedure, 18 CFR 385.206.

Commonwealth Edison seeks relief from what it alleges is MWGen's violation of its black start obligations under filed Interconnection Agreements.

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 below. 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: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13990 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–10–002]

Enogex Inc.; Notice of Compliance Filing

May 28, 2003.

Take notice that on May 22, 2003, Enogex Inc. tendered for filing a revised Statement of Operating Conditions in compliance with the Commission's order dated May 9, 2003. Enogex Inc., 103 FERC ¶ 61,161 (2003).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13992 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–241–004]

Southern Star Central Gas Pipeline, Inc. (Formerly Williams Gas Pipelines Central, Inc); Notice of Refund Report

May 28, 2003.

Take notice that on May 22, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) formerly Williams Gas Pipelines Central, Inc., tendered for filing a refund report, pursuant to the Commission's order issued April 15, 2003, in the above referenced proceeding, and Southern Star's report of penalty revenue filed April 30, 2002, with subsequent corrections on July 23, 2002, and August 6, 2002.

Southern Star states that the April 15 order directed Southern Star to make refunds within 10 days of the receipt of the order. Southern Star states that it made such refunds on April 25, 2003, and supplied the identical refund report at that time to those parties. Southern Star further states that the refund results from the amount of penalty revenue and the proposed distribution of such revenue collected, for Periods of Daily Balancing (PODB) in 1996 and 1997, pursuant to the provisions of section 9.6 of the General Terms and Conditions (GT&C) of its FERC tariff.

Southern Star states that a copy of its report filing was served on all parties receiving refunds, jurisdictional customers and interested state commissions and parties appearing on the service list for the docket number listed above.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13993 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–93–000, et al.]

Tampa Electric Company, et al., Electric Rate and Corporate Filings

May 27, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Tampa Electric Company, Florida Power Corporation

[Docket No. EC03–93–000]

Take notice that on May 23, 2003, Tampa Electric Company (Tampa Electric) and Florida Power Corporation, d/b/a Progress Energy Florida, Inc. (Florida Power) tendered for filing a joint application requesting authorization under section 203 of the Federal Power Act for the transfer by Tampa Electric to Florida Power of a 2.75-mile-long segment of transmission line located in Polk County, Florida.

Comment Date: June 13, 2003.

2. NRG Power Marketing Inc.

[Docket No. ER02–2463–003]

Take notice that on May 22, 2003, NRG Power Marketing Inc., (NRG) tendered for filing an affidavit and accompanying rate model showing cost data specific to Devon Unit Nos. 7, 8 and 10 that support the proposed rates under the Reliability Agreement, dated August 8, 2002, between ISO New England Inc., and Devon Power LLC.

Comment Date: June 12, 2003.

3. Southern California Edison Company

[Docket No. ER03–142–003]

Take notice that on May 22, 2003, Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission) in compliance with the Commission's ''Order on Compliance and Rehearing'' issued on May 12, 2003, in Docket Nos. ER03–142–001 and ER03–142–002, certain documents supporting its position in this proceeding that Reliability Service costs are not included in any transmission service rates paid by Existing Transmission Contract customers.

SCE states that copies of this filing were served upon the parties listed on the Commission's official Service List in this proceeding.

Comment Date: June 12, 2003.

4. Public Service Company of New Hampshire

[Docket No. ER03–569–001]

Take notice that on May 22, 2003, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate Public Service Company of New Hampshire (PSNH), filed a compliance filing regarding Original Service Agreement No. 95 by and between PSNH and AES Londonderry, LLC (AES) under Northeast Utilities System Companies' Open Access Transmission Tariff No. 9. NUSCO states that a copy of this filing has been mailed to AES.

Comment Date: June 12, 2003.

5. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER03–856–001]

Take notice that on May 22, 2003, Deseret Generation & Transmission Co-operative, Inc., submitted a correction to its informational filing that was filed in Docket No. ER03–856–000 on May 19, 2003.

Comment Date: June 12, 2003.

6. New England Power Pool

[Docket No. ER03–864–000]

Take notice that on May 19, 2003, New England Power Pool (NEPOOL) tendered for filing with the Federal Energy Regulatory Commission (Commission) an informational filing to notify the Commission that as of May 15, 2003, NEPOOL, ISO New England Inc. (the ISO) and NRG Power Marketing Inc. (NRG Power), acting on behalf of itself and several affiliates (the NRG Affiliates and, together with NRG Power, the NRG Participants), entered into an extension of the Weekly Billing Agreement dated November 15, 2002, that implemented a weekly billing and prepayment schedule for the NRG Participants.

The NEPOOL Participants Committee states that copies of these materials were served on the governors and electric utility regulatory agencies for the six New England states. In addition, all NEPOOL Participants Committee members have been furnished with an electronic copy of this filing.

Comment Date: June 9, 2003.

7. ICPM, Inc.

[Docket No. ER03–865–000]

Take notice that on May 22, 2003, ICPM, Inc. (ICPM) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of cancellation, pursuant to 18 CFR 35.15, giving notice of cancellation of its market-based electric tariff filed with the Commission.

Comment Date: June 12, 2003.

8. NDR Energy Group LLC

[Docket No. ER03–866–000]

Take notice that on May 22, 2003, NDR Energy Group, LLC (NDR) tendered for filing a petition for acceptance of NDR Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: June 12, 2003.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–867–000]

Take notice that on May 22, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, PPL Susquehanna L.L.C. and PPL Electric Utilities Corporation.

PJM requests a waiver of the Commission's 60-day notice requirement to permit an April 24, 2003, effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: June 12, 2003.

10. Ameren Energy Marketing Company

[Docket No. ER03–868–000]

Take notice that on May 22, 2003, Ameren Energy Marketing Company (AEM) submitted for filing a power sales agreement pursuant to which AEM will sell energy to Central Illinois Light Company (AmerenCILCO). AEM requests an effective date of June 1, 2003.

AEM states that copies of this filing have been served on AmerenCILCO and on all affected state commissions.

Comment Date: June 12, 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 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13989 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–323–000, ER03–323–001, ER03–323–002, and ER03–323–003]

Midwest Independent Transmission System Operator, Inc.; Notice of Technical Conference

May 28, 2003.

Take notice that a technical conference will be held on Thursday, June 26, 2003, at 9 a.m. in a room to be determined, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The technical conference will address the Midwest Independent Transmission System Operator, Inc.'s Market Mitigation Measures, as proposed in its filings in the above dockets.

Further details of the conference, including the agenda, will be specified in a subsequent notice. All interested persons and Staff are permitted to attend the conference, and registration is not required.

There will be no transcript of the conference and there will be no telephone link communications. For more information about the conference, please contact Jeffrey Hitchings at (202) 502–6042 or *jeffrey.hitchings@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13991 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–7–001]

Natural Gas Price Formation; Notice of Staff Technical Conference & Workshop on Energy Price Discovery & Indices

May 29, 2003.

The Federal Energy Regulatory Commission (FERC) will hold a technical conference on Tuesday, June 24, 2003, at FERC headquarters, 888 First Street, NE., Washington, DC, in the Commission Meeting Room (Room 2C). The Commodity Futures Trading Commission (CFTC) and the National Association of Regulatory Utility Commissioners (NARUC) are participating.

At an April 24, 2003, conference on Natural Gas Price Formation in this docket, Commission staff explored issues relating to the sufficiency of currently collected and published natural gas price information. Authenticity and reliability of the data and adequacy of coverage were discussed. At the upcoming conference we intend to weigh options and facilitate solutions that would ensure accurate, transparent and reliable gas and electric price indices.

We seek consensus on the best near-term option that will satisfy public policy goals in a timely, effective and efficient fashion. The discussion will be focused on comparing the merits of various options, including industry solutions and solutions involving regulatory or self-regulatory oversight, and what would be required to implement each option. Staff plans to issue an options paper in this docket and on the Commission's Web site by June 13. To advance public understanding of the options, the conference will include panelists to explain some of the less familiar options such as Self-Regulating Organizations (SROs) and audited data hubs.

This one-day meeting will begin at 9 a.m. and conclude about 5 p.m. All interested parties are invited to attend. There is neither a registration fee nor preregistration to attend this conference.

We look forward to an informative discussion of the options and a determination of which would best provide all participants in the market clear, transparent, dependable, and accurate price signals with which to make informed decisions.

The Capitol Connection offers coverage of all open and special Commission meetings held at the Commission's headquarters live over the Internet, as well as via telephone and satellite. For a fee, you can receive these meetings in your office, at home, or anywhere in the world. To find out more about Capitol Connection's live Internet, phone bridge, or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100, or visit *http://www.capitolconnection.org*. Capitol Connection also offers FERC open meetings through its Washington, DC-area television service.

The conference will be transcribed. Those interested in obtaining transcripts of the conference should contact Ace Federal Reporters at (202) 347–3700 or (800) 336–6646. Transcripts will be made available to view electronically under this docket number seven working days after the conference. Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703) 715–7999.

We will issue further details on the conference, including the Agenda and a list of participants, as plans evolve. For additional information, please contact Saida Shaalan of the Office of Market Oversight & Investigations at 202–502–8278 or by e-mail, *Saida.Shaalan@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14019 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Availability of the Draft Supplemental Programmatic Environmental Impact Statement on Stockpile Stewardship and Management for a Modern Pit Facility

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy's (DOE) National Nuclear Security Administration (NNSA) is responsible for the safety and reliability of the U.S. nuclear weapons stockpile, including production readiness to maintain that stockpile. Since 1989, the DOE has been without the capability to produce certified plutonium pits, which are an essential component of nuclear weapons. The NNSA, the Department of Defense, and Congress have highlighted the lack of long-term pit production capability as a national security issue requiring timely resolution. While a small interim capability is currently being established at the Los Alamos National Laboratory (LANL), classified analyses indicate that long-term support of the nuclear stockpile, which is a cornerstone of U.S. national security policy, will require a long-term pit production capability. Accordingly, the NNSA has prepared a Draft Supplement to the Programmatic Environmental Impact Statement (EIS) on Stockpile Stewardship and Management (SSM) for a Modern Pit Facility (MPF) [hereafter, that document will be referred to as the MPF Draft EIS], which is now available, in order to decide: (1) Whether to proceed with the MPF; and (2) if so, where to locate the MPF. This Notice of Availability also sets forth the dates, times, and locations for public meetings on the MPF Draft EIS.

DATES: NNSA is inviting comments related to the MPF Draft EIS. Comments should be submitted by August 5, 2003, and will assist the NNSA in finalizing the MPF Draft EIS. Comments submitted after August 5, 2003 will be considered to the extent practicable. Public meetings to discuss issues and receive comments on the MPF Draft EIS will be held in the vicinity of sites associated with the proposed action, as well as in Washington, DC. The public meetings will provide the public with an opportunity to present comments, ask questions, and discuss issues with NNSA officials regarding the MPF Draft EIS. The locations, dates, and times for these public meetings are as follows:

Pantex Site—June 26, 2003, 7 p.m.–10 p.m., College Union Building, Oak Room, Amarillo College, Washington Street Campus, 24th and Jackson Streets, Amarillo, TX 79178, (806) 371–5100.

Carlsbad Site, NM—June 30, 2003, 6 p.m.–10 p.m., U.S. Department of Energy, Carlsbad Area Office, 4021 National Parks Highway, Carlsbad, NM 88220, (505) 234–7227.

Los Alamos Site—July 1, 2003 7 p.m.–10 p.m., Cities of Gold Hotel, Highway 84/285, Pojoaque, NM 87544, (505) 455–0515.

Nevada Site—July 2, 2003, 7 p.m.–10 p.m., University of Nevada Las Vegas, 4505 Maryland Parkway, Student Union Building, Room 201, Las Vegas, NV 89154, (702) 895–4449.

Savannah River Site—July 7, 2003, 6 p.m.–10 p.m, North Augusta Community Center, 495 Brookside Avenue, North Augusta, SC 29841, (803) 441–4290.

Washington, DC—July 16, 2003, 10 a.m.–1 p.m., U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E–245, Washington, DC 20585, (202) 586–5484.

The NNSA will publish additional notices on the dates, times, and locations of the public meetings in local newspapers in advance of the scheduled meetings. Any necessary changes will be announced in the local media.

ADDRESSES: General questions concerning the MPF Draft EIS, including requests for the document, can be asked by calling 1–800–832–0885, ext. 65484, or by writing to: Mr. Jay Rose, MPF EIS Document Manager, Forrestal Building, U.S. Department of Energy/NNSA, 1000 Independence Avenue, SW., Washington, DC 20585. Comments can be submitted at the address above; faxed to: 1–202–586–5324; e-mailed to *James.Rose@nnsa.doe.gov.;* or submitted via the World Wide web at *http://www.mpfeis.com/*. Please mark correspondence as ''MPF Draft EIS Comments.''

FOR FURTHER INFORMATION CONTACT: For general information on the NNSA NEPA process, please contact: Mr. James J. Mangeno, NNSA NEPA Compliance Officer, NA–3.6, Forrestal Building, U.S. Department of Energy/NNSA, 1000 Independence Avenue, SW., Washington, DC 20585; or telephone 1–800–832–0885, ext. 68395. For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The MPF Draft EIS evaluates the environmental impacts associated with constructing and operating a MPF at the following sites: (1) Los Alamos Site, New Mexico; (2) Nevada Test Site; (3) Carlsbad Site, New Mexico; (4) Savannah River Site, South Carolina; and (5) Pantex Site, Texas. The MPF Draft EIS also evaluates an upgrade to the plutonium pit manufacturing capabilities currently being established at the TA–55 facility at LANL, and the No Action Alternative of relying on the small interim capability being established at LANL. The MPF Draft EIS evaluates a range of pit production capabilities consistent with national security requirements.

Additional NEPA analysis will be required for the specific siting of such a facility should the decision be made that a MPF is required. As identified in the MPF Draft EIS, constructing and operating a MPF is the preferred alternative. A preferred site for a MPF has not yet been determined, but will be identified in the MPF Final EIS.

Issued in Washington, DC this 28th day of May 2003.

Everet H. Beckner,

Deputy Administrator for Defense Programs, National Nuclear Security Administration.

[FR Doc. 03–14028 Filed 6–3–03; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011702–001.

Title: Hapag-Lloyd/Lykes Space Charter Agreement.

Parties: Lykes Lines Ltd., LLC, Hapag-Lloyd Container Linie GmbH.

Synopsis: The proposed agreement modification adds Puerto Rico to the geographic scope and revises the port rotation reflected in the Appendix of the agreement.

By Order of the Federal Maritime Commission.

Dated: May 30, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14051 Filed 6–3–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
16338N	Brisk International Express, Inc., 8542 NW. 66th Street, Miami, FL 33166	April 13, 2003.
16529N	Newmark Shipping Ltd. dba R S Freight Inc. dba R S F Inc., 4455 Torrance Blvd., Suite 848, Torrance, CA 90503.	May 1, 2003.
16731N	Providence Services, Inc., 8565 NW 68 Street, Miami, FL 33166	April 25, 2003.

Dated: May 30, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–14050 Filed 6–3–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License

Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 18040NF.
Name: Brit-Am, Logistics Management Services, Inc.
Address: 6425 Woodstone Way, Morrow, GA 30260.
Date Revoked: May 7, 2003.
Reason: Failed to maintain valid bonds.

License Number: 17950N.
Name: CK Logistics, Inc.
Address: 500 Sandau Road, Suite 600, San Antonio, TX 72816.
Date Revoked: February 26, 2003.
Reason: Surrendered license voluntarily.

License Number: 6064N.
Name: Container Management, Inc.
Address: 3250 NW North River Drive, Miami, FL 33142.
Date Revoked: May 18, 2003.
Reason: Failed to maintain a valid bond.

License Number: 770F.
Name: Francesco Parisi, Inc..
Address: C/O George Funaro & Co., P.C., One Penn Plaza, Suite 3515, New York, NY 10119.
Date Revoked: May 22, 2003.
Reason: Surrendered license voluntarily.

License Number: 16006N.
Name: Grand Bell, Inc. dba Grand Bell Maritime U.S.A.
Address: 17785 Center Court Drive, Suite 260, Cerritos, CA 90703.
Date Revoked: June 14, 2001.
Reason: Failed to maintain a valid bond.

License Number: 8188N.
Name: Interocean Transporters Network Corporation.
Address: 821 East 230th Street, Carson, CA 90745.
Date Revoked: May 12, 2003.
Reason: Surrendered license voluntarily.

License Number: 61F.
Name: Rue Forwarding Company, Inc.
Address: 45 John Street, New York, NY 10038.
Date Revoked: May 17, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17264N.
Name: Trans Atlantic Container Lines Inc.
Address: 1200 Fuller Road, Bldg. M–2, Suite 217, Linden, NJ 07036.
Date Revoked: May 18, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17149N.
Name: Triple Star International Freight Inc. dba Tagumpay Cargo.
Address: 31883 Alvarado Blvd., Union City, CA 94587.
Date Revoked: February 14, 2002.
Reason: Failed to maintain a valid bond.

Dated: May 30, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–14052 Filed 6–3–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to

section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

PMK International LLC, 18913 8th Avenue SW., Seattle, WA 98166, Officers: Mary E. Kastner, President (Qualifying Individual), Patrick M. Kastner, Vice President.

K.E.I. Enterprise dba KEI Logix, 375 W. Victoria Street, Gardena, CA 90248, Officer: Kevin Kim, President (Qualifying Individual).

Ba-Shi Yuexin Logistics Development Co. Ltd., 17890 Castleton Street, Suite 367, City of Industry, CA 91748, Officers: Qi Ding, Secretary (Qualifying Individual), Ke Fei Liu, President/CEO.

Ocean Freight, Forwarder—Ocean Transportation Intermediary Applicant

CR International, 192 Cherry Hill Road, NW., Cedar Rapids, IA 52405, Roxann M. Von Lienen, Sole Proprietor.

Dated: May 30, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14049 Filed 6–3–03; 8:45 am]

BILLING CODE 6730–01–P

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 June 27, 2003.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. American Pacific Bancorp, Portland, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of American Pacific Bank, Portland, Oregon.

Board of Governors of the Federal Reserve System, May 29, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–13931 Filed 6–3–03; 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 Web site 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 June 18, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Citizens Bancshares of Hutchinson, Inc., Hutchinson, Minnesota; to acquire Citizens Investment Services, LLC, Hutchinson, Minnesota, and thereby engage in financial planning, and providing investment services, pursuant to section 225.28(b)(6)(v), (b)(6)(vi), and (b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, May 29, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–13932 Filed 6–3–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

ACTION: Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 26, 2003. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on the Terrace level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, June 24, by completing the form found on–line at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm*

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, NW, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Fair Credit Reporting Act: Discussion of the renewal of federal preemption of state laws, set to expire at year–end.

Financial Privacy: Discussion of standardized short–form privacy notices that institutions could provide to customers about the institutions' privacy policies.

Predatory Lending: Discussion of responsible lending programs and products to counter predatory lending.

Issuance of Debit and Credit Cards: Discussion of rules for unsolicited issuance of debit cards under Regulation E (Electronic Fund Transfer Act) and credit cards under Regulation Z (Truth in Lending Act) – specifically whether card issuers should be permitted to issue at any time unsolicited, activated, supplemental debit or credit cards to current cardholders.

Committee Reports: Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470.

Board of Governors of the Federal Reserve System, May 29, 2003.

Jennifer J. Johnson

Secretary of the Board

[FR Doc. 03–13933 Filed 6–3–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting Notice

TIME AND DATE: 11:30 a.m., Monday, June 9, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 30, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–14110 Filed 5–30–03; 4:34 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 031 0068]

Southern Union Co., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 27, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Dennis Johnson, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2712.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 29, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/05/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'' or ''FTC'') has made public a draft complaint (''Complaint'') alleging that the proposed acquisition of Panhandle Eastern Pipeline Company (''Panhandle'') from Respondent CMS Energy Corporation (''CMS'') by Respondent Southern Union Company (''Southern Union'' or ''SU'') would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and has entered into an agreement containing consent order (''Agreement Containing Consent Order'') pursuant to which Respondents agree to be bound by a proposed consent order (''Proposed Consent Order'') that remedies the likely anticompetitive effects arising from the proposed acquisition, as alleged in the Complaint.

II. Description of the Parties and the Transaction

Southern Union, headquartered in Wilkes-Barre, Pennsylvania, is engaged either directly or through affiliates in the distribution and sale of natural gas to residential, commercial and

industrial customers located in certain states, including Missouri, Pennsylvania, Rhode Island and Massachusetts. For the fiscal year ended June 30, 2002, SU reported sales of nearly $1.3 billion and assets of approximately $2.67 billion.

Pursuant to an agreement executed November 20, 2002, which continued until the agreement was terminated on May 12, 2003, Respondent SU's subsidiary, Energy Worx, Inc. (''Energy Worx''), served as the operator and manager of the Central pipeline. The Central pipeline, which transports natural gas to customers in certain Midwestern states, including Kansas and Missouri, is owned by American International Group, Inc. (''AIG'') through its affiliate Southern Star Central Corp. (''Southern Star'').

CMS, headquartered in Dearborn, Michigan, is engaged either directly or through affiliates in the business of oil and gas exploration, natural gas transportation, liquefied natural gas services, independent power production, gas and electricity distribution, and marketing and management services. Panhandle, a subsidiary of CMS, owns and operates the Panhandle pipeline, which transports natural gas to customers in certain Midwestern states, including Kansas and Missouri.

Pursuant to an agreement dated December 21, 2002, and a letter of understanding dated December 20, 2002, Southern Union and affiliates of AIG agreed to acquire all of the capital stock of Panhandle from CMS. The agreement provided that Southern Union would own approximately 77.9%, and affiliates of AIG would own approximately 22.1%, of the equity interest in Panhandle. On May 12, 2003, in order to resolve competitive issues arising from this transaction, Southern Union, Southern Union Panhandle Corp., and CMS Gas Transmission Company entered into an amended and restated stock purchase agreement pursuant to which Southern Union Panhandle Corp., a wholly-owned subsidiary of Southern Union, intends to purchase all of the capital stock of Panhandle from CMS Gas Transmission Company, a wholly-owned subsidiary of CMS. AIG is not a party to the revised transaction and will have no ownership interest in Panhandle. The total value of the transaction is approximately $1.8 billion.

III. The Complaint

The Complaint alleges that the acquisition of Panhandle from Respondent CMS by Respondent SU would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the transportation of natural gas by pipeline into the Kansas City area. To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires Respondent Southern Union, prior to the proposed acquisition, to terminate the Management Services Agreement with AIG for the management of the Central pipeline. The proposed order also prohibits Southern Union from acquiring an equity position in AIG or the Central Pipeline. In addition, the Proposed Order prohibits Respondents Southern Union and CMS from transferring or otherwise providing any ownership interest in the Panhandle pipeline to AIG.

The Complaint alleges that a relevant line of commerce, or product market, in which to analyze the effects of the proposed acquisition is the transportation of natural gas by pipeline. The only way to economically transport commercial quantities of natural gas over significant distances is through large diameter, high pressure pipelines. Transportation of natural gas by other methods would be unsafe, prohibitively expensive, and otherwise not viable. Buyers of natural gas transportation services could not and would not switch to other means of transportation, or to alternative fuels, if the cost of pipeline transportation of natural gas were to increase by 5% to 10%.

The Complaint further alleges that the proposed transaction would lessen competition in a geographic market in the Kansas City area, consisting of Cass, Henry, Jackson, Johnson, Lafayette, Pettis and Saline Counties in Missouri, and Anderson, Butler, Chase, Coffey, Franklin, Johnson, Lyon, Marion, Miami and Osage Counties in Kansas. Buyers of natural gas in this geographic market can receive natural gas only from pipelines that travel through or terminate in that geographic market, and cannot economically access natural gas pipelines outside that area.

The only pipelines that transport natural gas to the relevant geographic market are the Panhandle pipeline, the Central pipeline, and two smaller pipelines that service only part of the western portion of the relevant geographic market. These other two pipelines could not act as a pricing constraint on Central or Panhandle because of operational limitations, capacity constraints, and distance limitations. As a result, for many buyers of natural gas transportation services in the relevant geographic market, Central and Panhandle are the only viable alternatives.

Pursuant to a Management Services Agreement with an affiliate of AIG, Southern Union's subsidiary, Energy Worx, served as the operator and manager of the Central pipeline from November 20, 2002, until the parties to that Management Services Agreement terminated it on May 12, 2003, in order to resolve competitive issues arising from this transaction. The Central pipeline transports a significant portion of the natural gas delivered to the relevant geographic market. Pursuant to the Management Services Agreement, Southern Union had effective control over the business of the Central pipeline, access to confidential competitive information about the Central pipeline, and a financial interest in the Central pipeline. The Management Services Agreement also contemplated that Southern Union would have an equity position in the Central pipeline.

The market for the pipeline transportation of natural gas to the relevant geographic market is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition. As originally proposed, common ownership interest and/or common management and control would exist between the only two alternatives for the transportation of natural gas for many buyers in the relevant geographic market.

Entry into the relevant line of commerce in the relevant section of the country is difficult and would not be timely, likely or sufficient to prevent anticompetitive effects that are likely to result from the proposed acquisition. Building a new pipeline is capital intensive, would involve significant sunk costs, is subject to significant regulatory constraints, and would require more than two years to accomplish. As a result, new entry would not be able to prevent a 5–10% increase in the price of pipeline transportation of natural gas.

The Complaint charges that the proposed acquisition, absent relief, is likely to substantially lessen competition and lead to higher prices for the transportation of natural gas by pipeline to the Kansas City area, by eliminating direct competition between the Panhandle pipeline and the Central pipeline; by placing the Panhandle pipeline and the Central pipeline under common ownership and/or common management and control; by increasing the likelihood that unilateral market power would be exercised in the

relevant geographic market; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction in the relevant geographic market.

IV. Resolution of the Competitive Concerns

The Commission has provisionally entered into an Agreement Containing Consent Order with Respondents Southern Union and CMS in settlement of the Complaint. The Agreement Containing Consent Order contemplates that the Commission would issue the Complaint and enter the Proposed Order to remedy the likely anticompetitive effects arising from the proposed acquisition, as alleged in the Complaint.

The parties have agreed to a proposed consent order that requires Southern Union to terminate the Management Services Agreement with AIG for the management of the Central pipeline by Southern Union's wholly-owned subsidiary, Energy Worx, prior to the proposed acquisition. Southern Union and AIG terminated the Management Services Agreement on May 12, 2003. In addition, the Proposed Order prohibits Southern Union and CMS from transferring any ownership interest in the Panhandle pipeline to AIG. The Proposed Order remedies the anticompetitive effects that are likely to result from common ownership and/or common management of the Panhandle pipeline and the Central pipeline in the relevant geographic market.

Paragraph II of the Proposed Order requires Respondents SU and CMS, prior to the acquisition date, to secure the consent or waiver of AIG for the termination of the Management Services Agreement and to absolutely terminate the Management Services Agreement. The Proposed Order explicitly prohibits Southern Union and CMS from consummating the proposed transaction until the agreement has been terminated. Following the acquisition, Respondent SU shall not, directly or indirectly, operate or manage the Central Pipeline. Additionally, the Proposed Order prohibits Respondent SU from acquiring any ownership interest in AIG or the Central pipeline. This paragraph is designed to ensure that Southern Union will not have an ownership interest in AIG, or any role in managing or operating the Central pipeline.

Paragraph III of the Proposed Order prohibits Respondents Southern Union and CMS from transferring any ownership interest in Southern Union, Panhandle or the Panhandle pipeline to AIG. If either Respondent SU or CMS transfers a non-public ownership interest in Southern Union, Panhandle, or the Panhandle Pipeline to someone other than AIG, it must transfer such interest subject to a restriction that prohibits the sale of such interest to AIG. Paragraph III is designed to prevent the parties from providing any interest in the Panhandle pipeline to AIG.

Paragraphs IV through VII contain standard reporting, notice and access provisions. Pursuant to Paragraph IV, Respondents are required to submit to the Commission a verified written report of compliance every thirty days until the Order is complied with and annually for nine years after the first year the Order becomes final. Paragraph V of the Proposed Order provides for notification to the Commission in the event of any corporate changes in the Respondents. Paragraph VI requires that Respondents provide the Commission with access to their facilities and employees for the purposes of determining or securing compliance with the Proposed Order. Finally, Paragraph VII terminates the Order ten years from the date it becomes final.

V. Opportunity for Public Comment

The Proposed Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this thirty day comment period will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make final the agreement's Proposed Order.

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order and to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–14032 Filed 6–3–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0937–0166]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary, Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection.

Title of Information Collection: 42 CFR subpart B: Sterilization of Persons in federally Assisted Family Planning Projects; Form No.: OMB #0937–0166; Use: These regulations and informed consent procedures are associated with Federally funded sterilization services. Selected consent forms are audited during the site visits and program reviews by Federal programs to ensure compliance with the regulations and protection of individual's rights.

Frequency: On Occasion.

Affected Public: Individuals or households, not for profit institutions, and/or State, local or tribal government.

Number of Respondents: 50,000.

Total Annual Responses: 50,000.

Total Annual Hours: 50,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, or E–mail your request, including your address, phone number, OS document identifier, to *John.Burke@hhs.gov.,* or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer; OMB Human

Resources and Housing Branch, Attention: Allison Eydt (OMB #0937–0166, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 27, 2003.

John P. Burke, III,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary, Department of Health and Human Services.

[FR Doc. 03–13956 Filed 6–3–03; 8:45 am]

BILLING CODE 4150–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–72]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Work-related assaults treated in hospital emergency departments (0920–0575)—Extension—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). Workplace violence, both fatal and non fatal, is recognized as an important occupational safety and health issue. Various data systems have provided fairly detailed information on fatal workplace violence, but much less is known about the circumstances and risk factors for non-fatal workplace violence. A number of strategies have been suggested for reducing the incidence and severity of workplace violence in various settings (*e.g.*, taxicabs, health care, law enforcement, social services), but again, little empirical knowledge exists about what has been implemented and what impact such strategies may have. The report, *Workplace Violence: A Report to the Nation,* published by the University of Iowa based on recommendations from a workshop of experts states, ''* * * research focused on a much broader understanding of the scope and impact of workplace violence is urgently needed to reduce the human and financial burden of this significant public health problem.'' In 2000, there were 677 workplace homicides in the U.S. From 1993–1999, there were an estimated 1.7 million nonfatal victimizations ''while at work or on duty'' every year, accounting for 18 percent of all violent crime during the seven-year period. In December 2001, Congress directed NIOSH to ''* * * develop an intramural and extramural prevention research program that will target all aspects of workplace violence * * *''

The Consumer Product Safety Commission (CPSC) maintains a database of injuries treated in a nationally-representative sample of U.S. hospital emergency departments (ED) called the National Electronic Injury Surveillance System (NEISS). Data routinely collected through NEISS include a brief narrative description of the injury event as well as basic demographic information, intent and mechanism of injury, work-relatedness, principal diagnosis, part of body affected, location where the injury occurred, involvement of consumer products, and disposition at ED discharge. For assaults, summary data are also being collected on the relationship of the perpetrator to the injured person and the context (*e.g.*, altercation, robbery, sexual assault, etc.). For work-related cases, occupation and industry information is collected. The data system does not, however, include any information on issues such as the specific workplace circumstances and risk factors for workplace violence, security measures in place in the workplace and whether they were utilized/worked appropriately, training in workplace violence risk factors and prevention strategies, previous incidents of workplace violence, return to work after assault, and other specific workplace violence information.

For the last ten years, NIOSH has been collaborating with CPSC to collect surveillance data on work-related injuries treated in the NEISS EDs. In addition, NIOSH has utilized the capacity of NEISS to incorporate follow-back surveys. Follow-back surveys allow collection of first-hand, detailed knowledge that does not exist in administrative or other records. CPSC routinely uses this mechanism to collect information on various types of injuries (*e.g.*, fireworks-related injuries, injuries to children in baby walkers, etc.). NIOSH has used this mechanism to collect information on the circumstances of injury, training, protective equipment (if appropriate), and other issues important to more fully understanding the risk factors for work-related injuries and to make appropriate recommendations for preventing other such injuries in the future.

The current proposed study will consist of a telephone interview survey of workers treated in NEISS hospital emergency departments for injuries sustained during a work-related assault over a one-year period. CPSC will hire a contractor to conduct the actual telephone interviews. NIOSH will review potential cases to identify those cases that should be forwarded to the contractor for interview. The survey includes an extended narrative description of the injury incident as well as items regarding general workplace organization; personal characteristics of the worker; work tasks at the time of the assault; training on workplace violence risk factors and prevention strategies; security measures in place and how they impacted the outcome of the incident; medical care received for injuries; time away from work; and return to work after the assault. This study will provide critical information for understanding the nature and impact of nonfatal assault among U.S. workers. In combination with data collected from other sources, this information will ultimately contribute to the prevention of violence in the workplace. The only cost to respondents is their time in participating in the survey.

Survey	Number of respondents	Number of responses/ respondent	Average burden/ response (hours)	Total burden (hours)
Work-related assaults treated in hospital emergency departments	1,600	1	20/60	533
Total				533

Dated: May 29, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–13968 Filed 6–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Continue Conceptual Discussions for Escape Respirator Standards Development Efforts Used for Respiratory Protection Against Chemical, Biological, Radiological, and Nuclear (CBRN) Agents, and Provide an Update on the Quality Assurance/ Administrative Module.

Date and Time: June 25, 2003; 9 a.m.–5 p.m.

Place: Hilton Garden Inn Pittsburgh/ Southpointe, 1000 Corporate Drive, Canonsburg, Pennsylvania.

Status: This meeting is hosted by NIOSH and will be open to the public, limited only by the space available. The meeting room will accommodate approximately 175 people. Interested parties should make hotel reservations directly with the Hilton Garden Inn Pittsburgh/Southpointe (724/743–5000/ 1–800–HILTON) before the cut-off date of June 10, 2003. A group rate of $55 per night has been negotiated for meeting guests. The NIOSH/NPPTL Public Meeting must be referenced to receive this special rate. Interested parties should confirm their attendance to this meeting by completing a registration form and forwarding it by e-mail (*confserv@netl.doe.gov*) or fax (304–285–4459) to the Event Management Office. A registration form may be obtained from the NIOSH Homepage (*www.cdc.gov/niosh*) by selecting Conferences and then the event.

An opportunity to make presentations regarding the conceptual discussions of standards and testing processes for escape respirator standards suitable for respiratory protection against CBRN Agents will be given. Requests to make such presentations at the public meeting should be mailed to the NIOSH Docket Officer, Robert A. Taft Laboratories, M/ S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513–533–8285, E-mail *niocindocket@cdc.gov.* All requests to present on the CBRN topics should contain the name, address, telephone number, relevant business affiliations of the presenter, a brief summary of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes. Participants will be given the opportunity to comment on the Quality Assurance/Administrative module.

After reviewing the requests for presentations, NIOSH will notify each presenter of the approximate time that their presentation is scheduled to begin. If a participant is not present when their presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

Comments on the topics presented in this notice and at the meeting should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513/533–8285. Comments may also be submitted by e-mail to *niocindocket@cdc.gov.* E-mail attachments should be formatted as WordPerfect 6/7/8/9 or Microsoft Word. Comments should be submitted to NIOSH no later than July 25, 2003, and should reference docket number, NIOSH–002, in the subject heading if they pertain to the CBRN topics, or reference docket number, NIOSH–001, in the subject heading if they pertain to the Quality Assurance/Administrative Module.

Purpose: NIOSH will continue conceptual discussions of standards and testing processes for escape respirator standards suitable for respiratory protection against CBRN Agents. In addition, an update on the development of the Quality Assurance/ Administrative module will be presented.

NIOSH, along with the U.S. Army Soldier and Biological Chemical Command (SBCCOM) and the National Institute for Standards and Technology (NIST), will present information to attendees concerning the concept development for the Escape Respirator CBRN standard. Participants will be given an opportunity to ask questions on these topics and to present individual comments for consideration. Interested participants may obtain the latest copy of the Escape Respirator CBRN concept paper, as well as earlier versions of the concept papers used during the standard development effort, from the NIOSH contact identified below, or from the NIOSH National Personal Protective Technology Laboratory Web site, address: *http://www.cdc.gov/niosh/npptl.* The June 15, 2003, concept paper will be used as the basis for discussion at the public meeting, as well as forming the basis for the new Escape Respirator CBRN statement of standard.

Recent acts of terrorism have created an urgent awareness of domestic security and preparedness issues. Municipal, states, and federal responder groups, particularly those in locations considered potential targets, have been developing and modifying response and consequence management plans. Since the World Trade Center and anthrax incidents, most emergency response agencies have operated with a heightened appreciation of the potential scope and sustained resources requirements for coping with such events. The federal Interagency Board for Equipment Standardization and Interoperability (IAB) has worked to identify personal protective equipment that is already available on the market for responders' use. The IAB has identified the development of standards or guidelines for respiratory protection equipment as a top priority. NIOSH, NIST, National Fire Protection Association, and the Occupational Safety and Health Administration have

entered into a Memorandum of Understanding defining each agency or organization's role in developing, establishing, and enforcing standards or guidelines for responders' respiratory protective devices. NIST has initiated Interagency Agreements with NIOSH and SBCCOM to aid in the development of appropriate protection standards or guidelines. NIOSH has the lead in developing standards or guidelines to test, evaluate, and approve respirators.

NIOSH, SBCCOM, and NIST have hosted public meetings on April 17 and 18, 2001; June 18 and 19, 2002; October 16 and 17, 2002; and April 29, 2003, presenting their progress in assessing respiratory protection needs of responders to CBRN incidents. The methods or models for developing hazard and exposure estimates, and the status in evaluating test methods and performance standards that may be applicable as future CBRN respirator standards or guidelines were discussed at these meetings.

The Quality Assurance/Administrative update module had been under development prior to the introduction of the CBRN topics and has been previously presented in an open format, the last of which were public meetings held on August 8, 2000, in Washington, DC, and on August 16, 2000, in San Francisco, California. More recent developments have necessitated revisions that will be highlighted at this meeting.

FOR FURTHER INFORMATION CONTACT: Event Management, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507, Telephone 304–285–4750, Fax 304–285–4459, E-mail *confserv@netl.doe.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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 29, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–13969 Filed 6–3–03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5003–N]

RIN 0938–ZA39

Medicare Program; Demonstration: End-Stage Renal Disease—Disease Management

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice informs interested parties of an opportunity to apply for a waiver allowing them to participate in the End-Stage Renal Disease (ESRD) Disease Management Demonstration. We are planning a demonstration that will increase the opportunity for Medicare beneficiaries with ESRD to receive integrated disease management services and to test the effectiveness of paying for services received by these beneficiaries in a new way. The demonstration aims to test the effectiveness of disease management models to increase quality of care for ESRD patients while ensuring that this care is provided more effectively and efficiently. The demonstration features two distinct payment options: (1) Capitation, and (2) a fee-for-service bundled payment option. Organizations participating under the capitation payment option will be responsible for providing all Medicare covered services for beneficiaries who choose to participate in the demonstration. We plan to use risk-adjusted ESRD capitation rates being developed for use in the demonstration. A similar system of payment rates for ESRD is planned for the M+C program in 2005.

Organizations participating under the fee-for-service bundled payment model will provide disease management services and dialysis services. They will receive payment for an expanded set of dialysis services, which includes items additional to those included under the current composite rate for outpatient dialysis services. Organizations under this option will be required through disease management to coordinate non-ESRD services, but will not have to provide or contract for these services directly.

Organizations under both capitation and fee-for-service bundled payment models will be subject to a reconciliation around the risk-adjusted ESRD payment rate. Organizations under the capitation model will be able to propose risk-sharing arrangements, which would allow them to share any losses or gains with us. Applicants under the fee-for-service bundled payment model will share 50 percent/50 percent on gains and losses (or a similar arrangement to assure budget neutrality). The maximum amount of the incurred gain or loss for the applicant under the fee-for-service bundled payment model will be the amount of the additional payment for the expanded set of dialysis services.

A competitive application process will be used to select organizations to participate in this demonstration. The demonstration is planned for 4 years.

DATES: Applications will be considered timely if we receive them on or before September 2, 2003.

ADDRESSES: Mail applications to: Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Research, Development, and Information, Division of Demonstration Programs, Attn: Sid Mazumdar, Mail Stop: C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244. Applications must be typed for clarity and should not exceed 40 double-spaced pages, exclusive of the executive summary, resumes, forms, and documentation supporting the cost proposal. Because of staffing and resource limitations, we cannot accept applications by facsimile (FAX) transmission. Applications postmarked after the closing date, or postmarked on or before the closing date but not received in time for panel review, will be considered late applications.

FOR FURTHER INFORMATION CONTACT: Sid Mazumdar, CMS Project Officer, at (410) 786–6673, or *smazumdar@cms.hhs.gov.*

Eligible Organizations

Potentially qualified applicants are companies experienced with providing services to ESRD patients. The demonstration will be especially appropriate for dialysis providers and disease management organizations. It will also be open to Medicare+Choice organizations and integrated health care systems.

SUPPLEMENTARY INFORMATION:

I. Background

A. Problem

Many Medicare+Choice organizations and private insurers have realized the importance of the effective coordination of care for persons with chronic conditions. The quality and cost of the care generally can be improved through better integration of the delivery system. The Medicare program is evaluating payment methods to create incentives to improve the quality of care, encourage

the coordination of services, and control costs.

Beneficiaries with (ESRD) are the only group eligible for benefits under Medicare Parts A and B who are prohibited from enrolling in M+C organizations, although a beneficiary who develops ESRD after enrolling in an M+C plan may remain enrolled.

Medicare coverage of individuals with ESRD was initiated in 1972 with the goal of providing life-saving treatment to patients with chronic renal failure. Over 30 years, the number of individuals with ESRD covered by the Medicare program has grown far beyond its expected size and budget, from 7,000 patients in the first year to more than 350,000 in 2001. The ESRD population is currently growing at 7 percent per year and has doubled in the past decade.

In recent years, the ESRD population has accounted for an increasing proportion of Medicare outlays. Between 1992 and 2001, Medicare spending for outpatient dialysis services furnished by freestanding facilities increased by about 10 percent per year. Intravenous medications have also increased Medicare spending for ESRD. Spending for injectible drugs increased from $1.3 billion in 1998 to $2.3 billion in 2001. In 2001, Medicare expenditures for ESRD amounted to $15 billion. The total Medicare cost for the ESRD program is projected to more than double in the next 10 years.

B. Approaches and Demonstration Project

This demonstration follows an earlier ESRD managed care demonstration. In 1993, the Congress required the Secretary to conduct an ESRD Managed Care Demonstration Project. As a result of this mandate, section 13567(b) of the Omnibus Budget Reconciliation Act (OBRA) 1993, Pub. L. 103–66, we implemented a demonstration that allowed ESRD patients to enroll in managed care settings. Participating managed care organizations were to be responsible for the total medical care of ESRD enrollees as well as provide specific case management functions and additional benefits of utility to the ESRD population.

Responding to our solicitation, three organizations joined the demonstration; Kaiser Permanente in southern California, Health Options Incorporated in Florida, and Xantus Corporation in Tennessee. Kaiser Permanente and Health Options Incorporated remained in the demonstration. Xantus discontinued demonstration operations in March 2000. The organizations that remained were a health maintenance organization (HMO) and an HMO subsidiary, both with separate M+C contracts.

The CMS-sponsored evaluation for the project shows the demonstration approach to be operationally feasible and the quality of care was maintained or improved. Overall, the patients who were enrolled in the demonstration reported high satisfaction, improved quality of life, and positive clinical outcomes. The executive summary of this report is available at *http://cms.hhs.gov/researchers/reports/2002/execsum.pdf.*

We plan the new demonstration to foster more types of integrated care for Medicare beneficiaries with ESRD. We seek to test innovative approaches to integrating the chronic care management services for patients with ESRD with other acute care services. Responding to published research on the effectiveness of disease management methods in treating ESRD patients, the demonstration aims to test the effectiveness of disease management models to increase quality of care for ESRD patients while ensuring that this care is provided more effectively and efficiently. Disease management techniques are intended to improve patient care and save money by coordinating interventions and educating patients about managing ESRD and its comorbid conditions.

National organizations have defined approaches to disease management, in order to improve patient outcomes while containing health care costs. Disease management programs tend to target persons whose primary health problem is a specific disease, along with comorbid conditions. Interventions tend to be highly structured and emphasize the use of standard protocols and adherence to clinical guidelines.

Common features to disease management include:

- Identification of patients and matching the intervention with the need.
- Use of evidence-based practice guidelines.
- Services designed to enhance patient self-management and treatment plan adherence, including education and behavior modification programs.

Additional features essential for disease management of ESRD include:

- A central role for the nephrologist.
- Management of the many comorbid conditions of ESRD.
- Care managers with specialized knowledge of diet, medications, total health status, and personal needs of ESRD patients.
- Integrated administrative and financial arrangements among providers of services to ESRD beneficiaries.

The new demonstration includes three delivery models and two payment models, or options. The delivery models are: (1) Managed care, (2) models similar to the approach taken under the Program for All-Inclusive Care for the Elderly (PACE-type) under sections 1894 and 1934 of the Social Security Act, and (3) fee-for-service. The two payment options are (1) capitation and (2) fee-for-service bundled payment. The capitation payment option applies to both managed care and PACE-type delivery models. The fee-for-service bundled payment delivery option would apply only to the fee-for-service model. The delivery and payment models have different implementation methods that are discussed in this solicitation. For each model, the organization will take responsibility for operations such as enrollment (capitation payment model), disease management, care coordination, and financial management.

An additional component to the demonstration payment method, for both managed care and fee-for-service is an incentive payment for quality. Under the demonstration, we will reserve five percent of the payment, either capitation or bundled payment, to be available for quality incentive payments. Capitation payments would be set at 95 percent of the risk-adjusted ESRD payment rate. Ninety-five percent of the additional payment for an expanded bundle will be paid for the fee-for-service option.

For both models, goals for a demonstration organization would be to implement clinical protocols for common clinical events, as well as for objectives as anemia management and diabetes management, and for quality of care in areas such as dialysis treatment modality, consideration for transplantation, post-transplantation follow-up, management of vascular access, prevention of peritoneal catheter exit site infections, and monitoring of dialysis adequacy. A site would coordinate inpatient, outpatient, and home-based services, ensuring continuity of care for multiple chronic care problems and comorbidities, in particular, cardiovascular disease, hypertension, and diabetes.

II. Capitation Payment Model (Managed Care and PACE-Type Delivery Models)

Under the capitation payment model, organizations serving ESRD patients would receive a risk-adjusted ESRD capitation payment in order to test the effectiveness of disease management models in increasing quality of care for

ESRD patients while containing costs. Organizations participating under capitation arrangements would be responsible for managing the care of ESRD patients and providing all Medicare covered services for enrolled beneficiaries. Participating organizations may propose to cover additional services that are not currently covered by Medicare. The following are examples of these additional services:

- Transportation.
- Nutritional services.
- Dental services.
- Prescription drugs (full or limited).
- Preventive care aimed at comorbidities.
- Home care services.
- Exercise programs.
- Education on disease.
- Counseling (including spiritual).
- Diabetes management.
- Cardiovascular management.

Beneficiaries would agree, as a condition of participation in the demonstration, to receive services through the participating organization. Organizations responding must demonstrate capability to identify beneficiaries for the demonstration, and they must be licensed to bear risk. Organizations would be required to meet M+C conditions regarding access and availability of care.

A. Managed Care Model

The managed care delivery model may be attractive to organizations such as large dialysis providers and entities that currently offer M+C plans. The optimal approach for these organizations would consider arrangements with hospitals and other providers to service the entire range of health care needs for ESRD patients, including transplantation. These companies would coordinate referrals for the comorbidities of ESRD patients and therefore should be able to manage treatments to improve quality and reduce costs compared to fee-for-service. Care coordination has the potential to enhance the continuity of patient care, improve clinical outcomes, and improve patient satisfaction. Managed care organizations would contract with disease management entities or directly provide disease management to all participating beneficiaries.

Studies have reported the growth over the past decade of for-profit dialysis facilities and chains of dialysis facilities under common ownership. According to a recent report, the five largest dialysis corporations provide services to more than 70 percent of all dialysis patients in the U.S. (Source: United States Renal Data System). The capitation payment model will provide an incentive for these companies to combine their services with those of other healthcare providers to create efficient systems for the care of ESRD patients. The demonstration also will capitalize on the clinical, financial, and organizational expertise of independent dialysis companies. Other companies, including single-or multi-site disease management companies, have shown potential for cost savings through clinical and organizational innovations. Networks that coordinate the entire range of patients' care will enhance the continuity of care for illnesses and conditions that impact ESRD patients. Since ESRD patients will choose whether to participate or remain in fee-for-service, companies already serving patients on a fee-for-service basis that participate in the managed care model of this demonstration will be required to continue these fee-for-service arrangements for patients who do not choose to participate in the demonstration. However, it is expected that many, if not all, will enroll.

B. PACE-Type Model

The PACE program provides for managed care services for very frail community dwelling elderly, most of who are dually eligible for Medicare and Medicaid. The PACE-type model is a variation of the managed care model described above, although with greater emphasis on patient care coordination. For the purposes of this project, the PACE-type model would be a delivery option, receiving no additional payment beyond the risk-adjusted ESRD rates. In the PACE-type model, the provider would ensure that all services, including those provided by contracted providers, would be controlled by an interdisciplinary team composed of professional and para-professional staff (for example, physicians, nurse practitioners, registered nurses, licensed practical nurses, occupational therapists, physical therapists, dietitians, day health center supervisors, recreation therapists, social workers, health workers, and drivers). The team would have responsibility for assessing participant needs, formulating care plans, directly delivering services, managing the care provided by contracted providers, and providing ongoing monitoring of treatment outcomes. Constant monitoring effectively would disclose potential needs for care plan adjustments. The team also would have the responsibility for maintaining high quality of care while simultaneously controlling program costs.

Organizations providing dialysis as well as other health care services exclusively to ESRD patients may base their delivery system on a variation of the PACE-type model emphasizing disease management protocols and multidisciplinary team management at one central site. Flexibility would be allowed in designing service delivery provisions, to be negotiated during the period before implementation. Organizations proposing the PACE-type model will not be required to only include dual eligible ESRD beneficiaries.

C. Eligibility Requirements

For the capitation model, an applicant organization must have at least preliminary arrangements with other organizations to assure the integrated provision of all Medicare-covered services. We expect organizations to select geographic areas where they will make arrangements with hospitals and other providers to service the entire range of Medicare covered health care needs of ESRD patients. All services should be geographically accessible to all ESRD patients in a service area (for example, within one hour or 50 miles of a patient's residence). However, special transportation arrangements may be needed to make transplant services available. Applications should include discussion of proximity of service providers, including hours of availability and other aspects of access. Maps would be useful. We encourage programs to allow a wide choice of modalities, while recognizing that for certain qualified applicants this choice is necessarily limited to in-center dialysis only.

All persons eligible for the Medicare ESRD benefit and in the service area would have the opportunity to participate on a voluntary basis except for patients who become eligible for the Medicare hospice benefit prior to enrolling in the demonstration. Demonstration sites could exclude patients according to particular criteria, including those under 18 years old, if justified. The demonstration organization would make clear that patient participation is entirely voluntary and that the ESRD beneficiary who chooses not to do so remains entitled to all Medicare-covered services.

Information provided by the provider to beneficiaries would include the network of providers who have contracted with the demonstration organization, including dialysis facilities, hospitals, and transplant surgeons, and that receiving services

through this network is a condition of participation in the demonstration.

D. Payment

For the managed care and PACE-type models, we plan to use risk-adjusted ESRD capitation payment rates being developed for the demonstration. These rates are part of the development of the ''selected significant conditions'' model for M+C risk adjustment. A similar set of payment rates for ESRD is planned for the M+C program in 2005. This risk adjuster will factor a greater number of comorbidities into the payment. The capitation payment method would depend on an organization's ability to submit data for relevant diagnoses recorded during hospital inpatient stays, hospital outpatient visits and physician visits. For the proposed new payment methodology for M+C ESRD, see *http://www.cms.hhs.gov/healthplans/rates/2004/45day-section-b.asp.* The actual ESRD risk-adjusted payment rates for 2004 will be available on our Web site in the near future.

The methodology will pay separate payment rates for dialysis, transplant, and post-transplant modalities. The organization would submit monthly data indicating the modality status for enrollees. The developmental phase for the demonstration would offer a period when CMS and organizations would be able to work together to establish the operational requirements of specific payment options. There will be no phase-in of the risk adjusted ESRD rates for the demonstration—payment will begin with one hundred percent, or full, risk adjustment. The actual payment amount will be reduced by five percent, which will be available later depending on performance on quality measures.

III. Fee-for-Service Bundled Payment Model

This delivery and payment model is appropriate for organizations such as disease management companies, dialysis facilities, and integrated health systems that will conduct disease management for ESRD patients and provide dialysis services under a new bundled payment methodology. Organizations will be expected to coordinate all services utilized by patients receiving dialysis through the organization. They will not be responsible for providing services other than disease management and dialysis services, and Medicare will process and pay all claims on a fee-for-service basis.

However, the organizations will be partially at risk for expenses incurred by Medicare for patients who receive dialysis services through the organization. Annually, we will conduct a reconciliation, wherein patients' total Medicare costs will be compared to what their risk-adjusted payment amounts would be. (See Financial Risk, below.) For the purposes of the reconciliation, organizations will be accountable for a patient's Medicare expenses until a patient either begins to receive dialysis services in another dialysis facility or in a nursing home, that is, the patient's care is no longer managed by the organization. (As an example, if a patient receiving services in a demonstration dialysis facility is admitted to a hospital and then returns to the facility for dialysis, the Medicare cost for the hospital stay will be counted as part of the demonstration organization's expenses.) Under this payment option, the maximum amount of incurred gain or loss for the organization will be equivalent to the total amount of the add-on payment for the expanded bundle.

The organization would identify distinct facilities that will participate in the demonstration. To minimize favorable selection, all, or nearly all, patients treated within the set of facilities that are included in the demonstration would be paid for under the bundled rate. The beneficiaries would be informed that the organization is participating in a new payment and disease management project. The organization would make special arrangements for those patients who choose to opt out of the demonstration. An acceptable arrangement would involve placing a patient who chooses to opt out in another facility, while ensuring that location and transportation arrangements are convenient for the patient. If this condition is not met, we would make arrangements for these people to continue in the facility under a separate payment from the demonstration. In addition, we would not include dialysis patients in the demonstration who are members of M+C plans.

The demonstration payment for the bundle is constructed as an add-on to the otherwise applicable specific composite rate payment for each geographic area, as listed in the CMS Program Memorandum for February 1, 2001 (Transmittal A–01–19). The expanded bundle add-on includes payment for several classes of drugs: Erythropoietin, Levocarnitine, phosphate binders, iron supplements, and Vitamin D analogs; necessary laboratory tests; and radiology. (See appendix I for a full list of items under the bundled payment.) Applicants for this option will have the choice of also including vascular access services in the expanded bundle add-on. Nearly all routine dialysis services are included in the bundle. Other items and services will be separately billable outside the bundle. Organizations will not be able to bill separately for items in the bundle.

The Medicare add-on payment for the expanded bundle not including vascular access services is $71.63 per session. The add-on payment for the bundle including vascular access services is $86.63. (These numbers include a one percent deduction for Medicare savings.) These payments do not include any potential co-payments and were calculated on Medicare claims data from July 2000 through December 2001, and will be used exclusively for this demonstration. We will update the payment for the expanded bundle to reflect changes in Medicare payment levels.

The add-on bundle rates include payment for disease management services. Organizations must provide a detailed description of the disease management services they will provide, including information on their proposed interventions, the type and number of patients to whom each intervention is targeted, and the frequency with which such interventions are expected. Applicants should also describe how these services will increase quality and reduce costs.

In accordance with the withhold for quality, five percent will be subtracted from the bundled payment rate. As described below, the five percent will be available later depending on performance on quality measures.

In rare circumstances when patients use other dialysis facilities, the organization will be responsible for reimbursing the facility at Medicare fee-for-service payment levels. It will have received the bundled payment on behalf of the beneficiary who is temporarily absent from the geographic area. Applicants should consider in their proposals what constitutes a temporary absence. The organization will continue to provide disease management services and coordinate other Medicare services while the patient is away.

Applicants proposing the fee-for-service option with the bundled dialysis payment should be aware that the implementation period will be at least six months, because of significant bill-paying systems changes. We will update the payment for the expanded bundle on an annual basis to reflect changes in Medicare payment levels. Facilities will be able to participate under this option for patients receiving home dialysis services under Method I. Demonstration payments will not be made for Method II home dialysis patients.

IV. Supplemental Coverage

The demonstration will be open to ESRD beneficiaries for whom Medicare is either primary or secondary payer. In the case of demonstration participants for whom another payer is primary, the demonstration organization must submit valid bills with the primary payer to collect the appropriate payment amount as specified by the demonstration's payment rules.

To make the demonstration financially viable, participating organizations may collect cost-sharing in the form of premiums, deductibles, and co-payments to beneficiaries in lieu of the cost-sharing amounts for which beneficiaries are responsible under the ordinary fee-for-service payment rules. To be financially attractive to beneficiaries, these should have actuarial values that are lower than current Medicare fee-for-service cost-sharing.

A beneficiary participating in the demonstration may choose to retain his or her Medigap policy. Participating organizations should clearly explain to beneficiaries the advantages of retaining and risks of discontinuing their Medigap coverage. Under the fee-for-service bundled payment option, participating organizations will be able to bill any supplemental insurance plan that the enrolled beneficiary holds for cost-sharing purposes. If a secondary payer is Medicaid or a group health plan, that payer may pay some or all of a beneficiary's monthly premium for enrollment.

Under the demonstration, an organization receiving a fully capitated payment may pursue the possibility of billing existing Medigap policies held by a beneficiary participating in the demonstration, or bill Medicaid, for the amount of cost-sharing that otherwise would be paid under Medicare fee-for-service. The demonstration organizations may attempt to make such arrangements with Medigap plans, State Medicaid agencies, and State insurance regulators.

Beneficiaries participating in the capitation demonstration will have the option of terminating supplementary coverage. In these cases, the selected demonstration organizations must work with the beneficiaries to ensure that either their policy is maintained at the end of the demonstration, or that beneficiaries understand that if they drop supplemental coverage, enrollment in their supplemental plans is not guaranteed at the end of the demonstration. It will be incumbent on the demonstration organizations to provide proper notice to potentially participating beneficiaries about their Medigap rights if the individual's participation in the demonstration ceases. Specifically, the demonstration organization should be explicit in its marketing information to beneficiaries about the scope of rights that accrue to patients under age 65 in the particular State.[1]

If the beneficiary intends to cancel a Medigap policy and if the arrangements with the supplemental insurer do not guarantee that the beneficiary has the same coverage at the end of the demonstration, it must be clear that the beneficiary chooses to participate in the demonstration with full knowledge of this possibility. Providers and beneficiaries are advised that the demonstration is time-limited, and that dropping a Medigap policy presents a significant risk. We will ensure that demonstration organizations communicate the advisability of maintaining Medigap coverage to potential participants.

When demonstration awards are made, the Terms and Conditions will require that the awardee submit for our approval a Phasedown Plan explaining how demonstration participants are to be assisted in converting back to previous insurance coverage and fee-for-service care at the conclusion of the demonstration, as well as during the project. This requirement will apply to organizations under both capitation and fee-for-service bundled payment models.

V. Financial Risk

A. Risk-Bearing Requirements

We will work with organizations that have requested capitation payment in the pre-implementation period to assure they meet the risk-bearing requirements under their State. We will consider the individual circumstances of the provider in relation to State law and the demonstration project, but we cannot exempt organizations from State law. Organizations will be required to meet all of the State's insurance requirements to the extent applicable. There is no risk-bearing licensure requirement for the fee-for-service model.

B. Risk Sharing

Organizations may propose risk-sharing arrangements under either the capitation or fee-for-service bundled payment options. If risk sharing is included for the capitation option, a year-end reconciliation will be conducted to compare an actual Medical-Loss-Ratio (MLR) to a target Medical-Loss-Ratio. Any differences, either gains or losses, would be shared on a symmetrical basis by the organization and us. As part of the proposal, organizations should submit a projected revenue and expense statement showing calendar year 2004 estimated per member per month Medicare revenue and member premium; benefit expenses (hospital inpatient, hospital outpatient, dialysis, professional, other Medicare services, and non-Medicare services); and administrative expenses. The statement should show any co-payment credits for the various services and reflect payment from Medicaid or supplemental insurers. A target MLR will result from the ratio of benefit expenses to revenues. One year after the end of each operational year, the organization should send a certified actual revenue and expense report to determine the actual MLR.

If risk sharing is proposed, there should be three calculations of projected savings/losses—optimistic or best case assumptions, expected or normal assumptions, and pessimistic or worst-case assumptions. Budget neutrality should be assessed for each situation. The risk-sharing proposal must include a 2 percent full-risk corridor above and below the targeted Medical-Loss-Ratio. In addition, prior to awards, we will work with applicants to determine whether the proposed Medical-Loss-Ratio is set at a level where the risk-

[1] Generally, an individual who voluntarily disenrolls from a managed care demonstration will not have guaranteed issue rights. If an individual is enrolled in a managed care demonstration and enrollment ceases under circumstances set forth in section 1851(e)(4) of the Act (for example, the demonstration is terminated), the individual will have the right to buy certain Medigap plans on a guaranteed issue basis (generally Plans A, B, C or F). This right generally will not accrue to an individual who wishes to voluntarily disenroll from the managed care demonstration. It also generally will not apply if an individual is enrolled in the fee-for-service model of the demonstration, since the statutory provision in section 1882(s)(3)(B)(iii) of the Act provides guaranteed issue rights to individuals in a managed care organization.

If an individual drops a Medigap policy to enroll in the ESRD managed care demonstration and it is the first time the individual has enrolled in Medicare managed care, that individual has a 12-month trial period. The individual may disenroll from the demonstration within the first 12 months and purchase his or her former Medigap policy, if it is still available from the same issuer. If the former policy is not available, the individual can buy Medigap Plans A, B, C, or F. Individuals who join the demonstration upon first becoming eligible for Medicare Part A at age 65 would not have ''trial period'' rights.

It is important to note that Federal law does not require a Medigap open enrollment period for beneficiaries under age 65, so Medigap insurers do not have to sell policies to this population. State law governs what Medigap choices are available to Medicare beneficiaries under age 65. Currently, twenty-two States have laws that provide Medigap rights to beneficiaries under 65. The Medigap plans available to the under-65 population vary by State.

sharing arrangement is projected to be budget neutral under expected or normal assumptions. If risk sharing is proposed for the capitation model, we will share risk only on medical benefit expenses. Administrative expenses must be reasonable and consistent with prior practices. Applicants can propose the percentages of risk sharing and risk corridors, but these must be symmetrical, for example, 50 percent organization/50 percent CMS beyond the 2 percent full risk corridor; 40 percent organization/60 percent CMS beyond the 2 percent full risk corridor on gains and losses. Seventy-five percent is the most we will share on gains or losses.

For the fee-for-service option, a CMS reconciliation will be conducted to compare total Medicare payments made on behalf of patients receiving dialysis and disease management services to total risk-adjusted ESRD payments that would have been received under the capitation payment model (minus the dollar amount of the one percent subtracted from the payment for the expanded bundle). It is expected that through efficiencies generated by disease management and a bundled dialysis payment, organizations will break even or achieve overall savings. Similar to the capitation model, there will be a 2 percent full-risk corridor above and below the targeted payment amount. Organizations will share with CMS 50 percent/50 percent on gains and losses resulting from the reconciliation beyond the full-risk corridor on gains and losses (or a similar arrangement to assure budget neutrality). The maximum amount of incurred gain or loss will be equivalent to the amount of the add-on payment for the expanded bundle. For the purposes of the reconciliation, organizations will be responsible for a patient's Medicare expenses until a patient either begins to receive dialysis services in another dialysis facility or in a nursing home. A 12-month period will be allowed for claim lag.

Similar to the capitation model, fee-for-service applicants should outline calculations of budget neutrality under optimistic or best-case assumptions, expected or normal assumptions, and pessimistic or worst-case assumptions.

VI. Legislative Authority

Depending on the model chosen by the applicant and approved by us, the demonstration project and the waivers granted to permit it would be authorized by one of two statutory provisions, or by both such provisions. The original ESRD managed care demonstration described above was, as noted, conducted in accordance with specific Congressional authority for such a demonstration in the context of ''Social HMO'' or ''SHMO'' demonstration projects. The managed care model demonstrations, as well as those we are referring to as ''PACE-type'', would be authorized under this broad authority. These types of demonstration models would also be authorized by the authority in section 402 of the Social Security Amendments of 1967, 42 U.S.C. section 1395b-1, which permits demonstrations, testing ''changes in methods of payment'' and the waiver of rules relating to payment, as well as the coverage of services not otherwise covered by Medicare. In the case of a fee-for-service demonstration model, this latter authority would authorize the demonstration.

A. SHMO Authority

Section 2355 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) required the Secretary to approve applications to carry out SHMO demonstrations to provide for the integration of health and social services under the direct financial management of a provider of services. Up to four additional projects were mandated by section 4207(b)(4) of the Omnibus Budget Reconciliation Act (OBRA) of 1990, Pub. L. 101–508. (This authority, as amended, is referred to as SHMO II.) In accordance with the previous demonstration, we are interpreting the term ''project'' to refer to the overall demonstration project, and that a significant number of organizations can participate in the proposed demonstration.

Section 13567(b)(2)(B) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) mandated that these demonstration waivers be extended through the end of 1997 and required at least one of the four new projects: ''to demonstrate * * * the effectiveness and feasibility of innovative approaches to refining, targeting and financing methodologies and benefit design, including the effectiveness and feasibility of integrating acute and chronic care management for patients with end-stage renal disease through expanded community care case management services.''

The Congress subsequently mandated that these demonstrations be extended. Section 631 of the Medicare, Medicaid and SCHIP Benefits Improvement Act of 2000 (BIPA) mandated an extension through August of 2003. While under current statute, a mandate that the demonstrations continue would expire on that date; we believe that to the extent a demonstration is otherwise permitted under the SHMO authority, it can be conducted under this authority subsequent to this date.

The Congress in Section 4207(b) of the Omnibus Budget Reconciliation Act of 1990 provided authority to waive ''any requirements of titles XVIII or XIX of the Social Security Act that, if imposed, would prohibit such project from being conducted.''

B. Section 402 Authority

Section 402(a)(1)(A) of the Social Security Amendments of 1967, 42 U.S.C. section 1395b–1(a)(1)(A), authorizes the Secretary to develop and engage in demonstrations ''* * * to determine whether, and if so which, changes in the method of payment or reimbursement * * * for health care and services under health programs established by the Social Security Act * * * would have the effect of increasing efficiency and economy of health services under such programs through the creation of additional incentives to these ends without adversely affecting the quality of such services * * *.'' Section 402(a)(1)(B), 42 U.S.C § 1395b–1(a)(1)(B) authorizes a demonstration to determine whether covering services not otherwise covered by Medicare (in this case, disease management services) would result in more economical provisions of Medicare covered services.

Under section 402(b) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1(b)), the Secretary may waive requirements in title XVIII that relate to reimbursement or payment. This authority will allow payment on a capitation basis rather than under the Medicare fee-for-service rules, and would allow fee-for-service/bundled payment and risk sharing around a traditional fee-for-service payment system. Section 402(a)(2), 42 U.S.C. § 1395b–1(a)(2), authorizes Medicare trust funds to cover the costs of the additional services under section 402(a)(1)(B).

VII. Quality Assurance and Improvement

A. Quality Indicators

Under the demonstration, we would link financial incentives to improvements in quality outcome indicators. Five percent of the capitation or expanded bundle payment rates will be reserved for incentive payments related to quality improvement activities.

For determining the incentive payment, we will use indicators profiled in the ESRD Clinical Performance Measures (CPM) Project. Indicators for the incentive payment will include adequacy of dialysis, anemia

management, serum albumin, bone disease, and vascular access.

Organizations will be able to earn all or part of the five percent withheld for quality. For each of the five measures, an organization will earn one half of one percent for achieving either of the improvement or the threshold targets outlined below. Appropriate targets will be used for patients receiving peritoneal dialysis. For each measure, the amount of incentive would be weighted according to the proportion of hemodialysis to peritoneal dialysis patients.

The demonstration will require further indicators for the evaluation of disease management efforts. Although not representing factors in the calculation of the financial incentive, organizations will be monitored for quality indicators measuring potential outcomes of disease management. Indicators of particular interest include blood pressure control, comprehensive diabetes care, adult immunizations, measures of successful transplantation or referrals for transplant evaluation, quality of life (QoL or CAHPS surveys), patient safety, psychiatric evaluation, referral and follow-up, and the percentage of referrals with consult and discharge summaries. The evaluation of the demonstration will assess all available measures of quality of care in the context of the demonstration. In addition, the demonstration will require at its initiation an updated Form CMS–2728 (that is, ESRD Medical Evidence Report Medicare Entitlement and/or Patient Registration) to be submitted for each patient. The 2728 will be used as a baseline for patient demographics, clinical lab values, and co-morbid conditions. This baseline data will be used along with the CPM Data to monitor patient enrollment so that selection bias is minimized. They will also be used for patient care monitoring to ensure that patients receive at least the same level of medically necessary services and medications as determined by the patient's phyisican as they received, prior to enrollment.

B. Incentive Payment for Quality

There will be two kinds of quality outcome targets—targets for an organization's improvement over time and those that measure an organization against a predetermined threshold level that takes into account nationwide performance for a quality indicator.

Improvement targets would be set using a methodology that bases the target on improvements in the ''quality deficit''. The quality deficit would be defined as 100 percent minus the organization's actual rate for assigned beneficiaries in the previous year. Improvement targets would be set at 10 percent over the deficit from 100 percent. Threshold targets would be set at 20 percent above the nationwide percent deficit from 100 percent.

Improvement Target = [Percent of patients in previous year meeting quality indicator + (10 percent * (100 percent − Percent of patients in previous year meeting quality indicator))]

Threshold Target = [Nationwide percent of patients meeting quality indicator + (20 percent * (100 percent − Nationwide percent of patients meeting quality indicator))]

The targets would be re-evaluated annually. Each measure would be worth an equal proportion of the total five percent reserved for quality improvement. Allowing organizations to earn incentive payments by meeting/exceeding either predefined thresholds or improvement targets would require bigger improvements for low performers than high performers and would take into account that it may be more difficult to improve on already high performance.

Example

(Quality Indicator: Adequacy of Hemodialysis, Percent of patients receiving hemodialysis with KT/V ≥ 1.2. Nationwide Percent: 86 percent, Source: 2001 Annual Report on ESRD Clinical Performance Measures Project)

For Organization A, 80 percent of hemodialysis patients in the previous year had a Kt/V ≥ 1.2.

- The organization's improvement target would be 82 percent [80 percent + (10 percent * (100 − 80))].

If 82 percent of the organization's hemodialysis patients have a Kt/V ≥ 1.2 in the operational year, the organization would earn half of the incentive payment for this quality indicator for meeting the improvement target.

- The nationwide percent of patients with Kt/V ≥ 1.2 is 86 percent; therefore, the threshold target is 88.8 percent [86 percent + (20 percent * (100 − 86))].

If 89 percent of the organization's hemodialysis patients have a Kt/V ≥ 1.2 in the operational year, then the organization would earn half of the incentive payment for this quality indicator for meeting the threshold target.

C. Clinical Quality Data Collection

For quality data assurance, we would use the Clinical Performance Measures Project data system, which is administered by the Quality Measurement and Health Assessment Group, Center for Beneficiary Choices, CMS. The CPM Project would provide data within 9 to 12 months for all five measures discussed above. By way of contrast, data using claims are less complete and take longer to obtain. Currently, CPM data are collected annually over a three-month time frame. For the demonstration, we intend to collect these data quarterly to examine trends more closely. Although the current CPM project only reports these indicators for a small percentage of dialysis patients, this demonstration would require a 100 percent reported sample. A CMS pilot project under development for electronic submission of clinical ESRD data may be ready within the next year. If feasible, we would require demonstration sites to utilize this system. The developmental period will be used to verify the details of reporting for individual sites, for example, how values will be established for patients with multiple observations in a quarter.

D. Quality Improvement

An optimal organization would include an approach to improving and ensuring quality of care for Medicare ESRD patients. Quality of care strategies would be beneficial if they are patient-centered and focus on outcomes of care and could be measured and monitored. The quality improvement program would include the following features:

- Written quality improvement policies and procedures
- Written patient education program
- A standing quality improvement committee
- Patient grievance and appeal systems
- Provider credentialing system

VIII. Budget Neutrality

This demonstration must be budget neutral. This means that the expected costs that are incurred to Medicare for each site under the demonstration can be no more than the expected costs were the demonstration not to occur. Before awards are made, our actuaries will review and approve documentation to support budget neutrality calculations.

IX. Evaluation and Reporting Requirements

We plan to award a separate contract to evaluate the ESRD demonstration. Awardees for the demonstration would agree to cooperate with our evaluation contractor, including participation in periodic site visits and providing information necessary to conduct the evaluation. The specific requirements for sites related to the evaluation of the demonstration would be finalized once

an evaluation contract has been awarded.

In addition, awardees under the fee-for-service bundled payment option will be required to provide line item billing for all non-composite expanded bundle services. For both capitation and fee-for-service bundled payment options, ability to submit data under the CPM project will be beneficial.

X. Submission of Applications

A. Purpose

This notice solicits applications for demonstration projects that increase the opportunity for Medicare beneficiaries with ESRD to receive integrated care management. The demonstration aims to test the effectiveness of disease management models to increase quality of care for ESRD patients while ensuring that this care is provided more effectively and efficiently.

Participating organizations will be able to solicit participation in the demonstration by patients whom they currently treat in the fee-for-service system as well as new patients. Organizations under both capitation and fee-for-service bundled payment models will be subject to a reconciliation around the risk-adjusted ESRD rates. (For the fee-for-service bundled payment option, one percent of the amount of the add-on to the bundled payment will be subtracted from this target.) Organizations under the capitation model will be able to propose symmetrical risk sharing arrangements around a two percent corridor, which would allow them to share any losses or gains with us. Applicants under the fee-for-service bundled payment model will share around a two percent corridor with CMS 50 percent/50 percent on gains and losses. The maximum amount of incurred gain or loss will be equivalent to the amount of the add-on payment for the expanded bundle. An incentive payment for quality is also included in the demonstration. The demonstration is planned for four years.

B. Submission of Applications

Each applicant organization is to submit one application regardless of the number of proposed demonstration sites. The application is to be coordinated and submitted by a component of the organization that currently treats or organizes the treatment of ESRD patients. If applicable, variations related to proposed sites should be outlined in the application text or supplemental materials.

We are seeking innovative proposals from qualified organizations that can test whether care of Medicare beneficiaries with ESRD can be more efficiently and effectively provided using models involving disease management, and whether clinical outcomes can be improved with a cost that is budget neutral to the Medicare program.

Interested organizations are able to use the capitation and fee-for-service bundled payment models outlined in this solicitation. Organizations in the demonstration will adopt one of the managed care, PACE-type or fee-for-service bundled payment delivery models. For the capitation models, the entire range of medical needs of ESRD patients must be addressed through a network of contracted or affiliated providers.

In order to be considered for review by the technical review panel, applicants must submit their applications in the standard format outlined in our Medicare Waiver Demonstration Application. Applications not received in this format will not be considered. The Medicare Waiver Demonstration Application may be accessed at the following Internet address: *http://www.cms.hhs.gov/healthplans/research.* The application outlines all application requirements including the format and content requirements.

Queries for the narrative portion of the application should be submitted in writing by mail, fax, or e-mail to: Sid Mazumdar, 7500 Security Boulevard, C4–17–27, Baltimore, MD 21244–1850: FAX: 410 786–1048, E-mail: *smazumdar@cms.hhs.gov,* or *ESRDDEMO@cms.hhs.gov.*

Applications should be sent to: Sid Mazumdar, Project Officer, Division of Demonstration Programs, Centers for Medicare & Medicaid Services, C4–17–27, 7500 Security Boulevard, Baltimore, MD 21244–1850.

C. Evaluation Process and Criteria

If the application meets the basic eligibility requirements (that is, responds to all components of the solicitation), it will be referred to a technical review panel for evaluation and scoring. Panels of experts from the government or private sector will conduct an independent review. The panelists' comments and evaluations will be transcribed into a summary statement that will serve as the basis for award decisions. The panelists' evaluations will contain numerical ratings based on the rating criteria specified in this section, the ranking of all applications, and a written assessment of each application. In addition, we will conduct a financial analysis of the recommended proposals and evaluate the proposed projects to assure that they are budget neutral.

The evaluation criteria and weights are described below. These criteria are intended to identify specific information that will be useful for evaluating the application for the ESRD Disease Management Demonstration and how the applicant will be evaluated on that information in accordance with the Medicare Demonstration Waiver Application referenced above.

1. Purpose of Project/Statement of Problem (10 points)

The applicant will be evaluated on how it defines the purpose of the ESRD demonstration project, that is, the specific goals and objectives to be achieved, and how taking part in the demonstration will lead to these goals. A successful applicant should include an explanation of its ability to manage care, access, additional benefits, and costs for ESRD patients. A successful application would also include specific indicators that could be used to measure these goals and, if possible, appropriate comparison groups.

2. Technical Approach (40 points)

(a) *Organizational Structure and Service Delivery Capacity.* Organizations may consist of single or multiple sites, and the central component may be an organization other than a dialysis company (for example, an organization specializing in disease management). If the central component of the demonstration organization is a disease management or other kind of organization, it would have established relationships with facilities that provide dialysis services.

(b) *Description of Sites Specific to the Demonstration.* Applicants will be evaluated on their operational structure. In addition, an applicant will be evaluated on its explanation of how its organizational components will coordinate to provide medical treatment and disease management to ESRD patients. It will also be evaluated on the experience and background of its component parts in serving ESRD patients.

An applicant organization may propose to operate the demonstration at more than one site. The applicant will identify which of the three delivery options—managed care, PACE-type, or fee-for-service bundled payment options it chooses for the demonstration, as well as explain the nature of any affiliations with providers, persons, and organizations. An applicant for the capitation option will also be evaluated

on how it will provide non-ESRD medical services to its population.

Applicants will be evaluated on their infrastructure to carry out the selected delivery model. This may include:

- Facilities.
- Equipment.
- Appropriate information and financial services.
- Ability to handle claims to pay providers (for the managed care and PACE-type models).
- Composition of the multidisciplinary team and how the team will function (for the PACE-type model).
- Any special arrangements that may be needed to make transplant services available.

Applicants under all three delivery options—managed care, PACE-type and the fee-for-service bundled payment—should identify the dialysis facilities where services will be provided, and how patients receiving services in those facilities will receive information about the demonstration project, including information on the advantages of retaining and risks of discontinuing Medigap coverage. It is expected that the bundled payment will be for all patients at the facility. In the event that a patient does not want to receive services at the facility, the applicant organization should identify other dialysis facilities conveniently located and with openings so as to allow a patient to receive services. If such a facility is not located within a reasonable distance, the applicant organization should state how it will accommodate patients who do not wish to participate. Applicants should also address what arrangements it will make for traveling patients who receive care in other facilities.

Whether an applicant proposes to serve a disadvantaged population or area will be an important consideration as to whether it is selected for the demonstration. Applications will be evaluated on how they propose to reach out to minorities or other disadvantaged individuals. A demographic profile of the service area, including estimated numbers of ESRD patients by age, sex, race and ethnicity, treatment status/modality and poverty status, along with any relevant socioeconomic or transportation issues, will be considered in determining the demonstration site's potential for assisting a disadvantaged population or area.

(c) *Disease Management Features.* Applicants will be evaluated on their disease management program, including their understanding of the role of the nephrologist in the care of the ESRD patient and the role of the care manager in providing or coordinating services beyond the dialysis facility. In addition, applicants will be evaluated on:

- The proposed disease management services and how they will increase quality and reduce costs.
- The proposed roles of the physician, case managers, and other appropriate staff such as advanced practice nurses, in planning for and coordinating the care of ESRD patients.
- The schedule of visits with the nephrologist and frequency of dialysis.
- The methods of training to ensure a team of care managers with specialized knowledge of diet and medications, as well as other personal needs of ESRD patients.
- How multidisciplinary teams will be used to serve ESRD patients, including the composition of these teams and proposed activities.
- The development and use of protocols to guide case managers' activities.
- If applicable, accreditation specific to disease management by a national organization.

(d) *Service Package*

Under the capitation option, all Medicare-covered services are to be provided. If a demonstration organization participates in a State Medicaid program, then it must work with that State program to meet its requirements. Applicants will be evaluated on their experience with the special clinical, service, and social support needs of the ESRD population and any measures they plan to take to enhance these measures in the demonstration. Applicants will be evaluated on their ability to offer patients a wide choice of treatment modalities, although it is recognized that certain providers may be limited in offering this choice.

3. Financial and Organizational Capability (35 points)

(a) *Ability to Bear Risk.* Applicants must be in compliance with State laws and regulations. Any activities undertaken by an organization under the capitation payment model cannot place the organization in conflict with State requirements on financial risk-bearing. If applicable, applicants will be evaluated on their ability to meet risk-bearing requirements.

(b) *Ability to Meet Enrollment Projections.* Applications will also be evaluated on how many beneficiaries are expected to be treated each year at each site. Under the capitation options, the applicant will be evaluated on its marketing strategy, including its plans to enroll both current and new patients to the demonstration. In addition, the applicant will be evaluated on how it explains how beneficiaries will be informed about supplemental insurance (Medigap) policies and protections. The applicant may restrict eligibility of enrollees by age or other criteria, as long as it gives an acceptable justification.

(c) *Staffing.* Applicants will be evaluated on demonstrated expertise among key personnel, including the following:

- Clinical knowledge and experience, including nephrology.
- Managed care and disease management expertise.
- Financial management expertise.

(d) *Financial and Organizational Provisions.* Applicants will be evaluated on the attractiveness to beneficiaries of Medicare cost-sharing arrangements under the demonstration.

Applicants choosing either the capitation payment or fee-for-service bundled payment options will be evaluated on their projection for attaining budget neutrality for the Medicare program. Applicants for the fee-for-service bundled payment option should include the expanded bundle payment as a medical expense, and project budget neutrality by comparing the payment to costs savings from the disease management intervention on an annual basis. Applicants should justify their proposed cost savings by projections of reduced utilization, references to disease management literature, and the organization's experience. An applicant for the fee-for-service bundled payment option should estimate the amount of ESRD and non-ESRD Medicare claims for its patient population.

If proposing risk sharing for the capitation option, an applicant will be evaluated on the quality of their projected revenue and expense statements, as well as on their analysis of budget neutrality. An applicant for the capitation option will be evaluated on the appropriateness of its Medical Loss Ratio.

(e) *Ability to Implement.* The applicant's organization will be evaluated on the basis of its ability to effectively develop and implement this demonstration project (including evidence of approval by governing boards), commitment of funds to planning and development, and formation of multi-disciplinary and cross-component task forces. The demonstration allows organizations to shift from treating patients in fee-for-service to treating them in managed care. Applicants choosing the managed care or PACE-type delivery option must explain how this change in service delivery will be completed, including

articles of incorporation and protocols for patients. The applicant should state how these elements will impact care, as well as service integration, utilization, access and availability.

Also, the applicant will be judged on its experience in conducting projects of similar clinical scope and organizational complexity as that proposed for the demonstration.

(f) *Information Systems and Management Plan.* Applicant organizations will be evaluated on whether they have sufficient management and clinical information systems and reporting mechanisms to implement the demonstration, including the ability and commitment to provide individual health status (for example, the Health Outcomes Survey) and utilization data. In addition, the applicant should delineate the information that will be collected to support this demonstration, for example, the CMS 2728 (both for new patients and existing patients pending demonstration entry), line item costs for prescribed medications, labs, radiology and other services, all comorbid conditions, patient demographics and facility characteristics.

4. Capability for Quality Assessment and Improvement (15 points)

Under the demonstration, we will link financial incentives to improvements in quality outcome indicators.

Knowledge and participation in our ESRD Clinical Performance Measures Project will be beneficial.

Applicants will also be evaluated on their quality improvement system, including the following:

- Written quality improvement policies and procedures.
- A standing quality improvement committee.
- Patient grievance and appeal systems.
- Provider credentialing system.
- Organizational modification methodology for applicants planning to shift from fee-for-service to the managed care model.

An organization's application will be evaluated on how it will measure improvements in health outcomes attributable to its disease management interventions.

XI. Final Awards

From among the most highly qualified applicants, the final selection of projects for the demonstration will be made by the Administrator and will take into consideration a number of factors, including operational feasibility, budget neutrality, geographic location, and program priorities (such as testing a variety of approaches for delivering services, targeting beneficiaries, and payment). We reserve the right to determine the scope of the project, which includes limiting the number of awards and beneficiaries covered under the demonstration. In evaluating applications, we rely on our past experience with successful and unsuccessful demonstrations. We expect to make the awards in 2003.

XII. Collection of Information Requirements

The application and instructions associated with this solicitation are approved under OMB control number 0938–0880, with a current expiration date of 05/31/03. We have requested a three year extension of the application. Pending OMB approval, this current application is valid through the interim period. The form and instructions can be obtained from the CMS web site referenced elsewhere in this notice.

Appendix I: Services Included in the Expanded Dialysis Bundle

A. Drugs

EPO (Erythropoietin, Epoetin Alpha) HCPCS Codes Q9920–Q9940 Aranesp (J0880)
Iron (J1750, J1755, J1760, J1770, J1780, J2915, J2916)
Vitamin D (J0630, J0635, J0636, J2500, J1270)
Levocarnitine (J1955)
Phosphate Binders (J0610)

B. Labs/Radiology

Laboratory HCPCS Codes (208 codes)

73120 X-Ray Exam Hand
75710 Artery X-Rays Arm/Leg
75716 Artery X-Rays Arms/Legs
75774 Artery X-Ray, Each Vessel
75893 Venous Sampling by Catheter
75964 Repair Artery Blockage; Each
76070 CT Scan, Bone Density Study
76075 Dual Energy X-Ray Study
76092 Mammogram, Screening
76778 Echo Exam Kidney Transplant
78070 Parathyroid Nuclear Imaging
78351 Bone Mineral Dual Photon
80048 Basic Metabolic Panel
80051 Electrolyte Panel
80053 Comp Metabolic Panel
80061 Lipid Panel
80069 Renal Function Panel
80074 Acute Hepatitis Panel
80076 Hepatic Function Panel
80156 Assay Carbamazepine
80162 Assay for Digoxin
80185 Assay for Phenytoin
80186 Assay for Phenytoin, Free
80197 Assay for Tacrolimus
80198 Assay for Theophylline
80202 Assay for Vancomycin
80410 Calcitonin Stimulation Panel
81000 Urinalysis, Nonauto, W/Scope
81001 Urinalysis, Auto, W/Scope
81002 Urinalysis, Nonauto W/O Scop
81003 Urinalysis, Auto, W/O Scope
81005 Urinalysis
81007 Urine Screen for Bacteria
81015 Microscopic Exam Urine
82009 Test for Acetone/Ketones
82010 Acetone Assay
82017 Acylcarnitines, Quant
82040 Assay Serum Albumin
82042 Assay Urine Albumin
82108 Assay, Aluminum
82232 Beta–2 Protein
82247 Bilirubin Total
82248 Bilirubin Direct
82270 Test Feces Blood
82306 Assay Vitamin D
82307 Assay Vitamin D
82308 Assay Calcitonin
82310 Assay Calcium
82330 Assay Calcium
82374 Assay Blood Carbon Dioxide
82379 Assay Carnitine
82435 Assay Blood Chloride
82465 Assay Serum Cholesterol
82550 Assay CK (CPK)
82565 Assay Creatinine
82570 Assay Urine Creatinine
82575 Creatinine Clearance Test
82607 Vitamin B–12
82728 Assay Ferritin
82746 Blood Folic Acid Serum
82747 Folic Acid, RBC
82800 Blood PH
82803 Blood Gases: PH, PO2, PCO2
82805 Blood Gases W/O2 Saturation
82810 Blood Gases, O2 Sat Only
82945 Glucose Other Fluid
82947 Assay Quantitative, Glucose
82948 Reagent Strip/Blood Glucose
82950 Glucose Test
82977 Assay GGT
83036 Glycated Hemoglobin Test
83540 Assay Iron
83550 Iron Binding Test
83718 Blood Lipoprotein Assay
83735 Assay Magnesium
83937 Assay Osteocalcin
83970 Assay Parathormone
83986 Assay Body Fluid Acidity
84075 Assay Alkaline Phosphatase
84100 Assay Phosphorus
84105 Assay Urine Phosphorus
84132 Assay Serum Potassium
84133 Assay Urine Potassium
84134 Assay Prealbumin
84155 Assay Protein
84160 Assay Serum Protein
84295 Assay Serum Sodium
84315 Body Fluid Specific Gravity
84443 Assay Thyroid Stim Hormone
84450 Transferase (AST) (SGOT)
84460 Alanine Amino (ALT) (SGPT)
84466 Transferrin
84478 Assay Triglycerides
84520 Assay Urea Nitrogen
84540 Assay Urine Urea-N
84545 Urea-N Clearance Test
84630 Assay Zinc
85002 Bleeding Time Test
85004 Automated Diff WBC Count
85007 Differential WBC Count
85008 Nondifferential WBC Count
85009 Differential WBC Count
85013 Hematocrit
85014 Hematocrit
85018 Hemoglobin
85021 Automated Hemogram
85022 Automated Hemogram
85025 Automated Hemogram
85027 Automated Hemogram
85032 Manual Cell Count, Each

85041 Red Blood Cell (RBC) Count
85044 Reticulocyte Count
85045 Reticulocyte Count
85046 Reticyte, HGB Concentrate
85048 White Blood Cell (WBC) Count
85049 Automated Platelet Count
85345 Coagulation Time
85347 Coagulation Time
85348 Coagulation Time
85520 Heparin Assay
85595 Platelet Count, Automated
85610 Prothrombin Time
85611 Prothrombin Test
85651 RBC SED Rate, Nonauto
85652 RBC SED Rate, Auto
85730 Thromboplastin Time, Partial
85732 Thromboplastin Time, Partial
86140 C-Reactive Protein
86317 Immunoassay, Infectious Agen
86590 Streptokinase, Antibody
86644 CMV Antibody
86645 CMV Antibody, IGM
86687 HTLV–I
86688 HTLV–II
86689 HTLV/HIV Confirmatory Test
86692 Hepatitis, Delta Agent
86701 HIV–1
86702 HIV–2
86703 HIV–1/HIV–2, Single Assay
86704 HEP B Core AB Test
86705 HEP B Core AB Test
86706 HEP B Surface AB Test
86707 HEP BE AB Test
86708 HEP A AB Test
86709 HEP A AB Test
86803 HEP C AB Test
86804 HEP C AB Test Confirm
86812 HLA Typing, A, B, /C
86813 HLA Typing, A, B, /C
86816 HLA Typing, DR/DQ
86817 HLA Typing, DR/DQ
86900 Blood Typing, ABO
86901 Blood Typing, RH (D)
86903 Blood Typing, Antigen Screen
86904 Blood Typing, Patient Serum
86905 Blood Typing, RBC Antigens
86906 Blood Typing, Rh Phenotype
87040 Blood Culture Bacteria
87070 Culture Specimen, Bacteria
87071 Culture Bact
87072 Culture Specimen By Kit
87073 Culture Bact
87075 Culture Specimen, Bacteria
87076 Bacteria Identification
87077 Culture Bact
87081 Bacteria Culture Screen
87084 Culture Specimen By Kit
87086 Urine Culture, Colony Count
87088 Urine Bacteria Culture
87147 Culture Typing, Serologic
87163 Culture, Any Source, Add'l ID Reqd
87181 Antibiotic Sensitivity, Each
87184 Antibiotic Sensitivity, Each
87185 Enzyme Detection
87186 Antibiotic Sensitivity, MIC
87187 Antibiotic Sensitivity, MBC
87188 Antibiotic Sensitivity, Each
87190 TB Antibiotic Sensitivity
87197 Bactericidal Level, Serum
87205 Smear/Stain, Interpret
87271 CMV, DFA
87340 HEP B Surface AG, EIA
87341 HEP B HBSAG Neutral AG, EIA
87350 HEP B AG, EIA
87380 HEP Delta AG, EIA
87390 HIV–1 AG, EIA
87391 HIV–2 AG, EIA
87515 HEP B, DNA, Direct
87516 HEP B, DNA, AMP
87517 HEP B, DNA, Quant
87520 HEP C, RNA, Direct
87521 HEP C, RNA, AMP
87522 HEP C, RNA, Quant
87525 HEP G, DNA, DIRECT
87526 HEP G, DNA, AMP
87527 HEP G, DNA, Quant
89050 Body Fluid Cell Count
89051 Body Fluid Cell Count
93000 Electrocardiogram Complete
93005 Electrocardiogram Tracing
93010 Electrocardiogram Report
93040 Rhythm ECG w/Report
93041 Rhythm ECG Tracing
93042 Rhythm ECG Report
93307 Echo Exam Heart
93308 Echo Exam Heart
G0001 Drawing Blood for Specimen
G0202 Screening Mammography, Digital

C.Vascular Access

Vascular Access HCPCS Codes (122 Codes)

00350 Anes-Major Vessels Neck; Nos
00532 Anes-Access Cent Venous Circ
01784 Anesthesia-AV Fistula
01844 ANES–VASC Shunt, Shunt Revis
35180 Repair Blood Vessel Lesion
35190 Repair Blood Vessel Lesion
35206 Repair Blood Vessel Lesion
35226 Repair Blood Vessel Lesion
35236 Repair Blood Vessel Lesion
35256 Repair Blood Vessel Lesion
35450 Repair Arterial Blockage
35451 Repair Arterial Blockage
35452 Repair Arterial Blockage
35453 Repair Arterial Blockage
35454 Repair Arterial Blockage
35455 Repair Arterial Blockage
35456 Repair Arterial Blockage
35457 Repair Arterial Blockage
35458 Repair Arterial Blockage
35459 Repair Arterial Blockage
35460 Repair Venous Blockage
35470 Repair Arterial Blockage
35471 Repair Arterial Blockage
35472 Repair Arterial Blockage
35473 Repair Arterial Blockage
35474 Repair Arterial Blockage
35475 Repair Arterial Blockage
35476 Repair Venous Blockage
35860 Explore Limb Vessels
35875 Remove Clot In Graft
35876 Remove Clot In Graft
35900 Excision Of Infected Graft—Extremity
35903 Excise Graft Extremity
35910 Excision Of Infected Graft—Extremity
36000 Place Needle In Vein
36005 Injection, Venography
36011 Place Catheter In Vein
36140 Establish Access To Artery
36145 Artery To Vein Shunt
36215 Place Catheter In Artery
36216 Place Catheter In Artery
36217 Place Catheter In Artery
36245 Place Catheter In Artery
36246 Place Catheter In Artery
36247 Place Catheter In Artery
36400 Drawing Blood
36406 Drawing Blood
36410 Drawing Blood
36420 Establish Access To Vein
36425 Establish Access To Vein
36488 Insert Catheter Vein
36489 Insert Catheter Vein
36490 Insert Catheter Vein
36491 Insert Catheter Vein
36493 Reposition CVC
36533 Insert Access Port
36534 Revise Access Port
36535 Remove Access Port
36550 Declot Vascular Device
36800 Insert Cannula
36810 Insert Cannula
36815 Insert Cannula
36819 AV Fusion By Basilic Vein
36820 AV Anastomosis-Perm Access
36821 Artery-Vein Fusion
36825 Artery-Vein Graft
36830 Artery-Vein Graft
36831 AV Fistula Excision
36832 AV Fistula Revision
36833 AV Fistula
36834 Repair A–V Aneurysm
36835 Artery To Vein Shunt
36860 Ext Cannula Declotting
36861 Cannula Declotting
36870 Thrombectomy
37190 Repair A–V Aneurysm
37201 Transcatheter Therapy Infuse
37205 Transcatheter Stent
37206 Transcatheter Stent Add-On
37207 Transcatheter Stent
37208 Transcatheter Stent Add-On
37209 Exchange Arterial Catheter
37607 Ligate Fistula
49420 Insert Abdominal Drain
49421 Insert Abdominal Drain
49422 Remove Perm Cannula/Catheter
71010 Chest X-Ray
71015 Chest X-Ray
71020 Chest X-Ray
71021 Chest X-Ray
71022 Chest X-Ray
71030 Chest X-Ray
71035 Chest X-Ray
75790 Visualize A–V Shunt
75820 Vein X-Ray Arm/Leg
75822 Vein X-Ray Arms/Legs
75860 Vein X-Ray Neck
75894 X-Rays Transcatheter Therapy
75896 X-Rays Transcatheter Therapy
75898 Follow-Up Angiogram
75900 Arterial Catheter Exchange
75901 Mechanical Removal Of Pericath Obstructive Material
75902 Mechanical Removal Of Intraluminal Obstructive Material
75960 Transcatheter Intro Stent
75961 Retrieve Broken Catheter
75962 Repair Arterial Blockage
75978 Repair Venous Blockage
76080 X-Ray Exam Fistula
76942 Echo Guide For Biopsy
76960 Echo Guidance Radiotherapy
93900 Duplex Scan Of Hemodialysis Access
93922 Extremity Study
93923 Extremity Study
93925 Lower Extremity Study
93926 Lower Extremity Study
93930 Upper Extremity Study
93931 Upper Extremity Study
93965 Extremity Study
93970 Extremity Study
93971 Extremity Study
A4300 Cath Impl Vasc Access Portal
M0900 Excision Without Graft

Authority: Section 402 of the Social Security Act Amendments of 1967 (42 U.S.C. 1395b1).

(Catalog of Federal Domestic Assistance Program No. 93.779, Health Care Financing Research, Demonstrations and Evaluations)

Dated: May 10, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–13829 Filed 5–29–03; 12:09 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Grants for Policy-Oriented Rural Health Services Research; Grant Announcement Number HRSA–03–091

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy (ORHP) announces that approximately $900,000 in Fiscal Year (FY) 2003 funds are available for competitive grants for policy-oriented rural health services research. Individual research projects that address rural health services will be funded under this announcement. This program is authorized by Section 301 of the Public Health Service Act. Eligibility is open to public, private, and non-profit—including faith-based and community-based—organizations. Further information is provided in the Eligibility Requirements section. Grant awards will be limited to $150,000 per grantee. It is anticipated that six (6) awards will be made. The project period is twelve months.

APPLICATION DEADLINES: Applications must be received by 4 p.m. Eastern Time on July 7, 2003. Completed applications must be sent to HRSA Grants Application Center (GAC), 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879.

Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants must obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service in lieu of a postmark. Private metered postmarks are not acceptable as proof of timely mailing. Late applications will not be reviewed. Applicants will receive a confirmation of receipt notice from the HRSA Grants Application Center.

The standard application form and general instructions for completing applications (Form PHS 398) have been approved by the Office of Management and Budget. To receive an application kit, contact the HRSA Grants Application Center toll-free at 1–877–477–2123 or write them at HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879. To order an application kit for this program, you must identify the program citing the following program name, catalogue of federal domestic assistance number, and announcement number: Grant Program for Policy-Oriented Rural Health Services Research, Catalogue Of Federal Domestic Assistance Number: 93.155, Grant Announcement Number: HRSA–03–091.

On-line grant application: Applicants should note that HRSA anticipates accepting grant applications online in the last quarter of the Fiscal Year (July through September). Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information.

Letter of intent: In order to allow the ORHP to plan for the objective review process, applicants are requested to notify the ORHP in writing of their intent to apply. This notification is not binding, but serves to inform the ORHP of anticipated numbers of applications that may be submitted. Do not fax notification. Notification is requested no later than June 11, 2003. The address for notification is: Emily Costich, Policy-Oriented Rural Health Services Research Program, Office of Rural Health Policy, Health Resources and Services Administration, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Information or technical assistance regarding business, budget, or financial issues should be directed to the Division of Grants Management Operations, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–89, Rockville, Maryland 20857, 301–443–2280. Specific contacts are:

Janice M. Gordon, Grants Management Officer, Division of Grants Management Operations, Telephone: 301–443–2385, E-mail: *jgordon@hrsa.gov.*

Darren S. Buckner, Grants Management Specialist, Division of Grants Management Operations, Telephone: 301–443–1913, E-mail: *dbuckner@hrsa.gov.*

Requests for technical or programmatic information on this announcement should be directed to Emily Costich, Office of Rural Health Policy, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0502, E-mail: *ecostich@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Policy-oriented rural health services research is useful because it informs policy-makers concerned with rural health issues and it enhances knowledge about rural health and rural health services. In addition, rural health services research addresses critical concerns facing rural communities in their quest to secure adequate, affordable, high quality health services. Research findings are useful to inform a wide audience of national, state, and local decision-makers about rural health issues. Research findings have been instrumental in bridging gaps between policy and program needs.

Research Priorities: These grants are designed to provide support both for entities established in the rural health services research field as well as those entering this field. These grants are also intended to advance specific areas of rural health services research in which a limited amount of research exists. To determine what specific rural health services research is in progress in the areas of applicant interest, query the Database for Rural Health Research in Progress at: *http://www.rural-health.org.* This grant program will support individual research projects and excludes clinical/biomedical research and the expenditure of funds for delivery of services.

Research Areas

Applications are sought for the research areas specified below, either singly or in combination. These areas are not listed in any priority order. Applications falling outside these research areas may be returned at the discretion of the Office of Rural Health Policy as being non-responsive.

(1) Mental Health
(2) Substance Abuse
(3) Oral Health
(4) American Indian/Alaska Native/Native Hawai'ian Health Issues
(5) Integration of Native and Non-Native Health Care
(6) Special Populations—Children, Women, Homeless, Elderly
(7) Chronic Disease (*e.g.*, Asthma and Diabetes)
(8) Bioterrorism Preparedness
(9) Frontier Issues
(10) Medicaid
(11) S–CHIP
(12) End of Life Care
(13) Continuum of Care
(14) Public Health Issues

(15) Quality of Life
(16) Uninsured
(17) Disabled/Disability
(18) Low Income Populations
(19) Quality of Care
(20) EMS (for all populations, with a special interest in children)
(21) Dual Eligibles

Geographic Coverage

Applications are sought for research products that are national in scope or generalizable to the nation. Research covering a single community, multiple communities, a single state, or a single region are not acceptable and will not be reviewed.

Criteria and Maximum Points: Applications will be evaluated on the basis of the following criteria:

- Principal Investigator and Support Personnel (25 Points) [This criterion includes evaluation of qualifications and achievements of principal investigator and support personnel, as well as multidisciplinary mix of personnel.]
- Organizational, Physical and Institutional Arrangements and Institutional Commitment to Rural Research (10 points) [This criterion includes evaluation of administrative capabilities to manage research activities and accounting capabilities to manage grant funds.]
- Project Proposal (30 points).
- Budget (5 points).
- Demonstrated Commitment and Experience in Rural Health Research, Policy or Service (15 points).
- Research Applicability to National Issues, Policy Relevance and Breadth of Scope (*e.g.*, geographic coverage) (15 points).

Eligibility Requirements: Eligibility is open to public, private, and non-profit—including faith-based and community-based—organizations. Institutions that received a Rural Health Research Center Award covering September 1, 2000–August 31, 2004 and those with Fiscal Year 2000–2003 ORHP awards under special congressional initiatives are ineligible for this grant program. Although multiple applications may be submitted, only one award will be made to the same entity. Receipt of a grant will not disqualify the recipient from the Rural Health Research Center competition in 2004.

In addition to the above criteria, applicants must be capable of receiving the grant funds directly and must have the capability to manage the project. Applicants must be able to exercise administrative and program direction over the grant project; must have the administrative and accounting capabilities to manage the grant funds; and must have some permanent research staff at the time the application is submitted.

Matching Requirements: Applicant will not be required to match or share the project cost if an award is made.

Funding Preferences: A funding preference will be awarded to any qualified applicant that demonstrates substantial inclusion of the following in the project proposal: The applicant is, or is located within, an institution of higher learning or a department or agency within a State or local government. Institutions of higher learning are preferred because they bring academic knowledge and expertise to the application of new scientific techniques to solve the complex problems of rural communities. It is essential that research conclusions are based on the knowledgeable application of scientific research techniques that an institution of higher learning can provide. Departments or agencies within a State or local government are preferred because of their expertise in assessing the impacts of national policies on state governance and rural communities. This expertise provides their research with a unique policy-oriented perspective about rural communities and their members. Approved applications that receive a funding preference will be ranked ahead of those that receive no preference. Applications recommended for approval that do not receive a preference will be given full and equitable consideration but will not be funded until all applications recommended for approval that do receive the preference and fall within the funding line are funded. The funding line is the threshold score that determines the cut-off point for funding in a given fiscal year as determined by available funds. Applicants who are eligible for a preference and wish to receive it, must request a preference by following the instructions described in the application kit.

Special considerations: HRSA wants to fund a variety of research areas in making new awards under this announcement. Therefore, HRSA will consider the variety of research areas when selecting which applications to fund or those recommended for approval. See the list of 21 research areas in the Research Areas section above.

HRSA wants to achieve a geographic balance among awardees in making new awards under this announcement. Therefore, HRSA will consider geographic distribution when selecting which applications to fund of those recommended for approval.

Executive Order 12372

This grant program is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which will be included in the application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State.

The due date for State process recommendations is 60 days after the application deadline for new applications. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date. (*See* part 148 of the PHS Grants Administration Manual, Intergovernmental Review of PHS Programs under Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements).

Dated: May 15, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–13916 Filed 6–3–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Title III Early Intervention Services Program, Existing Geographic Areas (EISEGA); CFDA 93.918; HRSA 04–005

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the anticipated availability of fiscal year (FY) 2004 funds to be awarded under the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Title III Early Intervention Services (EIS) Program for existing geographic areas to support outpatient HIV early intervention and primary care services for low-income, medically underserved people in

existing primary care systems. Grants will be awarded for a 3-year period.

Program Purpose: The purpose of this funding is to provide, on an ongoing outpatient basis, high quality, culturally competent, early intervention services/primary care to individuals with HIV infection. This is accomplished by increasing the present capacity and capability of eligible ambulatory health services entities. These expanded services become a part of a continuum of HIV prevention and care for individuals who are at risk for HIV infection or are HIV infected.

Program Requirements: As described in section 2651(b) of the Public Health Service Act, funded programs must provide the following services on an outpatient basis:

(A) Counseling individuals with respect to HIV disease;

(B) Testing individuals with respect to HIV disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;

(C) Referrals of individuals with HIV disease to appropriate providers of health and support services;

(D) Other clinical and diagnostic services regarding HIV disease and periodic medical evaluations of individuals with the disease; and,

(E) Providing therapeutic measures as described in (B).

Funded programs must provide the proposed services directly and/or through formal agreements with public or nonprofit private entities. They may also provide services through agreements with private for-profit entities if such entities are the only available providers of quality HIV care in the area. A minimum of 50 percent of funds awarded MUST be spent on primary care services as described in items B–E above. No more than 10 percent of funds awarded may be spent on administration, including planning and evaluation.

Eligible Applicants: Applicants are limited to public or private nonprofit entities that are currently funded under the Title III program whose project periods expire in FY 04 and other public or private nonprofit organizations, which meet the qualifications as described in section 2652(a) of the PHS Act, proposing to serve the same populations currently being served by these existing projects. Faith-based and community-based organizations which meet these qualifications are eligible to apply. The available service areas are:

State and Service Areas of Project Periods Ending 12/31/03 and 3/31/04

AL AUTAUGA; LOWNDES; BUTLER; DALLAS; CHILTON; ELMORE; MACON; BULLOCK; LEE; RUSSELL; PIKE; BARBOUR; DALE; GENEVA; HOUSTON; CRENSHAW; CONECUH; COFFEE; CHAMBERS; TALLAPOOSA; WILCOX; MONROE; PERRY, CALHOUN; CHAMBERS; CLEBURNE; COOSA; CLAY; CHEROKEE; DEKALB; ETOWAH; RANDOLPH; TALLADEGA; TALLAPOOSA, COLBERT; CULLMAN; FRANKLIN; JACKSON; LAUDERDALE; LAWRENCE; LIMESTONE; MADISON; MARION; MARSHALL; MORGAN; WINSTON, MOBILE; BALDWIN

AZ PIMA; TUCSON, MARICOPA; YAVAPAI; GILA; PINAL

CA SAN BERNARDINO, SAN FRANCISCO, SAN JOAQUIN; SOLANO; YOLO; CALAVERAS, LOS ANGELES, ALAMEDA, SAN FERNANDO VALLEY, SANTA CLARA, SANTA CRUZ; MONTEREY, ORANGE, NORTH SAN DIEGO COUNTY

DC DISTRICT OF COLUMBIA

FL DADE; MIAMI, MIAMI BEACH; SOUTH BEACH; NORTHSIDE; NORMANDY ISLE, MONROE; KEY WEST; MARATHON; TAVENIER

GA BULLOCH; CANDLER; EVANS; TOOMBS; TATTNALL; JEFF DAVIS; APPLING; WAYNE; COFFEE; BACON; PIERCE; BRANTLEY; ATKINSON; WARE; CHARLTON; CLINCH, FULTON; DEKALB, BURKE; COLUMBIA; EMANUEL; GLASCOCK; JEFFERSON; JENKINS; LINCOLN; MCDUFFIE; RICHMOND; SCREVEN; TALIAFERRO; WARREN; WILKES, CHATHAM; EFFINGHAM; LIBERTY; BRYAN; GLYNN, FULTON, BALDWIN; BIBB; CRAWFORD; HANCOCK; HOUSTON; JASPER; JONES; MONROE; DEKALB; PUTNAM; TWIGGS; WASHINGTON; WILKINSON, BUTTS; CARROLL; COWETA; FAYETTE; HEARD; LAMAR; MERIWETHER; PIKE; SPALDING; TROUP; UPSON

HI MAUI; WAIKIKI

IL COOK, WINNEBAGO; JO DAVIESS; STEPHENSON; WHITESIDE; LEE; OGLE; BOONE; MCHENRY; DEKALB

IN MARION

KS SEDGWICK; CHEYENNE; RAWLINS; DECATUR; NORTON; SMITH; JEWELL; REPUBLIC; SHERMAN; THOMAS; SHERIDAN; GRAHAM; ROOKS; OSBORNE; MITCHELL; CLOUD; WALLACE; LOGAN; GOVE; TREGO; ELLIS; RUSSELL; LINCOLN; OTTAWA; BARTON; ELLSWORTH; SALINE; RICE; MCPHERSON; DICKINSON; MARION; STAFFORD; RENO; HARVEY; PRATT; KINGMAN; BUTLER; GREENWOOD; GREELEY; WICHITA; SCOTT; LANE; NESS; RUSH; HAMILTON; KEARNY; FINNEY; HODGEMAN; PAWNEE; STANTON; GRANT; HASKELL; GRAY; FORD; KIOWA; EDWARDS; MORTON; STEVENS; SEWARD; MEADE; CLARK; COMANCHE; BARBER; HARPER; SUMNER; COWLEY; CHAUTAUQUA; ELK; CHASE; WOODSON; ANDERSON; LINN; ALLEN; BOURBON; WILSON; NEOSHO; CRAWFORD; MONTGOMERY; LABETTE; CHEROKEE, JOHNSON; WYANDOTTE; MIAMI; LEAVENWORTH

LA CALCASIEU; ALLEN; BEAUREGARD; CAMERON; JEFFERSON DAVIS;WASHINGTON

MA HAMPDEN; FRANKLIN

MI KENT; LAKE; IONIA; MUSKEGON; OCEANA; NEWAYGO; MASON; MANISTEE

MI WAYNE; OAKLAND; MACOMB; LAPEER; ST. CLAIR; MONROE

MO VERNON; BARTON; JASPER; NEWTON; MCDONALD; CEDAR; ST. CLAIR; DADE; LAWRENCE; BARRY; HICKORY; POLK; GREENE; CHRISTIAN; STONE; TANEY; DALLAS; WEBSTER; DOUGLAS; OZARK; LACLEDE; WRIGHT; PULASKI; TEXAS; HOWELL; PHELPS; DENT; SHANNON; OREGON, JACKSON; CLAY; RAY; PLATTE; CASS; CLINTON; LAFAYETTE

MS ATTALA; BOLIVAR; CARROLL; HOLMES; HUMPHREYS; LEFLORE; MONTGOMERY; SUNFLOWER; COAHOMA; TUNICA; DESOTO; TATE; PANOLA; QUITMAN; TALLAHATCHIE; SUNFLOWER; COVINGTON; ISSAQUENA; JONES; HUMPHREYS; HOLMES; WAYNE; SHARKEY; YAZOO; WARREN; LAMAR; CLAIBORNE; HINDS; MADISON; FORREST; PERRY; ATTALA; COPIAH; GREENE; RANKIN; SIMPSON; PEARL RIVER; LEAKE; NESHOBA; STONE; KEMPER; SCOTT; NEWTON; GEORGE; LAUDERDALE; SMITH; JASPER; CLARKE; JEFFERSON DAVIS

NC AVERY; BUNCOMBE; HAYWOOD; HENDERSON; MADISON; MITCHELL; MCDOWELL; RUTHERFORD; TRANSYLVANIA; POLK; YANCEY, ALAMANCE; CASWELL; CHATHAM; DAVIDSON; DAVIE; FORSYTH; GUILFORD; LEE; ORANGE; RANDOLPH; ROCKINGHAM; STOKES; SURRY; YADKIN, FRANKLIN; VANCE; WARREN; GRANVILLE; PERSON

NJ ESSEX; UNION

NM BERNALILLO; CIBOLA; MCKINLEY; SANDOVAL; SAN JUAN; VALENCIA; TORRANCE; SOCORRO, DONA ANA; OTERO; SIERRA; LUNA; HIDALGO; GRANT; CATRON; DEBACA; ROOSEVELT; LINCOLN; CHAVES; LEA; EDDY; GUADALUPE

NV WASHOE, CLARK

NY ERIE; CHAUTAUQUA; NIAGARA; CATTARAUGUS; WYOMING; ALLEGANY; ORLEANS; GENESEE, NEW YORK, BRONX; STATEN ISLAND, MANHATTAN; NEW YORK, KINGS, LIVINGSTON; MONROE; ONTARIO; SENECA; YATES; CHEMUNG; SCHUYLER; STEUBEN, QUEENS

OH HAMILTON; CLERMONT; BROWN; BUTLER; KENTON; HIGHLAND; FAYETTE; CLINTON; WARREN; CAMPBELL; BOONE; GRANT; KENTUCKY; OHIO; ADAMS, CUYAHOGA; LORAIN; ASHTABULA; LAKE

OK ADAIR; CHEROKEE; CRAIG; CREEK; DELAWARE; HASKELL; LATIMER; LE FLORE; MAYES; MCINTOSH; MUSKOGEE; NOWATA; OKFUSKEE;

OKMULGEE; OSAGE; OTTAWA; PAWNEE; PITTSBURG; ROGERS; SEQUOYAH; TULSA; WAGONER; WASHINGTON
PA PHILADELPHIA, LEHIGH; NORTHAMPTON, BEAVER; BUTLER; ARMSTRONG; INDIANA; CAMBRIA; SOMERSET; WESTMORELAND; FAYETTE; GREENE; WASHINGTON
PR SAN JUAN, HUMACAO; CAGUAS; NAGUABO; SAN LORENZO; LAS PIEDRAS; GURABO; JUNCOS; FAJARDO
RI BRISTOL; KENT; NEWPORT; PROVIDENCE; WASHINGTON
TX COLLIN; DALLAS; DENTON; ELLIS; HENDERSON; HUNT; KAUFMAN; ROCKWALL; DENTON; JOHNSON; PARKER; TARRANT, HARRIS, BASTROP; BLANCO; BURNET; CALDWELL; FAYETTE; HAYS; LEE; LLANO; TRAVIS; WILLIAMSON, ERATH; SOMERVELL; PALO PINTO; JOHNSON; HOOD; DENTON; NAVARRO; WISE; ELLIS; ROCKWALL; HUNT; TAYLOR; SHACKELFORD; RUNNELS; THROCKMORTON
UT BEAVER; BOX ELDER; CACHE; CARBON; DAGGETT; DAVIS; DUCHESNE; EMERY; GARFIELD; GRAND; IRON; JUAB; KANE; MILLARD; MORGAN; PIUTE; RICH; SALT LAKE; SAN JUAN; SANPETE; SEVIER; SUMMIT; TOOELE; UINTAH; UTAH; WASATCH; WASHINGTON; WAYNE; WEBER

State and Service Area of Project Periods Ending 6/30/04 or 9/29/04

AK MUNICIPALITY OF ANCHORAGE
AR ARKANSAS; ASHLEY; CHICOT; DESHA; DREW; JEFFERSON; LINCOLN; PULASKI; LONOKE; PRAIRIE, CRITTENDEN; CROSS; LEE; MISSISSIPPI; MONROE; ST. FRANCIS; WOODRUFF
CA LOS ANGELES; KERN
CT NEW HAVEN; FAIRFIELD
FL BROWARD; ST. LUCIE; MARTIN; FT. PIERCE; INDIANTOWN; COLLIER
IA IOWA, DALLAS; POLK; WARREN, BUREAU; APPANOOSE; CEDAR; CLINTON; DAVIS; DES MOINES; HENRY; IOWA; JACKSON; JEFFERSON; JOHNSON; KEOKUK; LEE; LOUISA; MAHASKA; MONROE; MUSCATINE; POWESHIEK; SCOTT; VAN BUREN; WAPELLO; WASHINGTON; HANCOCK; WARREN; HENDERSON; KNOX; MCDONOUGH; MERCER; ROCK ISLAND; WHITESIDE
ID ADA; BOISE; ELMORE; VALLEY; OWYHEE; CANYON; GEM; PAYETTE; WASHINGTON; ADAMS; BUTTE; BINGHAM; POWER; BANNOCK; CARIBOU; ONEIDA; FRANKLIN; BEAR LAKE
KY PIKE
LA WASHINGTON
MA BARNSTABLE; PLYMOUTH; WORCESTER; SUFFOLK; NORFOLK
MI WAYNE
MS BOLIVAR; SUNFLOWER; WASHINGTON; LA
MT BEAVERHEAD; BIG HORN; BLAINE; BROADWATER; CARBON; CARTER; CASCADE; CHOUTEAU; CUSTER; DANIELS; DAWSON; DEER LODGE; FALLON; FERGUS; FLATHEAD; GALLATIN; GARFIELD; GLACIER; GOLDEN VALLEY; GRANITE; HILL; JUDITH BASIN; LAKE; LEWIS AND CLARK; LIBERTY; LINCOLN; MCCONE; MADISON; MEAGHER; MINERAL; MISSOULA; MUSSELSHELL; PARK; PETROLEUM; PHILLIPS; PONDERA; POWELL; PRAIRIE; RAVALLI; ROOSEVELT; ROSEBUD; SANDERS; SILVER BOW; STILLWATER; SWEET GRASS; TETON; TOOLE; TREASURE; VALLEY; WHEATLAND; WIBAUX; YELLOWSTONE; YELLOWSTONE NATIONAL PARK
NC DURHAM; WAKE; ORANGE; GRANVILLE; VANCE
NJ UNION; MONMOUTH; MERCER; MIDDLESEX; SOMERSET; HUNTERDON
NY ALBANY; RENSSELAER; WESTCHESTER; PUTNAM; DUTCHESS; COLUMBIA; ORANGE; ULSTER; BRONX
PA PHILADELPHIA; YORK
PR LARES; BARRANQUITAS; CAMUY; CIALES; CIDRA; COMERIO; COROZAL; FLORIDA; NARANJITO; HATILLO; PATILLAS; OROCOVIS, GURABO; CAGUAS; SAN LORENZO; CIDRA; CAYEY, MAYAGUEZ; SAN SEBASTIAN; WESTERN PUERTO RICO
SC BEAUFORT; HAMPTON; JASPER
TX BEXAR
VA COVINGTON CITY; CLIFTON FORGE CITY; ALLEGHANY; BOTETCOURT; CRAIG; ROANOKE CITY; SALEM CITY; ROANOKE; AMHERST; APPOMATTOX; BEDFORD; BEDFORD CITY; CAMPBELL; LYNCHBURG CITY; BUCHANAN; DICKENSON; RUSSELL; TAZEWELL; DANVILLE CITY; PITTSYLVANIA; FRANKLIN; HENRY; MARTINSVILLE CITY; PATRICK; LEE; NORTON CITY; SCOTT; WISE; BLAND; BRISTOL CITY; CARROLL; GALAX CITY; GRAYSON; SMYTH; WASHINGTON; WYTHE; FLOYD; GILES; PULASKI; RADFORD CITY; AUGUSTA; BATH; HIGHLAND; ROCKBRIDGE; ROCKINGHAM; FREDERICK; PAGE; SHENANDOAH; CLARKE; WARREN; CULPEPER; FAUQUIER; MADISON; ORANGE; RAPPAHANNOCK; ALBERMARLE; FLUVANNA; GREENE; LOUISA; NELSON; CAROLINE; KING GEORGE; SPOTSYLVANIA; STAFFORD
VT ADDISON; BENNINGTON; CALEDONIA; CHITTENDEN; ESSEX; FRANKLIN; GRAND ISLE; LAMOILLE; ORANGE; ORLEANS; RUTLAND; WASHINGTON; WINDHAM; WINDSOR
WI DANE; ADAMS; BUFFALO; CRAWFORD; COLUMBIA; DODGE; GREEN; FOND DU LAC; CALUMET; PEPIN; TREMPEALEAU; JACKSON; LA CROSSE; MONROE; VERNON; GRANT; LAFAYETTE; IOWA; JEFFERSON; SAUK; RICHLAND; JUNEAU; MARQUETTE; WAUSHARA; WAUPACA; WINNEBAGO; SHEBOYGAN; ROCK; GREEN LAKE

Funding Priorities and/or Preferences: HRSA shall give preference to applicants experiencing an increase in the burden of providing services regarding HIV disease, as described in Section 2653 of the PHS Act. Under section 2653(d), of the applicants who qualify for preference under this section, (1) HRSA shall give preference to applicants that will expend the grant under section 2651 to provide early intervention under such section in rural areas; and (2) HRSA shall give special consideration to areas that are underserved with respect to such services. These may include organizations serving communities of color that are highly affected by HIV/AIDS.

Authorizing Legislation: The EIS program is authorized by section 2651(a) of the Public Health Service Act, as amended (42 U.S.C. 300ff–51)

Availability of Funds: Approximately $71,268,567 will be available for this initiative. HRSA expects to fund approximately 120 grants. These estimates are subject to change if an appropriations act providing otherwise is enacted. The project and budget periods for approved projects will begin on January 1, April 1, July 1 and September 30, 2004. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Application Deadline: Applications for this grant for programs with project periods ending 12/31/03 or 3/31/04 must be received in the HRSA Grants Application Center by close of business July 21, 2003. The applications for this grant for programs with project periods ending 6/30/04 or 9/29/04 must be received by December 22, 2003. New proposals for existing service areas must apply by the same deadline that existing programs serving those areas must meet. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legible dated receipt from a commercial carrier or the U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Grant applications postmarked after the deadline may be returned.

Where to Request and Send an Application: To obtain the official grant application kit (Form PHS–5161–1) and program guidance materials for this announcement call the HRSA Grant Application Center at 877–477–2123 and request the OMB Catalogue of Federal Domestic Assistance number 93.918A, HRSA 04–005, Program Code EISEGA. HRSA anticipates accepting grant applications online in the last quarter of the fiscal year (July through September). Please refer to the HRSA Grants Schedule at *http://www.hrsa.gov/grants/* for more information.

ADDRESSES: All applications should be mailed or delivered to HRSA Grant Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20879. Grant applications sent to any other address may be returned. The Internet address for HAB is *http://www.hab.hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information related to the program may be requested from the Division of Community Based Programs, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane Room 7A–30, Rockville, Maryland 20857. The telephone number is (301) 443–0493; and the fax number is (301) 443–1884.

SUPPLEMENTARY INFORMATION: Applications will be reviewed by an objective review committee. The review criteria will include: (1) Justification of need, (2) organizational capabilities and experience, (3) coordination and linkage with other HIV programs, (4) adequacy of scope of work for providing early intervention services, (5) work plan, (6) program evaluation, (7) appropriateness and justification of budget, and (8) adherence to program guidance.

There is no matching requirement for this program.

Public Health System Reporting Requirements: Under these requirements (approved under OMB No. 0937–0195), a community-based, non-governmental applicant must prepare and submit a Public Health System Impact Statement to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date. This statement must include (1) A copy of the face page of the application (SF424) and (2) A summary of the project, not to exceed one page, which provides (a) a description of the population to be served; (b) a summary of the services to be provided; and (c) a description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372: This program has been determined to be a program which is subject to the provision of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States that have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for the State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date. (See Part 148, Intergovernmental Review of Public Health Service Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

Dated: May 12, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–13915 Filed 6–3–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Application to Preserve Residence for Naturalization; Form N–470.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services has submitted the following information collection request for review and clearance 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 August 4, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 currently approved collection.

(2) *Title of the Form/Collection:* Application to Reserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–470. Bureau of Citizenship and Immigration Services.

Affected public who will be asked or required to respond, as well as brief abstract: Primary: Individuals or households. The information furnished on this form will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 375 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 375 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Customs and Immigration Enforcement, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, Washington, DC 20530.

Dated: May 30, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Customs and Immigration Enforcement, Department of Homeland Security.

[FR Doc. 03–14001 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SERVICES

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Report

ACTION: Request OMB emergency approval; affidavit of support; form I–134.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted the following information collection request utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (l)(2)(iii) of the Paperwork Reduction Act of 1995. The BCIS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Emergency review and approval of this information collection will ensure that the collection may continue to be utilized after its expiration of June 30, 2003. Therefore, OMB approval has been requested by June 20, 2003.

If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, 725—17th Street, NW., Suite 10235, Washington, DC 20503; Attention: Department of Homeland Security Desk Officer, 202–395–5887. Comments regarding the emergency submission of this information collection may also be submitted via facsimiile to 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the BCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted for 60 days until August 4, 2003. During the 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 technology 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 information collection.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–134. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Individuals or households. The information collected on this form is used to determine if an applicant for an benefit will become a public charge if admitted to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 44,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,652 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Department Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, NW. Washington, DC 20530.

Dated: May 29, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 03–14002 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; application for advance permission to return to unrelinqushed domicile; form I–191.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted the following information collection request utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (1)(2)(iii) of the Paperwork Reduction Act of 1995. The BCIS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Emergency review and approval of this information collection will ensure that the collection may continue to be utilized after its expiration of June 30, 2003. Therefore,

OMB approval has been requested by June 20, 2003.

If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, 725–17th Street, NW., Suite 10235, Washington, DC 20503; Attention: Department of Homeland Security Desk Officer, 202–395–5887. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the BCIS requests written comments and suggestions from the public and affected concerning this information collection. Comments are encouraged and will accepted for 60 days until August 4, 2003. During the 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 information collection.

(2) *Title of the Form/Collection:* Application for Permission to Return to Unrelinquished Domicile.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–191. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Individuals or households. The information collected on this form is used to determine an applicant's eligibility for discretionary relief under section 212(c) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Department Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW. 10th Floor, NW., Washington, DC 20530.

Dated: May 29, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 03–14003 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: immigration bond, form I–352.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 18, 2002, at 67 FR 77511, allowing for a 60-day public comment period. No comments were received by the agency on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 7, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530; 202–395–5887.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–352, Detention and Deportation, Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on this form is used by DHS to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The form serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of the bond.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Mr. Lewis Oleinick, Chief Information Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, NW., Washington, DC 20530.

Dated: May 29, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 03–14004 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; interagency record of individual requesting change/adjustment to or from A or G status; or requesting A, G or NATO dependent employment authorization; form I–566.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted the following information collection request utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (l)(2)(iii) of the Paperwork Reduction Act of 1995. The BCIS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Emergency review and approval of this information collection will ensure that the collection may continue to be utilized after its expiration of June 30, 2003. Therefore, OMB approval has been requested by June 20, 2003.

If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, 725—17th Street, NW., Suite 10235, Washington, DC 20503; Attention: Department of Homeland Security Desk Officer, 202–395–5887. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the BCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted for 60 days until August 4, 2003. During the 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 information collection.

(2) *Title of the Form/Collection:* Interagency Record of Individual Requesting Change/Adjustment to or From A or G Status; or Requesting A, G or NATO Dependent Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–566. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Individuals or households. The form facilitates processing of applications for benefits filed by dependents of diplomats, international organizations, and NATO personnel by the DHS and the Department of State.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4,400 responses at 15 minutes (.250) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Department Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, Washington, DC 20530.

Dated: May 29, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 03–14005 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–15234]

Merchant Marine Personnel Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). MERPAC provides advice and makes recommendations to the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U. S. merchant marine.

DATES: Applications should reach us on or before August 30, 2003.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–1), U. S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. Please submit applications to the same address.

FOR FURTHER INFORMATION CONTACT: Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: This notice is available on the Internet at *http://dms.dot.gov/search/searchFormSimple.cfm* under the docket number [USCG–2003–15234]. The application form is also available on the Internet at *http://www.uscg.mil/hq/g-m/advisory/app.pdf.* You may also obtain an application by calling Mr. Mark Gould at (202) 267–6890; by e-mailing him at *mgould@comdt.uscg.mil*; by faxing him at (202) 267–4570; or by writing him at the location in **ADDRESSES** above.

MERPAC is chartered under the Federal Advisory Committee Act, 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety, Security and Environmental Protection, on matters of concern to seamen serving in our merchant marine, such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended.

MERPAC meets normally twice a year, once at or near Coast Guard Headquarters, Washington, DC, and once elsewhere in the country. Its subcommittees and working groups may also meet to consider specific tasks as required.

The Coast Guard will consider applications for seven positions that expire or become vacant in January 2004. It needs applicants with one or more of the following backgrounds to fill the positions:

(a) Licensed deck officer;

(b) Marine educator;

(c) Licensed engineer;

(d) Member of the public;

(e) Unlicensed member of the engine department; and

(f) Two marine educators affiliated with state maritime academies.

Each member serves for a term of three years. No member may serve more than two consecutive three-year terms. MERPAC members serve without compensation from the Federal Government; however, they do receive travel reimbursement and per diem.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act [5 U.S.C. 552a].

Dated: May 28, 2003.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Standards.

[FR Doc. 03–14009 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Bonded Warehouse Proprietor's Submission

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: Bonded Warehouse Proprietor's Submission. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5697) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Bonded Warehouse Proprietor's Submission.

OMB Number: 1651–0033.

Form Number: Form 300.

Abstract: CBP Form 300 is prepared by Bonded Warehouse Proprietor's and submitted to CBP annually. The document reflects all bonded merchandise entered, released, and manipulated, and includes beginning and ending inventories.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,800.

Estimated Time Per Respondent: 24 hours and 18 minutes.

Estimated Total Annual Burden Hours: 43,740.

Estimated Total Annualized Cost on the Public: $787,320.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14054 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: General Declaration

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: General Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5701) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: General Declaration (Outward/Inward).

OMB Number: 1651–0002.

Form Number: Customs Form 7507.

Abstract: Customs Form 7507 allows the agent or pilot to make entry or exit of the aircraft, as required by statute. The form is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 166 minutes.

Estimated Total Annual Burden Hours: 83,333.

Estimated Total Annualized Cost on the Public: $1,512,500.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14055 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Lien Notice

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: Lien Notice. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5700) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Lien Notice.

OMB Number: 1651–0012.

Form Number: Form 3485.

Abstract: The Lien Notice, CBP Form-3485, enable the carriers, cartmen, and similar businesses to notify CBP that a lien exists against an individual/business for non-payment of freight charges, etc., so that the CBP will not permit delivery of the merchandise from public stores or a bonded warehouse until the lien is satisfied or discharged.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (with change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 2,240.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 9,296.

Estimated Total Annualized Cost on the Public: $104,092,250.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14056 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Importers of Merchandise Subject to Actual Use Provisions

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: Importers of Merchandise Subject to Actual Use Provisions. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5696–5697) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Title: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1651–0032.

Form Number: None.

Abstract: The Importers of Merchandise Subject to Actual Use Provision is part of the regulation which provides that certain items may be admitted duty-free such as farming implements, seed, potatoes etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 13,000.

Estimated Total Annualized Cost on the Public: $380,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14057 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Proof of Use for Duty Rates Dependent on Actual Use

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: Proof of Use for Duty Rates Dependent on Actual Use. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5696–5697) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of the Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Title: Proof of the Use for Rates of Duty Dependent on Actual Use.

OMB Number: 1651–0038.

Form Number: None.

Abstract: The Proof of the Use for Rates of Duty Dependent on Actual Use declaration is needed to ensure Customs control over merchandise which is duty-free. The declaration shows proof of use and must be submitted within 3 years of the date of entry or withdrawal for consumption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 10,500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 3,500.

Estimated Total Annualized Cost on the Public: $250,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14058 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Declaration of Persons Who Performed Repairs or Alterations

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: Declaration of Persons Who Performed Repairs or Alterations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extension without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5695) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Declaration of Person Who Performed Repairs.

OMB Number: 1651–0048.

Form Number: None.

Abstract: The Declaration of Person Who Performed Repairs is used by Customs to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 20,472.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 10,236.

Estimated Total Annualized Cost on the Public: $150,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14059 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Country of Origin Marking Requirements for Containers or Holders

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: Country of Origin Marking Requirement for Containers or Holders. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5699) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated,

(4) electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Country of Origin Marking Requirements for Containers or Holders.

OMB Number: 1651–0057.

Form Number: N/A.

Abstract: Containers or Holders imported into the United States destined for an ultimate purchaser must be marked with the English name of the country of origin at the time of importation into Customs territory.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 15 seconds.

Estimated Total Annual Burden Hours: 41.

Estimated Total Annualized Cost on the Public: $533.00.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14060 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Customs Modernization Act Recordkeeping Requirements

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: Customs Modernization Recordkeeping Requirements. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5698) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Customs Modernization Act Recordkeeping Requirements.

OMB Number: 1651–0076.

Form Number: N/A.

Abstract: This information and records keeping requirement is required to allow Customs to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 6,070.

Estimated Time Per Respondent: 957 hours.

Estimated Total Annual Burden Hours: 5,812,010.

Estimated Total Annualized Cost on the Public: $104,092,250.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14061 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Comment Request

ACTION: 60-Day notice of information collection under review; Application—Alternative Inspection Services; Form 1–823.

The Department of Homeland Security (DHS), Bureau of Immigration and Customs Enforcement, has submitted the following information collection request for review and clearance 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 August 4, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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—Alternative Inspection Services.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–823, Inspections Division, Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form will be used by the DHS to determine eligibility for automated inspections programs and to secure those data elements necessary to confirm enrollment at the time of application for admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 responses at 70 minutes (1.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 291,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcements, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, Washington, DC 20530.

Dated: May 30, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 03–14000 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

Strategic Plan

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Solicitation of comments for updating the Strategic Plan.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is soliciting comments as it updates its Strategic Plan. In accordance with the requirements of the Government Performance and Results Act of 1993 that agencies update their Strategic Plans every three years, OFHEO is developing its 2003–2008 Strategic Plan and soliciting the views and suggestions of those entities potentially affected by or interested in the plan. OFHEO's current Strategic Plan, for FY 2000–2005, may be viewed on the OFHEO Web site at *http://www.ofheo.gov* in the ''About OFHEO'' section.

DATES: Written comments regarding the Strategic Plan may be received through June 18, 2003.

ADDRESSES: All comments concerning the notice should be addressed to: Susan S. Jacobs, Associate Director, Office of Strategic Planning and Management, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Third Floor, Washington, DC 20552. Comments may also be submitted via electronic mail to: *StrategicPlan@ofheo.gov.* OFHEO requests that written comments submitted in hard copy also be accompanied by the electronic version in MS Word or in portable document format (PDF) on 3.5″ disk.

FOR FURTHER INFORMATION CONTACT: Susan S. Jacobs, Associate Director, Office of Strategic Planning and Management, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Third Floor, Washington, DC 20552, telephone (202) 414–3821 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Office of Federal Housing Enterprise Oversight (OFHEO) is charged by Congress, as established in title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, with the mandate of overseeing the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, Fannie Mae and Freddie Mac (the ''Enterprises'').

Three years ago, OFHEO adopted a Strategic Plan covering FY 2000–2005. Section 306 of the Government Performance and Results Act of 1993 (GPRA), 31 U.S.C. 1115 *et seq.*, requires that agencies update and revise their Strategic Plans every three years. OFHEO is currently drafting a new plan for FY 2003–2008 that will describe the agency's mission, strategic goals and objectives, and strategies to achieve them. This plan will provide a framework for the years ahead. OFHEO uses its Strategic Plan to guide each year's performance goals, which are described in OFHEO's Annual Performance Plans. They may be viewed on the OFHEO Web site at *http://www.ofheo.gov* in the ''Public Documents'' section, ''Reports'' section.

In today's notice, OFHEO is soliciting the views and suggestions that may be considered in the development of its revised plan. Additionally, OFHEO will publish a draft plan on the OFHEO Web site in late summer and will continue to encourage comments. OFHEO will then

submit its Strategic Plan pursuant to the statutory requirements.

Dated: May 22, 2003.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 03–13282 Filed 6–3–03; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Construction on a Single-Family Lot, in Volusia County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Royce Winslow (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize incidental take of the Florida scrub-jay (*Aphelocoma coerulescens*), on a single family lot for land clearing and other activities associated with the construction of a single family home on a 0.134-acre lot in City of Ormond Beach, Volusia County, Florida (Project).

The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). The Service announces the availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (*see* **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE059232–0 in such comments. You may mail comments to the Service's Regional Office (*see* **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov.* Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (*see* **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed below (*see* **ADDRESSES**). 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 administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (*see* **ADDRESSES**) and should be received on or before July 7, 2003.

ADDRESSES: Persons wishing to review the application, supporting documentation, and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permit Coordinator), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 South Point Drive, South, Suite 310, Jacksonville, Florida 32216–0912. Written data or comments concerning the application or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Please reference permit number TE059232–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (*see* **ADDRESSES** above), telephone: 404/679–7313; or Ms. Jane Monaghan, Fish and Wildlife Biologist, Jacksonville Field Office, (*see* **ADDRESSES**), telephone 904/232–2580, extension 128.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay is geographically isolated from other species of scrub-jays found in Mexico and the Western United States. The Florida scrub-jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub-jay population has been reduced by at least half in the last 100 years. Surveys indicate that one family of Florida scrub-jays occupies the Project site. The 0.134 acre of occupied habitat on the site is very overgrown due to fire suppression and a lack of any kind of management. The surrounding area is intensely developed with only scattered fragments of scrub habitat remaining. Construction of the Project's infrastructure, commercial construction and construction of the individual home sites will likely result in death of, or injury to, Florida scrub-jays incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

Section 9 of the Act, and implementing regulations, prohibits taking the Florida scrub-jay. Taking, in part, is defined as an activity that kills, injures, harms, or harasses a listed endangered or threatened species. Section 10(a)(1)(B) of the Act provides an exemption, under certain circumstances, to the Section 9 prohibition if the taking is incidental to an otherwise lawful activity. Section 10 requires the applicant to submit a Habitat Conservation Plan that specifies the impacts that are likely to result from the taking and the measures the permit applicant will undertake to minimize and mitigate such impacts. Section 10(a)(2)(B) of the Act provides statutory criteria that must be satisfied before an incidental take permit can be issued. The issuance criteria are as follows:

1. The taking is incidental to, and not the purpose of otherwise lawful activities.

2. Applicant will to the maximum extent practicable, minimize, and mitigate the impacts of such taking.

3. Applicant will ensure that adequate funding for the HCP and procedures to deal with unforeseen circumstances will be provided.

4. The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.

5. Applicant will ensure that other measures that the Service may require as being necessary or appropriate will be provided.

6. The Service has received such other assurances as may be required that the HCP will be implemented.

The HCP describes measures by the Applicant to avoid and mitigate ''take'' that would occur as a result of the project. To minimize impacts, the Applicant will ensure that clearing of vegetation within 150 feet of active nests will not take place during the nesting season for Florida scrub-jays (March 1 through July 1). To mitigate for the up to 0.134 acres of occupied habitat that would be eliminated on-site, the Applicant will contribute $1,688.00 to the National Fish and Wildlife Foundation Fund for the conservation and management of the Florida scrub-jay. This money will be used, along with other funds received from Section 10(a)(1)(B) permits, to purchase scrub-jay habitat in Volusia County, Florida. This amount is based on replacement at a rate of 2:1 (0.268 acre purchased to replace 0.134 acre at a current cost of $5,000.00 per acre for a final cost of $1,340.00), provides a $1,000 per acre ($268.00) management endowment for perpetual management, and includes a five percent fee ($84.00) for the administration of the National Fish and Wildlife Foundation account. Once purchased, the land will be transferred to a third party land management organization along with the $1,000 per acre management endowment. This management will be accomplished through the use of a conservation easement specifying that the land be left undeveloped and managed into perpetuity. It is believed that ensuring the protection and viability of quality, occupied habitat in a large contiguous preserve such as that which will be purchased in Volusia County, is more beneficial to the scrub-jay than any on-site mitigation plan could offer.

As stated above, we have determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis, and does not require the preparation of an Environmental Assessment or Environmental Impact Statement. This preliminary information may be revised due to public comment received in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Florida scrub-jay population as a whole. The Service does not anticipate significant direct or cumulative effects to the Florida scrub-jay population as a result of the construction project.

2. Approval of the HCP would not have adverse effects on known unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has therefore determined that approval of the Plan qualifies as a categorical exclusion under the NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Therefore, no further NEPA documentation will be prepared.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: May 8, 2003.

Christine E. Eustis,

Acting Regional Director.

[FR Doc. 03–13970 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft National Management Plan for the European Green Crab

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and request for comments.

SUMMARY: This notice announces the availability of a draft Management Plan for the European Green Crab, *Carcinus maenas,* for public review and comment. Comments received will be considered in preparing the final Management Plan for *C. maenas,* which will become the basis for cooperative and integrated management of the European Green Crab, *C. maenas,* with the involvement of Federal, State, Tribal, and local resource agencies.

DATES: Comments on the draft Management Plan for the European Green Crab should be received by July 31, 2003.

ADDRESSES: Mail written responses and requests for copies of the draft management plan to Fred Kern, Chair, Green Crab Control Working Group, NOAA National Ocean Service, Cooperative Oxford Laboratory, 904 South Morris Street, Oxford, MD 21654. The draft Management Plan for the European Green Crab is also available on the ANS Task Force Web site (*http://www.anstaskforce.gov*). You may also request copies of the draft plan by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Fred Kern, Chair, Green Crab Control Working Group, at 410–226–5193 or by e-mail at *fred.kern@noaa.gov* or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at *sharon_gross@fws.gov.*

SUPPLEMENTARY INFORMATION: The European green crab, *Carcinus maenas,* is one of the most ecologically and economically damaging predators in nearshore coastal communities of both eastern and western North America. Native of northern Europe, green crabs colonized eastern North America in the early 19th century and now occur abundantly from Nova Scotia to Maryland. In contrast, green crabs are a recent arrival to western North America, where they successfully colonized San Francisco Bay, CA, in 1989–90. Their impacts on both natural ecosystems and commercial fisheries are well

established, as is their ability to rapidly expand their range.

The western North America invasion has undergone a rapid range expansion, with green crabs expanding their range by more than 750 km in less than ten years since their initial invasion. Green crabs are now firmly established in every significant bay and estuary from Monterey Bay, CA, to Gray's Harbor, WA, and have the potential become established from the Gulf of Alaska to Baja, California. The uniformity of the green crab distribution strongly suggests that green crabs can rapidly expand their range once they are established. In 2000 they continued to expand their northern range in eastern North America by invading the Gulf of St. Lawrence at Prince Edward Island, Canada.

Green crabs are both eurythermic and eurohaline and can survive a temperature range from freezing to 30 °C while utilizing a broad range of habitat types. They exploit a wide range of prey types, including molluscs (clams and snails), crustaceans, annelids, fish, and algae. Several native species have declined significantly as a direct result of green crab predation in western North America. Green crabs have had substantial impacts on some commercially important clam species, *Mya arenaria,* and *Mercenaria mercenaria,* and on the scallop species, *Argopecten irradians.* Green crab predation in invaded communities may indirectly affect feeding rates and foraging efficiency of shorebirds.

Recognizing the ecological and economic impacts, as well as expanding geographic range of the green crabs in North America, *Carcinus maenas* was the first marine organism to be designated as an aquatic nuisance species in 1998 by the Aquatic Nuisance Species (ANS) Task Force. In 2000, the Green Crab Control Working Group was appointed by the ANS Task Force to develop a Management Plan. The management strategies available in the plan to limit the impact of the European green crab, as well as that of other invaders, include a combination of prevention, eradication, and control measures. This plan is the result of several years of planning and research and has identified the following management options for prevention, eradication, and control of *Carcinus maenas* in the United States:

- Prevention and Containment
- Detection and Forecasting
- Eradiction, Control, and Mitigation
- Information Access and Data Management

Prevention and Containment

This option provides a detailed description of the priority activities that the Working Group has identified to prevent further spread of the green crab. The goals of prevention and containment are to:

- Identify pathways of invasion and quantify the risk of each pathway; and
- Identify management options available for reducing the risk associated with each pathway.

The Management Plan also discusses the types of information needed to accomplish this management option, as well as the strategies that may be most effective.

Detection and Forecasting

This option provides a detailed description of the priority activities to be undertaken as soon as possible to implement a comprehensive program to detect new invasions and range expansions of the European green crab and to forecast pollution irruptions at invaded sites. The goals for this option are to do the following:

- Outline specific procedures for detecting the presence of juvenile green crabs in previously uninvaded areas. This will provide an ''early warning'' of new invasions and provide additional time for restricting activities that would potentially delay further spread. It also allows time to develop local education/outreach efforts or other activities aimed at heightening public awareness in order to minimize the probability of unintentional movement of green crabs;
- Track the approximate abundances of green crab populations in previously invaded areas to allow forecasting of ''outbreak'' years. The ecological and economic impacts of green crabs are directly related to their abundance, so if outbreak years can be forecasted, this would provide an important warning for resource managers, production fisheries, aquaculture, and others that may be negatively affected by a large year class of green crabs. This would also provide additional time to jumpstart necessary management activities, and increase education and outreach efforts that might ameliorate the impacts of these species in years of high abundance;
- Monitor uninvaded areas to detect new invasions and range expansions. This would most effectively be accomplished by detecting the presence of postlarval green crabs and/or the presence of young-of-the-year (YOY) juvenile green crabs. To detect the presence of green crab postlarvae, biweekly to monthly sampling between April and June would be involved. Postlarvae can be sampled by deploying bag collectors attached to docks, moorings, and buoys at replicate sites in harbors and bays. Bags are exchanged at the desired interval, and collected organisms are rinsed off the collectors, sorted, preserved, and counted. Young-of-the-year (YOY) juvenile green crabs are best sampled by deploying baited minnow traps in intertidal areas at replicate sites in harbors and bays in August and September; and
- Monitor invaded areas to forecast ''outbreak'' years. This is most effectively accomplished through monitoring the abundance of postlarval green crabs, including juvenile as well as adult crab populations.

Eradication, Control, and Mitigation

The Management Plan has identified and discussed various actions for this option. These actions are dependent upon the data, population abundance, and control tools currently available. Just as crab abundance differs by location, so too may the tools available for controlling the population be different. For example, early detection of new invasions may permit successful rapid response and extirpation at a local level. Small populations with no local recruitment may be easy to eradicate by selective harvest, chemical control, biological control, or genetic control measures, while population established with local recruitment may need control and containment in addition to selective harvest, chemical control, biological control, or genetic control measures. However, if the invasion has proceeded to the point that achieving population control on a broad scale is either perceived to be insurmountable or is not presently being addressed, mitigative control measures may be used in concert with broader regional or local control. Cooperative research on the seasonal dynamic of green crab recruitment and predation, along with field tests on the efficacy of various mitigation measures, should be conducted in those areas where green crab are abundant.

Information Access and Data Management

The objective for this component of the management plan is to share the information source(s) and data management needed to efficiently implement the national management plan. The objectives for this component of the plan are to:

- Provide current information on the research and management activities being conducted under the plan;
- describe standardized research and management protocols that allow others

to participate and contribute to full implementation of the plan;

• sustain a current synthesis of regional, national, and international results in the areas of research and management activities;

• create a directory of relevant contacts, activities, and information in support of the plan at the local, state, and regional levels; and

• develop educational outreach components in support of the plan.

The following three elements are discussed in detail in the Management Plan to meet the objectives for this component: (1) A system for information management and dissemination, (2) an advisory committee to guide development of the information system, and (3) a core group of scientists to provide syntheses of current research and management information. The implementation section of the plan has identified possible funding source(s), lead organization(s), and estimated cost to implement each task element identified and discussed in the plan.

This document was prepared by the Green Crab Control Working Group of the ANS Task Force, as authorized by section 4722(c) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*).

Dated: May 7, 2003.

Everett Wilson,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 03–13995 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–PG]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held July 10, 2003, 1–4 p.m., at the Wiseman Community Center, near milepost 188 of the Dalton Highway. The council will conduct a brief meeting in conjunction with a field tour of the Dalton Highway, visit with area residents, and hear public comment.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–3322 or e-mail *Teresa_McPherson@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The 13-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics we plan to discuss include:

• Management of the Dalton Highway Utility Corridor

• Status of planning in the National Petroleum Reserve Alaska (NPR–A)

• Other topics the Council may raise

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: May 28, 2003.

Henri R. Bisson,

State Director.

[FR Doc. 03–13971 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ030–1020–00–241A; AZA 31042]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to Mohave County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Mohave County Board of Supervisors proposes to use the land for a Library Station.

Gila and Salt River Meridian, Mohave County, Arizona

Township 21 N., R. 18 W., Sec 8, N½SE¼SE¼NE¼NE¼.
Containing 2.5 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations.

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for road purposes granted to the Mohave County Board of Supervisors by permit number AZA–17931.

5. Those rights for the purposes granted to the Golden Valley Chamber of Commerce permit number AZA–24652.

6. Subject to other valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purpose Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the Kingman Field Manager, 2475 Beverly Avenue, Kingman, Arizona 86401. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Janna Paronto, Realty Specialist, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401, Telephone (928) 692–4449.

Dated: April 23, 2003.

John R. Christensen,

Field Manager.

[FR Doc. 03–13923 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of Proposed Amendment; West Mojave Planning Area; California Desert Conservation Area Plan; Off-Road Vehicle Designations

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of proposed amendment; West Mojave Planning Area; California Desert Conservation Area (CDCA) Plan; off-road vehicle designations.

SUMMARY: The California Desert District of the Bureau of Land Management (BLM) is considering off-road vehicle designations for the West Mojave Desert Planning Area in accordance with the criteria and procedures of 43 Code of Federal Regulations subpart 8342. These designations, when approved by BLM, will amend the existing designations established under the CDCA plan in the West Mojave Area. This planning area encompasses approximately 3.3 million acres of public land managed by the BLM's California Desert District, located in Inyo, Kern, Los Angeles and San Bernardino Counties in southern California.

DATES: BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest that may be adversely affected, may protest. The protest must be received no later than the last day of the 30-day protest period established by the BLM California Desert District. More specific instructions and requirements for protests are contained in the **SUPPLEMENTARY INFORMATION** section of this notice.

SUPPLEMENTARY INFORMATION: Instructions for filing a protest with the Director of the BLM may be found at 43 CFR 1610.5. Any person who participated in the planning process and has an interest, which is or may be affected by the approval of the proposed Resource Management Plan, may protest such approval. A protest may raise only those issues that were submitted for the record during the planning process. New issues raised in the protest period should be directed to the West Mojave Project Office for consideration in plan implementation, as potential plan amendments, or as otherwise appropriate. Protests must be in writing and to be considered ''timely,'' the protest must be received no later than the last day of the 30-day protest period. Also, although not a requirement, it is recommended that the protest be sent by certified mail, return receipt requested. E-mail protests will not be accepted. Faxed protests will be considered as potential valid protests provided (1) that the signed faxed letter is received by the Washington Office protest coordinator by the closing date of the protest period and (2) that the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Please direct faxed protests to ''BLM Protest Coordinator'' at 202–452–5112. Please direct the follow-up letter to the appropriate address provided below. The protest must contain:

i. The name, mailing address, telephone number, and interest of the person filing the protest;

ii. A statement of the issue or issues being protested;

iii. A statement of the part or parts of the plan or amendment being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, maps, etc., included in the proposed amendment;

iv. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

v. A concise statement explaining why the State Director's decision is believed to be wrong. This is a critical part of the protest. Take care to document all relevant facts. As much as possible, reference or cite the planning documents, environmental analysis documents, available planning records (*i.e.,* meeting minutes or summaries, correspondence, etc.).

A protest which merely expresses disagreement with proposed decision without supporting data will not provide additional basis for the Director's review of the decision. Please note that comments, including names and street addresses of respondents, are available for public review and/or release under the Freedom of Information Act (FOIA). Individual respondents may request confidentiality.

Respondents who wish to withhold name and/or street address from public review or from disclosure under FOIA, must state this prominently at the beginning of the written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, will be made available for public inspection in their entirety. The Director will promptly render a decision on the protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director shall be the final decision of the Department of the Interior. File written protest by Surface mail: U.S. Department of the Interior, Bureau of Land Management, Director (210), Attn: Brenda Williams, P.O. Box 66538, Washington, DC 20035 or Overnight mail: U.S. Department of the Interior, Bureau of Land Management, Director (210), Attn: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact William Haigh, Project Manager, at (760) 252–6080 (Phone), e-mail at *whaigh@ca.blm.gov.*

Howard Stark,

Acting Deputy State Director for Natural Resources.

[FR Doc. 03–14201 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT100–03–1610–DU]

Intent To Prepare an Amendment to the Garnet Resource Management Plan (RMP) and an Associated Environmental Assessment (EA)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an amendment to the Garnet Resource Management Plan and an associated EA. This process will incorporate management direction for the Canada lynx, listed as a threatened species under the Endangered Species Act (ESA), which is based on the best scientific information available. If approved, the amendment would preserve the overall multiple-use direction of the RMP, while establishing management direction for Canada lynx conservation and recovery including: reducing or eliminating potential

adverse effects from management activities and protecting and restoring lynx, snowshoe hare, and alternate prey species habitat.

Public Participation: The BLM is seeking comments from individuals, organizations, tribal governments, and Federal, State, and local agencies that are interested or may be affected by the proposed action. The scoping comment period will commence with the publication of this notice. Formal scoping will end 30 days after publication of this notice. Comments should be received on or before the end of the scoping period at the address listed below. While public participation is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the EA. To assist the BLM in identifying and considering issues and concerns on the proposed action, comments on the proposed EA should be as specific as possible. 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.

ADDRESSES: Send written comments to Lynx Amendment EA, Missoula Field Office, 3255 Fort Missoula Road, Missoula, MT 59804. Comments, including names and addresses of respondents, may be published as part of this EA. Individual respondents may request confidentiality; if you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information, contact George Hirschenberger, Missoula Field Office, (406) 329–3908.

SUPPLEMENTARY INFORMATION: The BLM in the Montana State Office proposes to amend one land use plan, the Garnet Resource Management Plan, in the State of Montana. The proposed amendment would preserve the overall multiple-use direction of the RMP and modify or add management direction to the plan for Canada lynx conservation and recovery. The direction would be based on the management recommendations in the Canada Lynx Conservation Assessment and Strategy (LCAS), the Lynx Biological Assessment, the U.S. Fish and Wildlife Service Final Listing rule, **Federal Register**, Volume 65, Number 127, 40601–40606, March 24, 2000, and the best scientific information available. The BLM has identified preliminary issues and management concerns. The following represents the BLM's knowledge to date on potential planning issues: recreation, transportation, oil and gas leasing, mineral development, wildlife habitat restoration, prescribed fire, and livestock grazing and forest management, including timber harvesting, timber stand improvement and forest development. The BLM is seeking comments on the issues related to the proposed action.

Background: The Canada lynx inhabits coniferous forests with cold, snowy winters and a prey base of snowshoe hares. The lynx occupies approximately 44,000 acres of habitat on BLM lands administered by this resource management plan, which are located in Granite, Missoula, and Powell Counties, Montana. The U.S. Fish and Wildlife Service (Service) listed the lynx as threatened, effective March 24, 2000. The Service concluded that the chief threat to the lynx in the contiguous United States is the lack of guidance to conserve the species in current Federal land management plans. The Ecology and Conservation of Lynx in the United States, a compendium of current scientific knowledge about lynx, was completed in 2000 by an international team of experts in lynx ecology, directed by the Rocky Mountain Research Laboratory. Based on this information, the *Canada Lynx Conservation Assessment and Strategy* (LCAS) was completed and later revised by a team of biologists from the Forest Service, Bureau of Land Management, National Park Service and U.S. Fish and Wildlife Service in February 2000 and August 2000, respectively. After the lynx was proposed for listing in July 1998 under the ESA, conferencing was initiated on the effects of agency plans on the lynx. A Biological Assessment (BA) was prepared, which indicated that some adverse effects on lynx were likely on each of the 56 BLM and 57 Forest Service units evaluated. This BA was submitted to the U.S. Fish and Wildlife Service in February 2000. After listing, formal consultation on the plans was initiated, and was completed in October 2000. Because of the likelihood of adverse effects under current plans, and possible risk to lynx viability, the Assistant Director for Renewable Resources and Planning for the BLM Washington Office, and two Fish and Wildlife Service Regional Directors signed the Lynx Conservation Agreement in August 2000. It incorporates a staged approach to modifying management direction to better conserve the Canada lynx.

Dated: May 2, 2003.

Scott W. Lieurance,

Acting Missoula Field Manager.

[FR Doc. 03–13924 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT 060–1610–DO–016J; UT 090–1610–DO–017J]

Notice of Intent To Prepare Two Resource Management Plan Revisions for Public Lands and Resources Managed by the Moab and Monticello Field Offices, Respectively, and Call for Coal Information

AGENCY: Bureau of Land Management, Moab and Monticello Utah Field Offices.

ACTION: Notice of Intent to prepare two Resource Management Plan Revisions (RMPs) for public lands and resources managed by the Moab and Monticello Field Offices, respectively, and Call for Coal Information. These two plan revisions will require preparation of a single Environmental Impact Statement (EIS).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare two RMP revisions and a single associated EIS for lands managed by the Moab and Monticello Field Offices. These planning activities encompass approximately 2.46 million acres of public land in Grand and San Juan Counties, Utah. The plan revisions will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, tribal, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria, including an evaluation of the existing RMP in the context of the needs and interests of the public.

The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed. Comments on

issues and planning criteria will be most useful if received on or before the end of the scoping period at the address listed below.

Public Participation: Public meetings will be held throughout the region in order to promote public involvement in this process. In order to ensure local community participation and input, public meetings will be held, at a minimum, in Salt Lake City, Moab, Monticello, Blanding, Montezuma Creek, Bluff and Green River, Utah, and in Grand Junction, Colorado. Other locations will be announced in local and regional news media, planning bulletins and on BLM web sites. Early participation by all interested parties is encouraged and will help shape the future management of the public lands in the Moab and Monticello Field Offices. Written comments will be accepted throughout the planning process at the address shown below. In addition to the ongoing public scoping process, formal opportunities for public participation will be provided during a comment period for the draft alternatives and upon publication of the draft RMP/EIS.

ADDRESSES: For the Moab Field Office RMP revision, written comments should be sent to RMP Comments, Bureau of Land Management, Moab Field Office, 82 East Dogwood, Moab, Utah 84532; or Fax 435–259–2106. Documents pertinent to this proposal may be examined at the BLM's Moab Field Office. For the Monticello Field Office RMP revision, written comments should be sent to RMP Comments, Bureau of Land Management, Monticello Field Office, 435 North Main Street, Monticello, Utah 84535; or Fax 435 587–1518. Documents pertinent to this proposal may be examined at the BLM's Monticello Field Office.

All comments must be specific to either the Moab RMP or the Monticello RMP. All comments and or data received, including names and street addresses of respondents, will be available for public review at each of the Field Offices during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information regarding the Moab RMP revision and/or to have your name added to this mailing list, contact Brent Northrup, Resource Advisor/RMP Project Manager, Bureau of Land Management, Moab Field Office, 82 East Dogwood, Moab, UT 84532, phone: 435–259–2151, or e-mail: *brent_northrup@ut.blm.gov.* For further information regarding the Monticello RMP revision and/or to have your name added to the mailing list, contact Gary Torres, Supervisory Planner, Bureau of Land Management, Monticello Field Office, 435 North Main Street, P.O. Box 7, Monticello, Utah 84535, phone: 435–587–1524 or e-mail: *gary_torres@ut.blm.gov.*

SUPPLEMENTARY INFORMATION: Preliminary issues and management concerns have been identified by BLM personnel during planning evaluations and pre-planning analysis for each of the RMPs. They represent the BLM's knowledge to date of the existing issues and concerns with current management. The major issue themes that will be addressed in the plan revisions are: Management and protection of public land resources; management of conflicting and competing uses; access to and transportation on the public lands; and balancing multiple uses. Other specific issues may include cultural resource management, fire management, woodland harvest and management, lands and realty management, rangeland health and management, wild horse and burro management, potential establishment of special designation areas, and special status species management.

43 CFR 3420.1–2(a) requires that the BLM publish a call for coal and other resource information in the **Federal Register** if there are areas with coal occurrence in the planning area. Parties interested in coal leasing and development should provide coal resource data for their area(s) of interest. Identification of interests in future coal leasing, substantiated with adequate coal resource data, allows the BLM to address development potential during the RMP revision process and helps avoid unnecessary work, delays, or RMP amendments.

Proprietary data marked as confidential may be submitted in response to this call for coal resource information and other resource information. Please submit all proprietary information submissions to the individuals at the addresses listed above. The BLM will treat submissions marked as ''Confidential'' in accordance with the laws and regulations governing the confidentiality of such information.

In addition to coal resource data, the BLM seeks resource information and data for other public land values (*e.g.*, air quality, archaeology, fire/fuels, fisheries, forestry, geologic hazards, lands and realty, oil and gas (including coalbed methane), paleontology, rangeland management, recreation, trona, water quality, and wildlife).

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase for the plan revisions. An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include, but not be limited to, rangeland management, minerals and geology, outdoor recreation, archaeology, paleontology, special designations, wildlife and fisheries, lands and realty, hydrology, soils, sociology, and economics. Each Field Office is seeking public involvement at the earliest possible stages of this planning endeavor to enhance collaboration. If you have information, or concerns you would like to share, including ideas or opportunities that could enhance data collection, resource inventories, formulation of issues or alternatives, or development of planning criteria that would be applicable to the Moab or Monticello planning efforts, please submit them to the above addresses as appropriate. A reasonable range of alternatives that resolve those issues and management concerns identified during the scoping process will be developed and analyzed for each of the RMPs and a single Draft RMP/Draft EIS will be published and made available for public review.

Dated: April 11, 2003.

Gene Terland,

Associate State Director.

[FR Doc. 03–13921 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT 934–1610–DP]

Modification of Previous Notices of Intent to Prepare Proposed Plan Revisions for the Vernal Field Office Resource Management Plan (RMP), Price Field Office RMP, and the Richfield Field Office RMP in Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice of modification is to advise the public that the Bureau of Land Management, Utah, will not consider establishing additional Wilderness Study Areas in the above named plans.

FOR FURTHER INFORMATION CONTACT: Maggie Kelsey, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111: phone: (801) 539–4068.

Background Information: On April 14, 2003, a settlement agreement was reached between the Department of the Interior and the State of Utah, Utah School and Institutional Trust Lands Administration, and Utah Association of Counties regarding the designation of Wilderness Study Areas (WSAs) through the Bureau of Land Management's (BLM's) planning process. As a result of the settlement, the BLM will not consider the designation of new WSAs or the classification or management of BLM lands as if they are or may become new WSAs in the above named Resource Management Plans.

Dated: May 5, 2003.

Sally Wisely,

Utah State Director.

[FR Doc. 03–13922 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–52289]

Cancellation of Proposed Withdrawal; Nevada

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency, Region IX, on behalf of the City of Sparks, has cancelled its withdrawal application N–52289 for a sewage sludge disposal site in Warm Springs Valley, Nevada. The original Notice of Proposed Withdrawal was published as FR Doc. 89–28634, 54 FR 50659, December 8, 1989. A Notice of Termination of the segregative effect of the withdrawal application was published as FR Doc. 91–30739, 56 FR 66870, December 26, 1991.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Suglian, Land Law Examiner, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone (775) 885–6000.

SUPPLEMENTARY INFORMATION: The United States Environmental Protection Agency requested that the application be withdrawn at this time. The City of Sparks currently contracts with a private company for land application of sewage sludge on privately owned lands and plans to use this option in the foreseeable future.

Dated: April 25, 2003.

Elayn Briggs,

Acting Manager, Carson City Field Office.

[FR Doc. 03–13925 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Gulf of Mexico Region, Proposed Eastern Planning Area Final Environmental Impact Statement

AGENCY: Minerals Management Service, Interior.

ACTIONS: Notice of availability of the final environmental impact statement on proposed eastern planning area oil and gas lease sales 189 and 197.

SUMMARY: The U.S. Department of the Interior, Minerals Management Service (MMS) has prepared a final environmental impact statement (EIS) on two proposed oil and gas lease sales in the Eastern Planning Area (EPA) Outer Continental Shelf (OCS) of the Gulf of Mexico (GOM).

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Dennis Chew, telephone (504) 736–2793.

SUPPLEMENTARY INFORMATION: This EIS addresses two proposed Federal actions that offer for lease OCS areas in the EPA of the GOM that may contain economically recoverable oil and gas resources. Because each proposed lease sale and its projected activities is very similar, a single EIS has been prepared for the two proposed EPA lease sales scheduled in the *Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007* (the 5-Year Program). Under the 5-Year Program, proposed Lease Sale 189 is scheduled for 2003, while proposed Lease Sale 197 is scheduled for 2005. At the completion of this EIS process, a decision will be made only for proposed Lease Sale 189. An additional National Environmental Policy Act review will be conducted in the year prior to proposed Lease Sale 197 to address any new relevant information.

EIS Availability: To find out which libraries along the Gulf of Mexico Coast have copies of the final EIS for review or to obtain single copies of the final EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). A list of libraries and their locations is also available on the MMS Internet Web site at *http://www.gomr.mms.gov.*

Dated: May 20, 2003.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

Dated: May 27, 2003.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 03–13959 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSIs for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA regulations.

This listing includes all proposals for which the Gulf of Mexico OCS region prepared a FONSI in the period subsequent to publication of the preceding notice dated August 13, 2002.

Activity/operator	Location	Date
Murphy Exploration & Production Company, Supplemental Development Operations Coordination Plan, SEA No. S–5940.	South Timbalier Area, Block 86, Lease OCS 0605, located approximately 20 miles south of Lafourche Parish, Louisiana.	12/17/02
Shell Offshore, Inc., Initial Exploration Plan, SEA No. N–7565 ...	Desoto Canyon Area, Blocks 622 and 666, Leases OCS–G 10467 and OCS–G 10468 respectively, located 99 miles from the nearest Louisiana coastline, 127 miles from the Alabama coastline, and 136 miles from the Florida coastline.	01/08/03
Global Geo Services ASA, Geological & Geophysical Exploration Plan, SEA No. M03–01.	Located in the eastern Gulf of Mexico south of Apalachicola, Florida.	01/27/03
Ridgelake Energy, Inc., Initial Development Operations Coordination Plan and Lease-Term Pipeline, SEA Nos. N–7665 and P–14094.	High Island Area, Block A–352, Lease OCS–G 24424, located 114.5 miles from the nearest Texas coastline.	03/14/03
Shell Offshore, Inc., Initial Exploration Plan, SEA No. N–7621 ...	Desoto Canyon Area, Block 269, Lease OCS–G 23502, located 86 miles from the Louisiana shoreline, 127 miles from the Alabama shoreline, and 136 miles from the Florida shoreline.	01/08/03
Ocean Energy, Inc., Initial Exploration Plan, SEA No. N–7622 ...	DeSoto Canyon Area, Blocks 180 and 224, Leases OCS–G 23493 and OCS–G 23497, located 82 miles from the Louisiana shoreline, 102 miles from the Alabama shoreline, and 108 miles from the Florida shoreline, respectively.	01/15/03
Conoco, Inc., Initial Development Operation Coordination Plan, PEA No. N–7506.	Garden Banks Area, Blocks 783 and 784, Lease OCS–G 11573 and 11574, respectively, located approximately 150 miles from the nearest Louisiana shoreline.	02/28/03
J.M. Huber Corporation, Structure Activity, SEA ES/SR Nos. 03–001, 03–002, 03–003 and 03–004.	South Timbalier Area, Block 21, Lease OSC 00263, located 4 miles south of Lafourche Parish, Louisiana, and 6 miles southwest of Removal Fourchon, Louisiana.	01/09/03
Pioneer Natural Resources USA, Inc., Structure Removal Activity, SEA ES/SR No. 03–007.	Matagorda Island Area, Block 624, Lease OCS–G 03306, located 25 miles southeast of Calhoun County, Texas, and 280 miles southwest of Intracoastal City, Louisiana.	01/22/03
Energy Resource Technology, Inc., Structure Removal Activity, SEA ES/SR Nos. 03–008 and 03–009.	Matagorda Island Area, Block 705, Lease OCS–G 09001, and South Timbalier (South Addition) Area, Block 252, Lease OCS–G 10842, located 30 miles southeast of Calhoun County, Texas, and 195 miles southwest of Sabine Pass, Texas; located 50 miles south of Lafourche Parish, Louisiana, and 105 miles southeast of Morgan City, Louisiana, respectively.	01/29/03
Forest Oil Corporation, Structure Removal Activity, SEA ES/SR No. 03–012.	High Island Area, Block A–20, Lease OCS–G 06178, located 34 miles south-southeast of Galveston County, Texas, and 53 miles south-southwest Sabine Pass, Texas.	02/06/03
Walter Gas & Oil Corporation, Structure Removal Activity, SEA ES/SR No. 3–013.	South Pelto Area, Block 6, Lease OCS–G 09651, located 8 miles from the nearest Louisiana shoreline.	03/11/03
Walter Gas & Oil Corporation, Structure Removal Activity, SEA ES/SR No. 3–014.	West Delta Area, Block 35, Lease OCS–G 13641, located 10 miles from the nearest Louisiana shoreline.	03/13/03
Forest Oil Corporation, Structure Removal Activity, SEA ES/SR No. 03–015.	Chandeleur Area, Block 17, Lease OCS–G 04493, located 7 miles east of Chandeleur Islands, Louisiana, and 100 miles northeast of Fourchon, Louisiana.	02/05/03
Forest Oil Corporation, Structure Removal Activity, SEA ES/SR Nos. 03–016 and 01–091A.	West Cameron Area (South Addition), Block 576, Lease OCS–G 02019, High Island Area (East Addition South Extension), Block A286, Lease OCS–G 03486, located l00 miles west-southwest of Cameron Parish, Louisiana, and 114 miles south-southeast of Sabine Pass, Texas; located 89 miles southeast of Galveston County, Texas, and 98 miles south of Sabine Pass, Texas, respectively.	02/12/03
W & T Offshore Incorporated, Structure Removal Activity, SEA ES/SR No. 03–017.	Eugene Island Area, Block 90, Lease OCS–00229, located 23 miles south-southeast of Iberia Parish, Louisiana, and 54 miles southeast of Intracoastal City, Louisiana.	02/14/03
Stone Energy Corporation, Structure Removal Activity, SEA ES/SR No. 03–018.	Eugene Island Area, Block 65, Lease OCS–G 16343, located 15 miles southwest of St. Mary Parish, Louisiana, and 50 miles southeast of Intracoastal City, Louisiana.	02/13/03

Activity/operator	Location	Date
Remington Oil and Gas Corporation, Structure Removal Activity, SEA ES/SR No. 03–019.	East Cameron Area (South Addition), Block 305, Lease OCS–G 16270, located 89 miles south-southwest of Vermilion Parish, Louisiana, and 111 miles southeast of Cameron, Louisiana.	02/12/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–020.	South Marsh Island Area (South Addition), Block 80, Lease OCS–G 14439, located 60 miles southwest of St. Mary Parish, Louisiana, and 90 miles southwest of Morgan City, Louisiana.	02/14/03
El Paso Production, Inc., Structure Removal Activity, SEA ES/SR Nos. 03–021 and 03–022.	South Marsh Island Area, Block 229, Lease OCS–G 00310, and Block 245, Lease OCS–G 16336, located 10 miles southwest of St. Mary Parish, Louisiana, and 85 miles east-southeast of Cameron, Louisiana, located 20 miles southwest of St. Mary Parish, Louisiana, and 85 miles east-southeast of Cameron, Louisiana, respectively.	02/26/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR Nos. 03–023 and 95–071A.	Eugene Island Area, Block 119, Lease OCS–G 00049, and Block 129, Lease OCS–G 00054, located 25 miles southwest of Terrebonne Parish, Louisiana, and 55 miles southwest of Morgan City, Louisiana, located 30 miles southwest of Terrebonne Parish, Louisiana, and 60 miles southwest of Morgan City, Louisiana, respectively.	02/26/03
Samedan Oil Corporation, Structure Removal Activity, SEA ES/SR No. 03–024.	Ship Shoal Area, Block 80, Lease OCS–G 05537, located 25 miles southwest of Terrebonne Parish, Louisiana, and 80 miles southeast of Intracoastal City, Louisiana.	03/18/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR Nos. 03–025 through 03–029, and 95–21A.	Eugene Island Area, Block 119, OCS–G 00049 and OCS–G 00797, located 18 to 22 miles southwest of Terrebonne Parish, Louisiana, and 50 to 55 miles south-southwest of Morgan City, Louisiana.	03/03/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–030.	Eugene Island Area, Block 105, OCS–G 00797, located 20 miles from the nearest Louisiana shoreline.	03/18/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR Nos. 03–031 and 03–032.	Eugene Island Area, Block 126, OCS–G 00052, and Brazos Area, Block 399, OCS–G 07218, located 25 miles from the nearest Louisiana shoreline, and located 15 miles from the nearest Texas shoreline, respectively.	03/18/03
Exxon Mobil Production Company, Structure Removal Activity, SEA ES/SR No. 03–065.	South Timbalier (South) Area, Block 55, Lease OCS–G 00421, located 15 miles from the nearest Louisiana shoreline.	03/18/03
Exxon Mobil Production Company, Structure Removal Activity, SEA ES/SR No. 03–066.	West Delta Area, Block 32, OCS–G 00367, located 10 miles from the nearest Louisiana shoreline.	03/26/03
GX Technology Corporation, Geological & Geophysical Exploration for Mineral Resources, Sea No. L03–08, for China Offshore Geophysical Corporation International.	Located in the central Gulf of Mexico south of Cocodrie, Louisiana.	03/18/03
C & C Technologies, Inc., Geological & Geophysical Exploration Plan, SEA No. L03–09, for C & C Technologies, Inc.	Located in the central Gulf of Mexico southwest of Fourchon, Louisiana.	03/20/03
Chevron U.S.A. Production Company, Structure Removal Activity, SEA ES/SR No. 03–079.	Ship Shoal Area, Block 108, Lease OCS–G 00814, located 20 miles from the nearest Louisiana shoreline.	03/26/03
Newfield Exploration Company, Structure Removal Activity, SEA ES/SR No. 03–085.	Ship Shoal (South) Area, Block 111, Lease OCS–G 06739, located 12 miles northwest of Plaquemines Parish, Louisiana, and 163 miles southeast of Intracoastal City, Louisiana.	03/26/03
Newfield Exploration Company, Structure Removal Activity, SEA ES/SR No. 03–086.	Eugene Island Area, Block 324, Lease OCS–G 05516, located 65 miles from the nearest Louisiana shoreline.	03/26/03
Exxon Mobil Production Company, Structure Removal Activity, SEA ES/SR Nos. 03–033 through 03–064.	Main Pass Area, Block, 7, Lease OCS–G 01366; Blocks 18–19, Lease OCS–G 01963; Block 92, Leases OCS–G 01366 and 01500; Block 103, Lease OCS–G 01627; located approximately 25 miles from the nearest Louisiana shoreline.	03/28/03
Shell Offshore, Inc., Structure Removal Activity, SEA ES/SR No. 03–084.	South Timbalier (South) Area, Block 239, Lease OCS–G 22754, located 63 miles south-southeast of Cameron, Louisiana, and 56 miles south-southwest of Vermilion Parish, Louisiana.	03/28/03

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: April 7, 2003.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–13999 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of a Multi-Project Environmental Assessment To Evaluate the Potential Environmental Impacts Associated With the Removal of Sand Resources From Ship Shoal, Offshore Central Louisiana

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Preparation of an environmental assessment.

SUMMARY: MMS is preparing an environmental assessment (EA) to examine the potential effects on the marine and coastal environments of using sand from Ship Shoal, a sand shoal located approximately 10 miles south of Isle Dernieres, offshore the central coast of Louisiana. Geological and geophysical studies of Ship Shoal have determined that the shoal's sand is an ideal source of material to place on the rapidly eroding Louisiana barrier islands. Several coastal restoration and storm protection projects that propose to use sand from Ship Shoal are already in the planning stages. The Louisiana Department of Natural Resources (LDNR), the U.S. Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (USACE) are assisting during development of the EA. We will publish an announcement in the **Federal Register** when the EA has been completed and is available to the public.

Public Comment: MMS requests interested parties to submit comments specific to the environmental issues related to the removal of sand resources from Ship Shoal. Comments should be sent to Chief, Leasing Division, Minerals Management Service, 381 Elden Street, Mail Stop 4030, Herndon, Virginia 20170. In addition, comments may be sent by e-mail to *barry.drucker@mms.gov.* Your comments should be submitted on or before July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Leasing Division, Sand and Gravel Unit, 381 Elden Street, Mail Stop 4030, Herndon, Virginia 20170, Mr. Barry Drucker, telephone (703) 787–1296, e-mail: *barry.drucker@mms.gov.*

SUPPLEMENTARY INFORMATION: Louisiana's coastal land loss problem continues at a rate of more than 30 square miles per year severely affecting the storm buffering capacity and the protection that nearshore barrier islands provide to human populations, oil and gas infrastructure, inland bays, estuaries, and wetlands. The bays inshore of the islands are huge estuaries where freshwater and saltwater mix and most of Louisiana's commercial and recreational fish depend on them during parts of their life cycle. Without barrier islands, coastal fisheries will experience significant adverse impacts. The entire Isle Dernieres chain in offshore central Louisiana, a critical component of the Louisiana barrier island system, is projected to be lost by the year 2010. A study by the Coastal Wetlands Planning, Protection and Restoration Act task force recommended returning Isles Dernieres and the Timbalier Islands to 1992 conditions (pre-Hurricane Andrew), which would require adding sand to build them to a width of about 1,230 feet wide and 8–9 feet above sea level. The current overall strategy is to restore the island chains to a condition suitable for providing coastal protection and for maintaining the integrity of the estuarine system.

Geological and geophysical studies of Ship Shoal indicate that very significant similarities exist among the properties of Ship Shoal and the nearby barrier islands. Ship Shoal sand is considered ideal material for use in restoration and nourishment projects along the Louisiana coast within the Terrebonne and Barataria Basins. Resource estimates for the volumes of sand comprising the Ship Shoal structure are 1.2 billion cubic meters.

MMS has already been notified by LDNR and EPA that they will seek leases for the use of Ship Shoal sand for planned projects at Whiskey Island and New Cut, Louisiana. In addition, USACE is considering using Ship Shoal sand as a base for the levee system for the Morganza to the Gulf Hurricane Protection Project. Besides these efforts, MMS anticipates that Ship Shoal will serve as a long-term source of material for further Louisiana coastal restoration efforts well into the future.

Public Law 103–426, enacted October 31, 1994, gave MMS the authority to convey, on a noncompetitive basis, the rights to Federal sand, gravel, or shell resources for shore protection, beach or wetlands restoration projects, or for use in construction projects funded in whole or in part by or authorized by the Federal Government.

Dated: May 12, 2003.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 03–13957 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Planning Area, Oil and Gas Lease Sale 190 (2004)

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of an Environmental Assessment.

SUMMARY: The Minerals Management Service (MMS) is beginning preparation of an environmental assessment (EA) for proposed Lease Sale 190 (scheduled for March 2004) in the Central Planning Area (CPA) of the Gulf of Mexico (GOM). The preparation of this EA is the first step in the decision process for Lease Sale 190. The proposal and alternatives for Lease Sale 190 were identified by the Director of MMS in January 2002 following the Call for Information and Nominations/Notice of Intent to Prepare an Environmental Impact Statement (EIS) and were analyzed in the *Final Environmental Impact Statement for Proposed Central Gulf of Mexico OCS Oil and Gas Lease Sales 185, 190, 194, 198, and 201, and Proposed Western Gulf of Mexico OCS Oil and Gas Lease Sales 187, 192, 196, and 200* (Final EIS). A CPA proposed action analyzed in the Final EIS was the offering of all available unleased acreage in the CPA. Three alternatives were analyzed: exclude blocks within 15 miles of Baldwin County, Alabama, coast; exclude blocks near biologically sensitive topographic features; and cancel the lease sale. The analysis in the EA will reexamine the potential environmental effects of the proposed action and its alternatives based on any new information regarding potential impacts and issues that were not available at the time the Final EIS was prepared.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Joseph Christopher, telephone (504) 736–2774.

SUPPLEMENTARY INFORMATION: In November 2002, MMS prepared a Final EIS, which addressed nine proposed Federal actions that offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and its projected activities are very similar each year for each planning area, a single EIS was prepared for the nine CPA and Western Planning Area (WPA) lease sales scheduled in the *Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007* (the 5-Year Program). Under the 5-Year Program, five annual areawide lease sales are scheduled for the CPA (Lease Sales 185, 190, 194, 198, and 201) and five annual areawide lease sales are scheduled for the WPA (Lease Sales 184, 187, 192, 196, and 200). Lease Sale 184 was not addressed in the Final EIS; a separate

EA was prepared for that proposal. The Final EIS addressed CPA Lease Sales 185, 190, 194, 198, and 201 scheduled for 2003, 2004, 2005, 2006, and 2007, respectively, and WPA Lease Sales 187, 192, 196, and 200 scheduled for 2003, 2004, 2005, and 2006, respectively. Although the Final EIS addresses nine proposed lease sales, at the completion of the EIS process, decisions were made only for proposed CPA Lease Sale 185 and proposed WPA Lease Sale 187. In the year prior to each subsequent proposed lease sale, an additional National Environmental Policy Act review will be conducted to address any new information relevant to that proposed action. After completion of the EA, MMS will determine whether to prepare a Finding of No New Significant Impact (FONNSI) or a Supplemental EIS. The MMS will then prepare and send Consistency Determinations (CD's) to the affected States to determine whether Lease Sale 190 is consistent with their Federally-approved State coastal zone management programs. Finally, MMS will solicit comments via the Proposed Notice of Sale (PNOS) from the governors of affected States on the size, timing, and location of Lease Sale 190. The tentative schedule for the prelease decision process for Lease Sale 190 is: EA FONNSI or Supplemental EIS decision, October 2003; CD's sent to affected States, November 2003; PNOS sent to governors of affected States, November 2003; Final Notice of Sale published in the **Federal Register**, February 2004; and Lease Sale 190, March 2004.

Public Comments: Federal, State, and local government agencies, and other interested parties are requested to send within 30 days of this Notice's publication comments regarding any new information or issues that should be addressed in the EA to the Regional Supervisor, Leasing and Environment (MS 5410), Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments should be enclosed in an envelope labeled ''Comments on CPA Lease Sale 190 EA.'' You may also send comments to the MMS e-mail address: *environment@mms.gov.* Comments, including the names and home addresses of respondents, will be made available for public review during regular business hours. You may request that your name, home address, or both be withheld from the public record by stating so at the beginning of your submission. The MMS will honor such a request to the extent allowable by law. All comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses will be made available for inspection in their entirety. Anonymous comments will not be considered. To obtain single copies of the Final EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the Final EIS or check the list of libraries that have copies of the Final EIS and their locations on the MMS Web site at *http://www.gomr.mms.gov.*

Dated: April 23, 2003.

Charles J. Schoennagel, Jr.,

Deputy Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–13960 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Civil/Criminal Penalties

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice summarizing OCS civil penalties paid, January 1, 2003 through December 31, 2003.

SUMMARY: This notice provides a listing of civil penalties paid January 1, 2002 through December 31, 2002, for violations of the OCS Lands Act. The purpose of publishing the penalties summary is to provide information to the public on violations of special concern in OCS operations and to provide an additional incentive for safe and environmentally sound operations.

FOR FURTHER INFORMATION CONTACT: Doug Slitor (Program Coordinator), Safety and Enforcement Branch, Engineering and Operations Division, (703) 787–1030.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA 90) strengthened section 24 of the OCS Lands Act Amendments of 1978. Subtitle B of OPA 90, titled ''Penalties,'' increased the amount of the civil penalty from a maximum of $10,000 to a maximum of $25,000 per violation for each day of noncompliance. More importantly, in cases where a failure to comply with applicable regulations constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life); property; any mineral deposit; or the marine, coastal, or human environment; OPA 90 provided the Secretary of the Interior (Secretary) with the authority to assess a civil penalty without regard to the requirement of expiration of a period of time allowed for corrective action.

On August 8, 1997 (62 FR 42668), MMS published new regulations implementing the civil penalty provisions of the OCS Lands Act. Written in ''plain English,'' the new question-and-answer format provides a better understanding of the OCS civil penalty process. In addition, the provisions of the OPA 90 require the Secretary to adjust the maximum civil penalty to reflect any increases in the Consumer Price Index. The new rule increased the maximum civil penalty to $25,000 per day, per violation. Please note, subsequent to publishing the new regulations, MMS made several corrections and amendments, including the appeals procedures. These were published at 63 FR 42711, 8/11/98; 64 FR 9066, 2/24/99; 62 FR 9065, 2/24/99, and 64 FR 26257, 5/13/99.

Between August 18, 1990, and January 2003, MMS initiated 450 civil penalty reviews. Operators have paid 341 civil penalties for a total of $9,353,342 in fines. Sixty-two cases were dismissed, 5 cases were merged, and 44 are under review.

On September 1, 1997, the Associate Director of Offshore Minerals Management issued a notice informing lessees and operators of Federal oil, gas, and sulphur leases on the OCS that MMS will annually publish a summary of OCS civil penalties paid. The annual summary will highlight the identity of the party, the regulation violated, and the amount paid. The following table provides a listing of the penalties paid between January 1, 2002, and December 31, 2002. Please note that the MMS published a direct final rule (5/29/98, 63 FR 29477) that renumbers each section in 30 CFR part 250. A quarterly update of the list, along with additional information related to the renumbering of the regulations, is posted on the MMS worldwide web home page, *http://www.mms.gov.*

OCS Civil/Criminal Penalties Program

The goal of the MMS OCS Civil/Criminal Penalties Program is to assure safe and clean operations on the OCS. Through the pursuit, assessment, and collection of civil penalties and referrals for the consideration of criminal penalties, the program is designed to encourage compliance with OCS statutes and regulations.

The following acronyms are used in this table:

ESD (emergency shutdown device);
INC (incident of noncompliance);
LACT (liquid automatic custody transfer);
LSH (level safety high);
LSL (level safety low);
MAWP (maximum allowable working pressure);
NON (notice of noncompliance);
PSH (pressure safety high);
PSHL (pressure safety high/low);
PSL (pressure safety low);
PSV (pressure safety valve);
SDV (shutdown valve);
SSSV (surface-controlled subsurface safety valve);
SSV (surface safety valve).

2002 Civil/Criminal Penalties Summary

[Paid in Calendar Year 2002]

Operator name and Case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
The Louisiana Land and Exploration Company—G–2000–047.	The master shutdown devices for bad oil pump number 1, bad oil pump number 2 and for 7 wells were bypassed; as well as the pressure safety low on the fuel gas scrubber. 06/14/00–06/14/00	$85,000 01/11/02	250.803(c)(1)
Fairways Specialty Sales & Service, Inc.—G–2001–004.	Operator did not conduct an annual crane inspection and the Low Pressure Oil Separator was operating above the MAWP. 06/03/00–10/26/00 09/23/00–10/30/00	$83,000 04/12/02	250.107(a) 250.108
El Paso Production Oil & Gas Company—G–2001–005.	The level safety high on the sump tank was bypassed. 10/13/00–10/13/00	$13,000 02/13/02	250.803(c)(1)
Matrix Oil & Gas, Inc.—G–2001–006.	INC issued for a hole was in piping caused by corrosion approximately 1 foot down stream of the PSV on the test separator. 09/14/00–09/29/00	$17,000 11/19/02	250.107
Fairways Specialty Sales & Service, Inc.—G–2001–009.	Facility was not identified as required and the operator did not correct the violation until 209 days after being cited. Civil Penalty is being pursued as a failure to correct. Facility had corrosion problems including rusty handrails, nuts, bolts, nipples, and valves and the operator did not correct the violation until 213 days after being cited. Civil Penalty is being pursued as a failure to correct. 07/11/00–02/04/01 07/11/00–02/08/01	$84,800 04/12/02	250.154 250.107
Fairways Specialty Sales & Service, Inc.—G–2001–010.	Facility was not identified as required and the operator did not correct the violation until 90 days after being cited. Civil Penalty is being pursued as a failure to correct. Facility had corrosion problems including rusty piping, handrails, nuts, bolts, nipples, and valves, and the operator did not correct. 11/06/00–02/01/01 11/06/00–02/05/01	$26,200 04/12/02	250.107 250.154
EEX Corporation—G–2001–013	Pressure safety low on condensate pump bypassed. 12/01/00–12/01/00	$7,500 03/19/02	250.803(c)(1)
El Paso Production Oil & Gas Company—G–2001–015.	There were 5 wells where the downhole tubing plug was not tested within the required timeframe. 06/04/00–02/20/01	$7,000 02/01/02	250.804(a)(1)(iii)
Texaco Exploration and Production Inc.—G–2001–017.	Inoperable Gas Detection system in the drilling mud returns. 04/17/01–04/17/01	$12,500 01/29/02	250.410(c)(2)(iv)
Amerada Hess Corporation—G–2001–018.	ESD (emergency shutdown) station on boat landing was bypassed; the PSHL (pressure safety high/low) on the departing oil pipeline was found bypassed; and the PSV (pressure safety valve) on the bulk oil dual separator was bypassed. 04/11/01–04/11/01 03/31/01–03/31/01 03/31/01–03/31/01	$36,000 04/18/02	250.803(c)(1) 250.803(c)(1) 250.1004(b)(3)
The Louisiana Land and Exploration Company—G–2001–020.	The SSSV for Wells Nos. B–1 and B–3 was bypassed. 03/07/01–03/07/01	$20,000 01/11/02	250.803(c)(1)
Texaco Exploration and Production Inc.—G–2001–021.	Bypassed manual reset relay for the test separator. 05/21/00–05/21/00	$10,000 01/23/02	250.803(c)(1)
Chevron U.S.A. Inc.—G–2001–024.	The surface safety value (SSV) for Well C–7 was bypassed. 06/15/01–06/16/01	$20,000 01/23/02	250.803(c)(1)
BP Corporation North America Inc.—G–2001–025.	Level safety low (LSL) for glycol/hydrocarbon separator was found bypassed. 06/12/01–06/13/01	$20,000 01/10/02	250.803(c)(1)
El Paso Production GOM Inc.—G–2001–026.	Burner safety low on glycol reboiler was found bypassed. It was not flagged or being monitored at the time. 05/24/01–05/24/01	$12,000 06/05/02	250.803(c)(1)
El Paso Production Oil & Gas Company—G–2001–027.	ESD station blocked out of service by a closed manual isolation block valve located on the sub-cellar deck exit stairway to the boating landing. 06/19/01–06/19/01	$17,000 04/15/02	250.803(c)(1)

2002 CIVIL/CRIMINAL PENALTIES SUMMARY—Continued

[Paid in Calendar Year 2002]

Operator name and Case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Chevron U.S.A. Inc.—G–2001–028.	Pollution occurred when both the wet oil tank and sump tank carried over. The level safety high (LSH) on the wet oil tank did not shut in the platform as indicated on SAFE chart. 05/25/01–05/25/01 05/25/01–05/25/01	$36,000 01/29/02	250.300(a) 250.802(e)
Denbury Resources Inc.—G–2001–029.	A major component of the approved dry chemical firefighting system was inoperable. 05/08/01–05/08/01	$15,000 03/07/02	250.803(b)(8)
Panaco, Inc.—G–2001–030	The ultraviolet (UV) fire detection system for turbine generators was bypassed plus no record of testing the fire detection system from 5/2/99 to 5/2/01. 05/02/99–05/02/01 05/02/01–05/02/01	$151,000 02/12/02	250.804(a)(8) 250.803(c)(1)
NCX Company, Inc.—G–2001–031.	The 2″ ball valve for the bypass line, near the fuel gas scrubber shutdown valve (SDV), was in the half-open position rendering the SDV inoperative. 07/11/01–07/11/01	$12,000 04/24/02	250.803(c)(1)
Stone Energy Corporation—G–2001–034.	Five barrels of oil polluted the Gulf of Mexico. The pressure safety high/low and independent pressure safety high were bypassed. 07/05/01–07/05/01 07/05/01–07/05/01	$35,000 05/03/02	250.803(c)(1) 250.300(a)
Energy Partners, Ltd.—G–2001–035.	The surface safety valve on Well C–1A was bypassed. 07/22/01–07/22/01	$10,000 06/10/02	250.803(c)(1)
Devon Energy Production Company, L.P.—G–2001–036.	Operating with an inoperable inlet SDV on the compressor suction scrubber while the compressor remained in service and on production for 76 days. 04/25/01–07/09/01	$15,200 08/12/02	250.803(b)(7)(iii)
Amoco Production Company—G–2001–037.	Fuel Gas Scrubber SDV bypassed and PSH nonfunctional. 07/17/01–07/17/01	$15,000 04/02/02	250.803(c)(1)
Energy Resource Technology, Inc.—G–2001–038.	The high-pressure freewater knockout separator panel was pinned out of service. 11/30/00–11/30/00	$15,000 06/11/02	250.803(c)(1)
NCX Company, Inc.—G–2001–039.	The manual emergency shutdown (ESD) station located on the east production deck stairway exit to the cellar deck was found disconnected from the facility ESD system, and the platform's monitoring gas detection system (ASH) was found bypassed. 07/17/01–07/17/01 07/17/01–07/17/01	$24,500 03/22/02	250.803(c)(1) 250.803(b)(4)
BP Exploration & Oil Inc.—G–2001–040.	Rig floor hand injured after receiving a shock from an improperly grounded skid mounted electrical pressure washer. 03/15/01–03/15/01	$23,000 05/09/02	250.114(c)
Apache Corporation—G–2001–041.	Surface safety valve (SSV) on Well No. A–5 was found pinned out of service. 07/16/01–07/16/01	$13,000 05/10/02	250.803(c)(1)
GOM Shelf LLC—G–2001–042 ..	The emergency shutdown stations (ESD's) at the southeast and northwest stairways at the +10 deck were discovered inoperable. The ESD's at the southwest and northeast boat landings were also discovered inoperable. 07/24/01–07/24/01	$60,000 09/24/02	250.803(b)(4)
Devon Energy Production Company, L.P.—G–2001–044.	The ''total system bypass'' was found in the bypass position on a slave panel. This bypassed the pressure safety high/low and level safety high on the fuel gas scrubber. 06/27/01–06/27/01	$3,000 06/20/02	250.803(c)(1)
Union Oil Company of California—G–2001–045.	The level safety high on the sump tank was bypassed. 07/23/01–07/23/01	$10,000 04/16/02	250.803(c)(1)
Union Oil Company of California—G–2001–047.	The emergency shutdown (ESD) station at the boat landing was found blocked out of service. 08/12/01–08/12/01	$5,000 09/11/02	250.803(c)(1)
Union Oil Company of California—G–2002–001.	The emergency shutdown (ESD) stations on the northwest, southwest, east, and west boat landings were all bypassed. 09/18/01–09/18/01	$20,000 09/11/02	250.803(c)(1)
Nuevo Energy Company—P–2002–001.	Failure to test fire and gas detection systems on required basis (every 3 months); 1 testing period missed. Failure to conduct required monthly testing for flow safety valves on water injection wells for 2 months; 2 testing periods missed. 06/22/01–07/23/01 06/23/01–07/13/01	$6,000 08/08/02	250.804(a)(8) 250.804(a)(8)

2002 CIVIL/CRIMINAL PENALTIES SUMMARY—Continued

[Paid in Calendar Year 2002]

Operator name and Case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Union Oil Company of California—G–2002–003.	Pressure safety high/low and level safety high on fuel gas scrubber were found bypassed. 09/25/01–09/25/01 09/25/01–09/25/01	$17,500 09/11/02	250.803(c)(1) 250.803(c)(1)
Fairways Specialty Sales & Service, Inc.—G–2002–004.	Oil was observed entering the Gulf of Mexico from two different sources associated with the water clarifier: from the open end of an unapproved 4″ PVC line installed on the water overboard discharge line and extending approximately 20′ into the air, and directly from the water overboard discharge line due to a malfunctioning dump valve. 09/28/01–09/28/01 09/28/01–09/28/01	$42,500 08/20/02	250.802(e) 250.300(a)
J.M. Huber Corporation—G–2002–005.	The sump pump was not operational resulting in pollution of crude oil into Gulf waters. 10/30/01–10/30/01 10/30/01–10/30/01	$35,000 08/16/02	250.300(b)(4) 250.300(a)
Fairways Specialty Sales & Service, Inc.—G–2002–006.	Emergency shutdown stations at two boat landings and the shutdown valve to the test separator were bypassed. 11/07/01–11/07/01 11/08/01–11/08/01	$28,000 08/20/02	250.803(c)(1) 250.803(c)(1)
Linder Oil Company, A Partnership—G–2002–008.	The walkway to the sump tank, handrails on a stairway and +12 walkway, and grating at the wellbay area on the +12 level were not maintained in a safe condition. The walkway and handrails had corroded to the point of separation and the grating had missing sections. 08/28/01–09/20/01	$25,000 09/10/02	250.107
Union Oil Company of California—G–2002–010.	Three emergency shutdown stations were bypassed at the +10 deck level. 10/29/01–11/06/01	$15,000 09/11/02	250.803(c)(1)
Kerr-McGee Corporation—G–2002–011.	The surface-controlled subsurface safety valves in Wells A–6 & A–6D were bypassed for 11 days. 09/14/01–09/24/01	$66,000 10/22/02	250.803(c)(1)
Vastar Resources, Inc.—G–2002–012.	Two emergency shutdown stations were inoperable; one at the boat landing on the F structure and one at the boat landing on the I structure. 12/03/01–12/03/01	$37,000 08/13/02	250.803(b)(4)
Kerr-McGee Oil & Gas Corporation—G–2002–013.	Rusty vessel, walkways, stairways, and grating preventing safe operations. 12/21/01–12/21/01	$20,000 10/22/02	250.107
Shell Offshore Inc.—G–2002–014.	Flowline pressure-activated relay had a pin inserted in it thereby bypassing the pressure safety high/low for flowline segment FA–2. 10/01/01–10/01/01	$12,000 12/09/02	250.803(c)(1)
Exxon Mobil Corporation—G–2002–015.	Secondary sump pump, approved in lieu of level safety high on sump tank, found out of service. 01/10/02–01/11/02	$15,000 09/09/02	250.802(e)
Seneca Resources Corporation—G–2002–016.	Surface-controlled subsurface safety valve (SSSV) for Well No. 15 was bypassed and out of service. 12/11/01–12/14/01	$32,000 08/28/02	250.803(c)(1)
J. M. Huber Corporation—G–2002–017.	Relay for Well Number 81 Surface Safety Valve pinned out of service. 01/08/02–01/08/02	$7,000 08/27/02	250.803(c)(1)
BP Exploration & Production Inc.—G–2002–018.	The oil low level sensor on the heater treater was not tested within the required timeframe (missed 13 monthly tests). 12/13/00–12/03/01	$39,000 09/16/02	250.804(a)(3)
Chevron U.S.A. Inc.—G–2002–019.	The gas sales pipeline (KAH 827) did not have secondary over-pressure protection. 11/13/01–11/13/01	$23,000 09/30/02	250.1002(d)
Burlington Resources Offshore Inc.—G–2002–020.	The firewater pump was in the manual mode instead of the automatic mode, as required by the approved SAFE chart. The float cell oil pump's shutdown valve was bypassed. 04/20/01–04/20/01 04/20/01–04/20/01	$47,500 12/05/02	250.802(e) 250.803(c)(1)
Remington Oil and Gas Corporation—G–2002–024.	Remote BOP control station was found inoperable. 04/18/02–04/18/02	$12,500 12/04/02	250.406(d)(3)
Vastar Resources, Inc.—G–2002–030.	Leaking valves causing gas blow by and incorrectly operated Flotation Cell causing gas accumulation resulting in a fire which required an emergency evacuation of personnel and a shut in of the facility. 02/12/02–02/12/02	$20,000 12/10/02	250.107
Conoco Inc.—G–2002–032	Surface-controlled subsurface safety valve for Well A–6 was blocked out of service. 05/08/02–05/08/02	$10,000 11/27/02	250.803(c)(1)

2002 CIVIL/CRIMINAL PENALTIES SUMMARY—Continued

[Paid in Calendar Year 2002]

Operator name and Case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Conoco Inc.—G–2002–035	Surface-controlled subsurface safety valve for Well A–5 was blocked out of service. 05/09/02–05/09/02	$5,000 11/27/02	250.803(c)(1)

Total Penalties Paid: 1/1/02–12/31/02. 54 Cases: $1,448,700.

Dated: May 6, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–13958 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1033 (Preliminary)]

Hydraulic Magnetic Circuit Breakers From South Africa

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from South Africa of hydraulic magnetic circuit breakers, provided for in subheadings 8535.21.00 and 8536.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 14, 2003, a petition was filed with the Commission and Department of Commerce (Commerce) by Airpax Corp., Cambridge, MD, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of hydraulic magnetic circuit breakers from South Africa. Accordingly, effective April 14, 2003, the Commission instituted antidumping duty investigation No. 731–TA–1033 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 22, 2003 (68 FR 19849). The conference was held in Washington, DC, on May 5, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 29, 2003. The views of the Commission are contained in USITC Publication 3600 (June 2003), entitled *Hydraulic Magnetic Circuit Breakers from South Africa: Investigation No. 731–TA–1033 (Preliminary).*

Issued: May 30, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–14040 Filed 6–3–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. GE2003–2]

Request for Comments on Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing

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

ACTION: Request for comments.

SUMMARY: The Department of Labor is inviting comments on its draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing (draft guidelines). The draft guidelines are available on OSHA's Web page and through its publications office. Interested persons may submit written or electronic comments on the draft guidelines. The Agency will also hold a stakeholder meeting where the public is invited to express its views on the draft guidelines.

DATES: *Written Comments:* Comments must be submitted by the following dates.

Hard Copy: You must submit your comments (postmarked or sent) by August 4, 2003.

Facsimile and electronic transmission: You must submit comments by August 4, 2003.

(Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

Stakeholder meeting: OSHA will hold a one-day stakeholder meeting in the Washington, DC metropolitan area to discuss the draft guidelines. OSHA will announce the exact location and date of the stakeholder meeting prior to the close of the comment period. OSHA requests that interested parties submit their intention to participate in the stakeholder meeting through express delivery, hand delivery, messenger service, fax or electronic means by August 4, 2003.

ADDRESSES:

I. Submission of Comments and Intention To Participate in Stakeholder Meeting

Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. GE2003–2, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The OSHA Docket Office and the Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST. You must submit one copy of your intention to participate in the stakeholder meeting by regular mail, express delivery, hand delivery, or messenger service to the above address.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this

document, Docket No. GE2003–2, in your comments. You may also fax your intention to participate in the stakeholder meeting.

Electronic: You may submit comments and your intention to participate in the stakeholder meeting through the Internet at *http://ecomments.osha.gov*. (Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

II. Obtaining Copies of the Draft Guidelines

You can download the draft guidelines for the poultry processing industry from OSHA's Web site at *http://www.osha.gov* A printed copy of the draft guidelines is available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by telephone at (800) 321–OSHA (6742). You may fax your request for a copy of the draft guidelines to (202) 693–2498.

FOR FURTHER INFORMATION CONTACT: Steven F. Witt, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments and Internet Access to Comments

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web site. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments and intentions to participate in the stakeholder meeting by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions will be posted on OSHA's Web site at *http://www.osha.gov.* OSHA cautions you about submitting personal information such as social security numbers, date of birth, etc. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available through the OSHA Web site and for assistance in using the web site to locate docket submissions.

OSHA is providing the public with 60 days to provide comments on the poultry processing ergonomics guidelines. During the development of the nursing home ergonomics guidelines (the final version was published March 13, 2003), the Agency provided 30 days for comment, then extended the comment period an additional 30 days at the request of several stakeholders. The 60-day period provided adequate time for the public to provide comments on the nursing home guidelines, so OSHA is also allowing 60 days for the public to comment on the poultry processing ergonomics guidelines.

II. Background

On April 5, 2002, the Department of Labor announced a four-pronged comprehensive approach for addressing musculoskeletal disorders (MSDs), which calls for OSHA to develop industry and task-specific guidelines. OSHA's third industry-specific guidelines address ergonomic concerns in poultry processing facilities. The draft poultry are compatible with OSHA's 1990 Ergonomic Program Management Guidelines for Meatpacking Plants. The two documents are similar in several key respects, recommending an ergonomics process that relies on management support, employee involvement, training, problem identification, solutions, addressing reports of injuries, and evaluating ergonomics efforts. However, the documents are also different in some respects, reflecting the advances in understanding that have occurred during the 13 years that have passed since the publication of the meatpacking guidelines. The poultry guidelines are based on the meatpacking guidelines, but have been shortened and formatted to resemble OSHA's more recent ergonomics guidelines for nursing homes and the retail grocery industries. The other major differences are that the poultry guidelines:

- Use terms ''musculoskeletal disorder'' and ''MSD'' instead of ''cumulative trauma disorder'' and ''CTD'',
- Include many more examples of practical ergonomic solutions tailored to the poultry industry, and
- Are less detailed and more flexible about how to address reports of injuries and provide medical management.

OSHA invites comment on the similarities and differences between the two guidelines, particularly whether the draft guidelines affect the ergonomics efforts that poultry processors have developed using the meatpacking guidelines.

The draft guidelines contain an introduction and two main sections. The introduction provides an overview of MSDs in poultry processing and explains the role of ergonomics in reducing the incidence of these injuries. A section entitled ''Ergonomics Process'' describes a process for developing and implementing a strategy for analyzing the workplace, implementing ergonomic solutions, training, addressing reports of injuries, and evaluating progress.

The heart of the guidelines, the Implementing Solutions section, describes examples of ergonomic solutions (engineering solutions, work practices, and personal protective equipment) that may be used in poultry processing to control exposure to ergonomic risk factors commonly encountered in the industry. The recommendations cover workstation design, tools, manual material handling, and fitting/selection of personal protective equipment. The draft guidelines finish with a list of references and sources of additional information poultry processing facilities can use to help them with their ergonomics efforts.

OSHA encourages interested parties to comment on all aspects of the draft guidelines. The Agency is particularly interested in:

- Information about successful ergonomics efforts firms in the poultry processing industry have used to address ergonomic concerns,
- Innovative solutions poultry processing firms have used to effectively solve ergonomic problems, and
- Checklists or flowcharts poultry processing firms use to identify workplace problems, identify risk factors, or evaluate aspects of their ergonomics process. OSHA is particularly interested in short, user-friendly checklists for identifying workplace problems that employers have successfully in their workplaces.

III. Stakeholder Meeting

Following the close of the comment period, OSHA will hold a stakeholder meeting in the Washington, DC metropolitan area during the week of August 18. The Agency will announce the exact date and location of the stakeholder meeting at a later date.

This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and

Health. It is issued under sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657).

Issued at Washington, DC, this 30th day of May, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–14080 Filed 6–3–03; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.
2. *The title of the information collection:* ''Reports Concerning Possible Non-Routine Emergency Generic Problems''.
3. *The form number if applicable:* Not Applicable.
4. *How often the collection is required:* On occasion.
5. *Who will be required or asked to report:* Nuclear power plant, non-power reactor, and materials applicants and licensees.
6. *An estimate of the number of annual responses:* 204 (104 reactor licensees; 100 material licensees).
7. *The estimated number of annual respondents:* 204 (104 reactor licensees; 100 material licensees).
8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 53,680 (43,680 for reactor licensees and 10,000 for materials licensees).
9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.
10. *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.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, 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 should be directed to the OMB reviewer listed below by July 7, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0012), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 28th day of May, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–13997 Filed 6–3–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26062; 812–12380]

Vanguard Convertible Securities Fund, et al.; Notice of Application

May 29, 2003.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF THE APPLICATION: Applicants request an order to permit them to enter into and amend sub-advisory agreements without shareholder approval and to grant relief from certain disclosure requirements. The order would supersede a prior order (''Prior Order'').[1]

APPLICANTS: Vanguard Convertible Securities Fund; Vanguard Explorer Fund; Vanguard Fenway Funds; Vanguard Fixed Income Securities Funds; Vanguard Horizon Funds; Vanguard Malvern Funds; Vanguard Morgan Growth Fund; Vanguard PRIMECAP Fund; Vanguard Quantitative Funds; Vanguard Specialized Funds; Vanguard Trustees' Equity Fund; Vanguard Variable Insurance Fund; Vanguard Wellesley Income Fund; Vanguard Wellington Fund; Vanguard Whitehall Funds; Vanguard Windsor Funds; Vanguard World Fund (each, a ''Trust''); and The Vanguard Group, Inc. (''VGI'').

FILING DATES: The application was filed on December 15, 2000 and amended on May 8, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 23, 2003, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o Sarah A. Buescher, Senior Counsel, The Vanguard Group, Inc., P.O. Box 2600, Mail Stop V26, Valley Forge, Pennsylvania 19482.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 942–0611 or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

[1] The Vanguard Group, Inc., *et al.,* Investment Company Act Release Nos. 19411 (April 16, 1993) (notice) and 19471 (May 12, 1993) (order).

Applicants' Representations

1. Each Trust is registered under the Act as an open-end management investment company and is organized as a Delaware statutory trust. Each Trust is a member of The Vanguard Group (''The Vanguard Group''), a group of 33 investment companies with more than 100 series (each, a ''Fund'' and together, the ''Funds''), each of which has its own investment objectives, policies, and restrictions.[2]

2. VGI is a Pennsylvania corporation that is wholly and jointly owned by the members of The Vanguard Group. VGI is a registered investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and a registered transfer agent under the Securities Exchange Act of 1934 (''Exchange Act''). VGI provides each Trust, at cost, with corporate management, administrative, transfer agency and distribution services. VGI also provides certain Funds with investment advisory services at cost.

3. VGI's Portfolio Review Group evaluates, selects and recommends investment advisers (''Selected Advisers'') to the relevant boards of trustees of each Trust (each, a ''Board''). Each Selected Adviser is an investment adviser as defined in section 2(a)(20) of the Act and is registered under the Advisers Act or exempt from registration. Selected Advisers are not ''affiliated persons'' of the applicants, as defined in section 2(a)(3) of the Act other than by virtue of serving as investment advisers to one or more Funds. Each Selected Adviser operates pursuant to a written advisory contract (''Selected Advisory Agreement'') approved by the relevant Board, including a majority of the Board's trustees who are not ''interested persons'' of the Trust, as defined in section 2(a)(19) of the Act (''Independent Trustees''). The Portfolio Review Group monitors the compliance of each Selected Adviser with the respective Fund's investment objectives and other policies, reviews each Adviser's performance, and recommends to the relevant Boards the allocation and reallocation of a Fund's assets among the Selected Advisers and/or VGI.

4. The Prior Order exempted applicants from section 15(a) of the Act and rule 18f–2 under the Act to permit the Funds to hire Selected Advisers and revise Selected Advisory Agreements without obtaining a shareholder vote, subject to the approval by the relevant Board and certain other conditions.[3] Applicants state that recent orders providing similar relief have conditions that would permit the Board to serve shareholders more efficiently. Applicants seek to update the conditions in the Prior Order to make them similar to conditions in the recent orders. Applicants therefore request an order to supersede the Prior Order to permit VGI, subject to Board approval, to enter into and amend Selected Advisory Agreements without Fund shareholder approval.[4] The requested relief will not extend to an investment adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Funds or VGI, other than by reason of serving as investment adviser to one or more of the Funds (an ''Affiliated Adviser''). Applicants also request an exemption from the various disclosure provisions described below that may require the Funds to disclose the fees paid to each Selected Adviser. An exemption is requested to permit the Funds to disclose (as both a dollar amount and as a percentage of a Fund's net assets): (a) Aggregate fees paid by the Fund to VGI and Affiliated Advisers; (b) aggregate fees paid by the Fund to Selected Advisers, and (c) the fees paid by the Fund to each Affiliated Adviser (collectively, the ''Aggregate Fee Disclosure'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides, in relevant part, that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of ''the terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Selected Advisers.

5. Regulation S–X sets forth the requirements for financial statements that must be included in investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that shareholders are relying on VGI's experience to select and monitor the Selected Advisers best suited to achieve a Fund's investment objectives. Applicants contend that from the perspective of the investor, the role of the Selected Advisers is comparable to that of individual portfolio managers

[2] Applicants also request relief with respect to any other registered open-end management investment company or series thereof that (a) is organized or advised currently or in the future by VGI or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with VGI; (b) operates in substantially the same manner described in the application; and (c) complies with the terms and conditions in the application (''Future Funds,'' and together with the Funds, the ''Funds''). Any Fund that currently intends to rely on the requested order is named as an applicant. If the name of a Fund contains the name of a Selected Adviser, the name of the Selected Adviser will be preceded by the word ''Vanguard.''

[3] The term ''shareholder'' includes variable life insurance policy and variable annuity contract owners that are unitholders of any separate account for which the Fund serves as a funding medium.

[4] As described in the application, the requested order would revise the conditions in the Prior Order to make them more consistent with conditions in recent similar orders granted by the Commission and would also make certain other modifications to the conditions related to disclosure relief based upon the applicants' unique management structure. For Funds that were relying on the Prior Order, applicants will provide a notification to shareholders that describes the principal differences between the Prior Order and the requested order.

employed by investment advisory firms. Applicants state that requiring shareholder approval of the Selected Advisory Agreements would impose unnecessary costs and delays on the Funds, and may preclude the Board from acting in a prompt manner. Applicants note that investment advisory agreements with Affiliated Advisers would remain subject to section 15(a) of the Act and rule 18f–2 thereunder.

8. Applicants assert that many Selected Advisers charge their customers for advisory services according to a ''posted'' fee schedule. Applicants state that while Selected Advisers are willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so when the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Selected Advisers to accept lower advisory fees from the Funds, resulting in a direct benefit to Fund shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Unless a Fund's shareholders have previously approved the Fund's use of a multi-manager arrangement pursuant to the Prior Order, before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or in the case of a Fund whose public shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 3 below, by the initial shareholders(s) (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, by the initial unitholder of the sub-account) before the shares of the Fund are offered to the public.

2. Each Fund will operate as a member of The Vanguard Group of Investment Companies with ''internalized'' corporate management and distribution services provided on an ''at cost'' basis.

3. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. Each Fund's prospectus will prominently disclose that VGI has the ultimate responsibility (subject to oversight by the Board) to oversee the Selected Advisers and recommend their hiring, termination, and replacement.

4. Within 90 days of the hiring of any new Selected Adviser for any fund, VGI will furnish to the applicable Fund's shareholders (or if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) all information about the new Selected Adviser that would be included in a proxy statement, except as modified by the order to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Selected Adviser. To meet this obligation, VGI will provide shareholders (or if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) of the applicable Fund an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Aggregate Fee Disclosure.

5. A Fund will not enter into an advisory agreement with any Affiliated Adviser without that agreement, including the compensation to be paid thereunder, being approved by the Fund's shareholders (or if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account).

6. At all times, a majority each Fund's Board will be Independent Trustees, subject to the suspension of this requirement for the death, disqualification or bona fide resignation of trustees as provided in rule 10e–1 under the Act, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

7. When a change in a Selected Adviser is proposed for a Fund with an Affiliated Adviser, the Fund's Board, including a majority of the Board's Independent Trustees, will make a separate finding, reflected in the affected Fund's Board minutes, that the change is in the best interests of the Fund and its shareholders (or if the Fund serves as a funding medium for any sub-account of a registered separate account, the best interests of the Fund and unitholders of any such sub-account), and does not involve a conflict of interest from which VGI or the Affiliated Adviser derives an inappropriate advantage.

8. VGI will provide general management services to the Funds, including overall supervisory responsibility for the general management and investment of each Fund, and, subject to review and approval by each Board, will: (a) Set the Funds' overall investment strategies; (b) evaluate, select and recommend Selected Advisers to manage all or part of a Fund's assets; (c) monitor and evaluate the performance of Selected Advisers; (d) implement procedures reasonably designed to ensure that the Selected Advisers comply with the Funds' investment objectives, policies and restriction; and (e) allocate and, when appropriate, reallocate a Fund's assets among Selected Advisers.

9. No trustee or officer of a Trust, or director or officer of VGI will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director, or officer), any interest in a Selected Adviser or Affiliated Adviser, except for: (a) Ownership of interests in VGI or any entity that controls, is controlled by, or is under common control with VGI; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Selected Adviser or Affiliated Adviser or an entity that controls, is controlled by, or is under common control with a Selected Adviser or Affiliated Adviser.

10. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

11. Any person who acts as legal counsel for the Board's Independent Trustees must be independent legal counsel as defined in rule 0–1(a)(6) under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14046 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26063; 812–12972]

Société Générale, et al.; Notice of Application

May 29, 2003.

AGENCY: Securities and Exchange Commission (''Commission'')

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from section 12(d)(1)(F)(ii) of the Act, under section 6(c) of the Act for an exemption from section 12(d)(3) of the Act and section 14(a) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would (a) permit certain existing and future registered closed-end investment companies (each, an ''SG Trust,'' and collectively ''SG Trusts'') that are sponsored by SG Cowen Securities Corporation (''SG Cowen''), or any entity controlling, controlled by or under common control with SG Cowen, to offer and sell shares to the public with a sales load that exceeds the limit in section 12(d)(1)(F); (b) permit the SG Trusts to purchase certain securities from Société Générale (''SG Paris'') or other issuers that are involved in securities-related activities; (c) exempt the SG Trusts from the initial net worth requirements of section 14(a); (d) permit SG Cowen to deposit with each SG Trust the components of that SG Trust's portfolio; and (e) permit SG Paris to write certain put or index options deposited with an SG Trust and to make payments pursuant to the terms of such options to the SG Trust, and to purchase and exercise certain call options from the SG Trust.

APPLICANTS: SG Paris, SG Cowen, and SG Cowen Principal Protection Trust I (''SG Trust I'').

FILING DATES: The application was filed on May 9, 2003, and amended on May 22, 2003.

HEARING OF NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 23, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: SG Cowen and SG Trust I, 1221 Avenue of the Americas, New York, New York 10020; SG Paris, 29, Boulevard Haussmann, 75009 Paris, France.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each SG Trust will be organized as a limited life grantor trust under Delaware law and registered under the Act as a closed-end management investment company. SG Cowen, or an entity controlling, controlled by or under common control with SG Cowen, will serve as sponsor to GS Trust I and all future SG Trusts.[1] No SG Trust will have a separate investment adviser, but each will be managed by a board of trustees (''Board'') consisting of three or more trustees, a majority of whom are not interested persons, as defined in section 2(a)(19) of the Act, of the SG Trust or SG Cowen (''Independent Trustees''). A Commercial bank or trust company, unaffiliated with SG Cowen and qualified to serve as a trustee under the Trsut Indenture Act of 1939, will serve as administrator to each SG Trust to carry out the day-to-day administration of that SG Trust. SG Cowen will serve as principal underwriter, as defined in section 2(a)(29) of the Act, of the shares issued by SG Trust I. Future SG Trusts may employ different principal underwriters. The investment objectives of each SG Trust will be to preserve the initial capital of investors at maturity of the SG Trust, while also giving investors the opportunity to participate in a possible increase in the value of a securities market index during the term of the investment.

2. SG Cowen is a broker-dealer registered with the Commission under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (''NASD''). SG Paris is a French limited liability company, registered in France and having the status of a bank. SG Cowen and SG Paris are part of the Société Générale Group (the ''Group''), an international banking and financial services group based in France that includes approximately 300 French and foreign banking and non-banking companies.

3. Before an SG Trust begins operations, SG Cowen will purchase units of the Nasdaq-100 Trust (''QQQ''),[2] securities issued by another ETF, or securities issued by one or more other issuers not registered or required to be registered as an investment company, such as an operating company[3] (these securities are collectively referred to as ''Reference Securities''). SG Cowen will purchase the Reference Securities on the open market at their market price at the time of purchase (''Purchase Price''). In addition, the Board of an SG Trust will employ an unaffiliated agent (''Independent Agent'') to solicit competitive offers from at least three unaffiliated third party derivatives dealers and SG Paris to sell to SG Cowen over-the-counter put options on the Reference Securities (''Portfolio Puts'').[4] The strike price of each Portfolio Put will equal the Purchase Price. The Independent Agent will also solicit competitive bids from at least three Unaffiliated Bidders and SG Paris to purchase from SG Cowen over-the-counter call options on the Reference Securities (''Portfolio Calls'') at the same

[1] SG Trust I is currently the only existing SG Trust intending to rely on the requested order. Any other existing and future entity that relies on the order will comply with the terms and conditions of the application.

[2] QQQ are units of an exchange-traded fund (''ETF''). An ETF is an investment company that is registered under the Act as an open-end management investment company or unit investment trust (''UIT'') and that has received certain exemptive relief in order that its securities may be traded at ''negotiated prices'' on a national securities exchange in the same manner as other equity securities.

[3] Issuers will not include entities that rely on sections 3(c)(1) or 3(c)(7) of the Act.

[4] The derivatives dealers will consist of major broker-dealers and/or financial institutions that are in the business of making bids or offers on Derivatives (as defined below) and that are not affiliated persons, promoters or principal underwriters of an SG Trust, or affiliated persons of such persons (''Unaffiliated Bidders''). The Independent Agent will solicit offers only from derivatives dealers with a credit rating of A or better by S&P and A2 or better by Moodys' and that are subject to bankruptcy or insolvency laws providing exemptions from any automatic stay imposed under those laws to the extent necessary to permit the liquidation of the Portfolio Puts and Index Options (as defined below).

strike price. Because the sale price of the Portfolio Calls should exceed the purchase price of the Portfolio Puts, an amount of cash will be generated (''Net Premium'') which SG Cowen will use to purchase over-the-counter cash-settled options tied to the performance of a securities market index (''Index Options'').[5] The Independent Agent will also solicit competitive offers from at least three Unaffiliated Bidders and SG Paris to sell these Index Options to SG Cowen. The Portfolio Puts, Portfolio Calls and Index Options (collectively, the ''Derivatives'') will be European-style options, and will all expire on the same day (''Termination Date'').

4. The Independent Agent will solicit bids or offers for each Derivative pursuant to procedures adopted by the Board and communicated to the Independent Agent as set forth in condition 1 below. No bidder, including SG Paris, will have access to any bids until after the respective Derivatives have been purchased or sold. SG Cowen may not purchase a Portfolio Put or Index Option from or sell a Portfolio Call to SG Paris on behalf of an SG Trust unless two bona fide bids have been received for the relevant Derivative from Unaffiliated Bidders. The purchase or sale of a Derivative in a transaction with SG Paris will be subject to approval by the Board, including a majority of Independent Trustees.

5. SG Cowen will deposit with each relevant SG Trust the Reference Securities, the obligations under the Portfolio Calls, the Portfolio Puts, the Index Options, and an amount of cash for operational expenses (collectively, the ''Portfolio''). Except in the event of the bankruptcy or insolvency of the writer of a Portfolio Put or Index Option, the SG Trust will hold each component of the Portfolio until the Termination Date. Certain future SG Trusts may also hold a separate guarantee of principal provided by a bank or insurance company that would provide additional protection in the event that a writer of a Portfolio Put defaulted.[6]

6. During the initial offering, shares of an SG Trust (''Shares'') will be sold to the public at a price equal to the net asset value per share, as determined by or under the direction of the Board, plus a sales load and an amount intended to compensate SG Cowen for the organizational expenses of the relevant SG Trust.[7] Shares will be listed on the AMEX, and will subsequently trade at market prices. Applicants state that the secondary market value of the Shares is expected to depend primarily on market interest rates, market volatility, and the value of the Index Options. Each SG Trust will calculate the net asset value of its Shares on a weekly basis in accordance with procedures adopted by the Board.

7. Applicants state that an SG Trust will protect principal primarily through the use of the Portfolio Puts. Applicants indicate that the combination of the Portfolio Puts and Portfolio Calls will effectively eliminate any possibility of gain or loss on the Reference Securities. Applicants state that the potential return on the investment in an SG Trust is therefore derived solely from the performance of the Index Options. Applicants believe that structuring the SG Trusts in this manner will offer investors certain advantages over other types of principal protected products, including certain tax and performance benefits.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those securities represent more than 3% of the acquired company's total outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other required investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to an acquiring company if the company and its affiliated persons own no more than 3% of an acquired company's total outstanding securities, provided that, among other provisions, the acquired company does not impose a sales load of more than 1.5%. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors.

2. An SG Trust will invest in shares of QQQs or other ETFs in reliance on section 12(d)(1)(F). Applicants request an exemption under section 12(d)(1)(J) from section 12(d)(1)(F)(ii) so that the SG Trusts may offer shares to the public with a sales load that exceeds 1.5%. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees with respect to shares of any SG Trust will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules applicable to a fund or funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii) because the aggregate sales charges would not exceed the limit that otherwise lawfully could be charged at any single level. Applicants assert that the NASD's rule more accurately reflects today's regulatory environment with respect to the methods by which investment companies finance sales expenses.

B. Section 12(d)(3) of the Act

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under the Act exempts certain transactions from the prohibition of section 12(d)(3) if certain conditions are met. One of these conditions, set forth in rule 12d3–1(c), provides that the exemption provided by the rule is not available when the issuer of the securities is the investment adviser, promoter, or principal underwriter of the investment company, or an affiliated person of those entities. In addition, rule 12d3–1(b)(3) does not permit a registered investment company to invest more than five percent of the value of its total assets in securities of an issuer that derived more than 15% of its gross revenues from securities related activities. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly

[5] The Index options may be based on indices that are broad-based, narrow-based, sector specific, customized, or based on the performance of a single security. The value of any index will be publicly disseminated throughout the trading day on each day that the American Stock Exchange (''AMEX'') is open for normal trading.

[6] No guarantee would be purchased from an affiliate of SG Cowen unless applicants first obtained a separate order of exemption permitting such a purchase, the Commission issued one or more exemptive rules that would permit such a purchase, or the guarantee were structured in a manner that complied with, among other things, the then-current interpretations of the Commission and its staff regarding sections 12(d)(3) and 17(a) of the Act.

[7] SG Cowen will retain a portion of the Net Premium as compensation for organizing, structuring, and paying the operational expenses of an SG Trust. In addition, the Portfolio will include an amount of cash to be periodically disbursed to SG Cowen to cover structuring, organization and ongoing expenses of the SG Trust. Any expenses in excess of the cash amount will be borne by SG Cowen; any cash in excess of the actual expenses will be retained by SG Cowen. These expenses will be disclosed in advance in the prospectus for each SG Trust.

intended by the policies and provisions of the Act.

2. Applicants state that because SG Pairs is an affiliated person of SG Cowen, a promoter of the SG Trust, the exemption afforded by rule 12d3–1 would not be available to an SG Trust with respect to the purchase of Portfolio Puts and/or Index Options from SG Paris at the time SG Cowen deposits the Portfolio into an SG Trust. Applicants also state that it is possible that the Index Options or the Portfolio Puts may represent more than five percent of the value of the total assets of an SG Trust. Applicants request an exemption under section 6(c) from section 12(d)(3) to the extent necessary to permit SG Cowen to make the initial deposit of Portfolio Puts and Index Options into each SG Trust.

3. Applicants state that section 12(d)(3) was intended to prevent investment companies form exposing their assets to the entrepreneurial risks of securities related businesses and to prevent reciprocal practices between investment companies and securities related businesses. Applicants assert that the SG Trusts' holdings of Portfolio Puts and Index Options will not raise these concerns. Applicants state that neither the Portfolio Puts nor the Index Options will subject an SG Trust to the entrepreneurial risks of an investment in a general partnership interest in a securities related issuer. In addition, Applicants assert that there will be no conflicts of interest or potential for reciprocal practices because the Portfolio Puts and Index Options will be purchased from the derivatives dealer offering the best value on the Portfolio Puts and Index Options, and the Portfolio Puts and Index Options will be deposited with an SG Trust before sales of an SG Trust's Shares are effected. In addition, each SG Trust will have a fixed portfolio.

C. Section 14(a) of the Act

1. Section 14(a) of the Act requires, in pertinent part, that a registered investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 under the Act exempts from section 14(a) UITs that meet certain conditions in recognition of the fact that once the units are sold, a UIT requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a UIT investing in eligible trust securities shall be exempt from the net worth requirement, provided that the UIT holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. Applicants request an order under section 6(c) exempting the SG Trusts from the requirements of section 14(a), provided that each SG Trust complies with all conditions of rule 14a–3 under the Act, other than the condition that all portfolio investments be limited to ''eligible trust securities.'' Applicants assert that while each SG Trust will be registered as a closed-end management investment company, the SG Trusts will have the characteristics of UITs. Investors in an SG Trust, like investors in a UIT, will not be purchasing interests in a managed pool of securities, but rather in a fixed portfolio. Applicants believe therefore, that there will be no need for an ongoing commitment on the part of the underwriter.

D. Section 17(a) of the Act

1. Section 17(a)(1) and (2) of the Act generally prohibit the promoter or principal underwriter, or any affiliated person of the promoter or principal underwriter, of a registered investment company, acting as principal, knowingly to sell or purchase any security or other property to or from such investment company. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from the terms of section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act.

2. Applicants assert that section 17(a) precludes: (a) An SG Trust from purchasing a Portfolio from SG Cowen; (b) SG Paris from making payments under the Portfolio Puts and Index Options and/or exercising the Portfolio Calls upon the termination of any SG Trust; (c) SG Paris from purchasing the Portfolio Calls, and (d) SG Paris from writing the Portfolio Puts and Index Options deposited with any SG Trust. Applicants request an exemption under sections 6(c) and 17(b) to permit each of these proposed transactions.

3. Applicants assert that given the static nature of the Portfolio, any overreaching by SG Paris would reduce the returns that an SG Trust is able to offer shareholders and would make the SG Trusts a relatively less attractive alternative to competing products. Applicants note that they are only seeking relief with respect to the initial purchase of and deposit of the underlying securities (and the sale of the Portfolio Calls and deposit of the obligations under the Portfolio Calls) and the exercise of the Derivatives upon the termination of the SG Trust, and not with respect to an ongoing course of business. Consequently, the terms of the components of the Portfolio and of their purchase will be fully disclosed to potential investors prior to their making an investment decision. Applicants also state that since there are relatively few equity derivatives dealers that can write instruments such as the Derivatives and since SG Paris is one of the largest participants in that market, the requested relief will help promote competition and allow the SG Trusts to obtain more favorable terms on the various Derivatives.

4. Applicants also assert that SG Cowen will purchase Portfolio Puts and Index Options from SG Paris and sell Portfolio Calls to SG Paris only if the value offered by SG Paris on the relevant Derivative is more favorable than the value offered by Unaffiliated Bidders. Applicants state that the proposed bidding procedures for Derivatives will be designed to ensure that the bidding or offering process with respect to a Derivative is conducted in a neutral manner. Applicants state that the Group's roles as sponsor, principal underwriter, and bidder/offeror for the Derivatives will not give it an advantage in structuring the Derivatives or assessing their value. Applicants state that the participants in the over-the-counter options markets are various sophisticated, established, well-capitalized financial institutions including major investment banking firms, money center banks, insurance companies, and their affiliates, all of which employ similar valuation models and technology to price options. Furthermore, applicants state that prospective bidders will have a copy of an SG Trust's prospectus and a draft of the relevant Derivative a reasonable amount of time prior to the day the final bids are due. Applicants assert that the Portfolio Puts and Portfolio Calls are typical over-the-counter options, and although the Index Options will not be typical over-the-counter options, they will not be of such a customized nature as to make it unlikely for other broker-dealers or financial institutions to submit offers. The form of each Derivative will be similar to other types of Derivatives used in privately negotiated transactions, and since all of the Derivatives' terms will have been set, other than price, applicants assert that the bidding/offering procedure has been made as simple as possible. Accordingly, applicants state that the

notice period and information provided in the bidding/offering process should be sufficient to ensure competitive, bona fide bids/offers.

5. Applicants believe that the safeguards set forth in the application are sufficient to ensure that neither SG Cowen nor SG Paris will be able to overreach any SG Trust to the detriment of that SG Trust or its shareholders, and that the proposed transactions will be reasonable and fair, consistent with the general policy of the relevant SG Trust, and consistent with the general purposes of the Act. Applicants also submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Prior to recommending to the Board that an SG Trust purchase a Portfolio Put or Index Option from or sell a Portfolio Call to, SG Paris, an Independent Agent will conduct a competitive bidding process in which the Independent Agent solicits bids or offers on each type of Derivative form at least three Unaffiliated Bidders. At a reasonable amount of time prior to the date bids are to be submitted, the Independent Agent will solicit bids by supplying prospective bidders with a bid invitation letter that includes any requirement for the bidder to include audited financial statements in the SG Trust's registration statement, a copy of the draft prospectus of the SG Trust, and a draft of the terms of the relevant Derivative. No bidder, including SG Paris, will have access to any bids until after the respective Derivatives have been purchased or sold. An SG Trust may not purchase a Portfolio Put or Index Option from or sell a Portfolio Call to SG Paris unless two bona fide bids have been received for the relevant Derivative from Unaffiliated Bidders.

2. If the Independent Agent recommends that the Board approve the purchase or sale of a Derivative in a transaction with SG Paris, the Independent Agent must provide the Board with an explanation of the basis for its recommendation and a summary of the material terms of any bids that were rejected.

3. The Board will represent an SG Trust in any negotiations relating to a Derivative purchased from or sold to SG Paris, including the negotiation of the final terms of the Derivative and any negotiations with SG Paris in conjunction with a default on a Derivative.

4. The purchase or sale of a Derivative in a transaction with SG Paris will be subject to approval by the Board, including a majority of Independent Trustees, who will determine that the purchase or sale of the Derivative is in the best interests of the SG Trust and its shareholders and meets the standards specified in section 17(b) of the Act. In considering the purchase and sale of the Derivatives, the Board will determine that (a) the offer price on a Portfolio Put and the bid price on a Portfolio Call will maximize the Net Premium, and (b) the offer price on an Index Option will maximize the return to the SG Trust. In the event that SG Paris and an Unaffiliated Bidder both submit the best bid for a particular Derivative, the bidders will be permitted to submit another bid. If the bids are still the same, the relevant Derivative will not be purchased from or sold to SG Paris, except as described below. Under normal circumstances, the Board will approve the purchase of the Portfolio Put and the sale of the Portfolio Call to the bidders offering the best price on each. However, to avoid potential adverse tax consequences, the Portfolio Call will not be sold to the same entity from which the Portfolio Put is purchased. Accordingly, if the same bidder offers the best price on both the Portfolio Call and the Portfolio Put, the Board will consider the second most favorable bids on both the Portfolio Call and Portfolio Put, and select the Derivatives that would maximize the Net Premium. In the event that the next best bid on either the Portfolio Call or Portfolio Put would generate an identical Net Premium and SG Paris has offered the next best bid on either the Portfolio Call or Portfolio Put, the Board will approve the purchase of the Portfolio Put from or sale of the Portfolio Call to the Unaffiliated Bidder. All Board findings relating to the purchase and sale of the Derivatives, and the basis for the findings, will be reflected in the Board minutes. The terms of the Derivatives will not be subject to any material modification without the approval of the Board, including a majority of the Independent Trustees, after the purchase and sale of the Derivatives have been approved.

5. SG Paris will not purchase or sell a Derivative to an SG Trust on less favorable terms than for similar transactions with unaffiliated parties that are similarly situated to the SG Trust.

6. The Administrator will immediately report any default on either a Portfolio Put or Index Option to the Board. The Board, including a majority of Independent Trustees, will evaluate the default and will determine the amounts due to the SG Trust. The SG Trust will not settle any default for less than the full amount determined by the Board without obtaining a further exemptive order from the Commission.

7. No less than a majority of a Board will consist of Independent Trustees.

8. The Independent Trustees will be represented by independent legal counsel within the meaning of Rule 0–1 under the Act.

9. The administrator, under the supervision of the Board, will maintain sufficient records to verify compliance with the conditions of the order. Such records will include, without limitation: (a) An explanation of the basis upon which the Independent Agent selected prospective bidders; (b) a list of all bidders to whom a bid invitation letter (or similar electronic invitation) was sent and copies of the bid invitation letters and accompanying materials; (c) copies of all bids received, including the winning bids; (d) the materials provided to the Board in connection with the Independent Agent's recommendation regarding the sale and purchase of each Derivative; (e) the final price and terms of each Derivative with an explanation of the reason the purchase or sale is considered an affiliated transaction; and (f) records of any negotiations with the counterparties to the Derivatives, including with respect to any default in connection with a Portfolio Put or Index Option and the satisfaction of any obligations to an SG Trust. All such records will be maintained for a period ending not less than six years after the Termination Date, the first two years in an easily accessible place, and will be available for inspection by the staff of the Commission.

10. The underwriting allocations of an SG Trust will be determined at least one business day prior to the day the Independent Agent invites financial institutions to bid and will not in any way be based on participation in the bidding process.

11. The applicants will not have any involvement with respect to the Independent Agent's selection of prospective bidders or the bids approved by the Board and will not attempt to influence or control in any way the sale or purchase of the Derivatives aside from placing a bid for each Derivative.

12. Each SG Trust will comply with section 12(d)(1)(F) of the Act in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

13. No investment company whose shares are purchased by an SG Trust

will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

14. Any sales charges and/or service fees (as those terms are defined in NASD Conduct Rule 2830) charged with respect to Shares of an SG Trust will not exceed the limits set forth in NASD Conduct Rule 2830 applicable to a fund of funds (as defined in NASD Conduct Rule 2830).

15. The SG Trusts and SG Cowen will comply in all respects with the requirements of rule 14a–3 under the Act, except that the SG Trusts will not restrict their portfolio investments to ''eligible trust securities.''

16. No fee, spread, or other remuneration shall be received by the SG Cowen in connection with the deposit of the Reference Securities and Derivatives with an SG Trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14047 Filed 6–3–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47936; File No. SR–NASD–2003–57]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Revisions to the Uniform Application for Securities Industry Registration or Transfer (Form U–4) and Uniform Termination Notice for Securities Industry Registration (Form U–5)

May 28, 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 April 8, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On April 16, 2003, NASD submitted Amendment No. 1 to the proposed rule change.[3] On April 30, 2003, NASD submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to revise the Uniform Application for Securities Industry Registration or Transfer (''Form U–4'') and Uniform Termination Notice for Securities Industry Registration (''Form U–5'') to: (1) Add disclosure questions to the ''Regulatory Disciplinary Actions'' subsection of section 14 (Disclosure Questions) of the Form U–4 to elicit information regarding events that might cause a person to be subject to a statutory disqualification as a result of additional categories of statutory disqualification in the Act created by passage of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley Act''); (2) add a Disclosure Reporting Page (''DRP'') and a question to the Form U–5 that parallels the Form U–4 DRP relating to terminations for cause; (3) streamline the language associated with questions on the Form U–4 relating to fingerprinting requirements; and (4) make certain technical, clarifying, and conforming changes to facilitate accurate reporting and filing.

The text of the proposed rule change and the Exhibits related thereto are available at the principal offices of NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose[5]

The Form U–4 is the Uniform Application for Securities Industry Registration or Transfer. Representatives of broker-dealers and investment advisers must use this form to become registered in the appropriate jurisdictions and/or with appropriate self-regulatory organizations (''SROs''). The Form U–5 is the Uniform Termination Notice for Securities Industry Registration. Broker-dealers and investment advisers must use this form to terminate registration of an individual in the various SROs and jurisdictions. (Form U–4 and Form U–5 are together hereinafter referred to as the ''Forms.'')

The proposed revisions to the Forms would (1) Add disclosure questions to the ''Regulatory Disciplinary Actions'' subsection of Section 14 (Disclosure Questions) of the Form U–4 to elicit information regarding events that might cause a person to be subject to a statutory disqualification as a result of additional categories of statutory disqualification in the Act created by passage of the Sarbanes-Oxley Act; (2) add a DRP and a question to the Form U–5 that parallels the DRP and Form U–4 question relating to terminations for cause; (3) streamline the language associated with questions on the Form U–4 relating to fingerprinting requirements; and (4) make certain technical, clarifying, and conforming changes on the Forms to facilitate accurate reporting.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC, dated April 16, 2003 (''Amendment No. 1''). In Amendment No. 1, NASD stated that the rule filing would be effective on July 14, 2003, instead of June 30, 2003.

[4] *See* letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine England, Assistant Director, Division, SEC, dated April 29, 2003 (''Amendment No. 2''). In Amendment No. 2, NASD amended the filing to correct typographical errors on pages 51 of 100 and 68 of 100 of the filing. On page 51 of 100, the NASD added the following language to renumbered question 14D(1)(e): ''denied, suspended, or revoked your registration license or.'' On page 68 of 100, the NASD eliminated the word ''or'' before ''commodities exchange.''

[5] The NASD requested that the Commission make certain non-substantive organizational changes to the Purpose section (and the corresponding numbered introductory text throughout the notice). In addition, the NASD requested that the Commission include footnotes in the notice that specifically provide the new definitions for the following new defined Form U–4 terms: (1) ''Affiliated Firm;'' (2) ''Federal Banking Agency;'' and (3) ''Final Order.'' Telephone conference between Shirley H. Weiss, Office of General Counsel, NASD Regulation, Richard E. Pullano, Chief Counsel and Associate Director, CRD/Public Disclosure, NASD Regulation, Elizabeth Badawy, Senior Policy Liaison, Division, Commission, and Christopher B. Stone, Special Counsel, Division, Commission (May 22, 2003).

[6] On April 6, 2003, the North American Securities Administrators Association, Inc. (''NASAA'') voted to approve the proposed listed Forms revisions at its Membership meeting.

New Disclosure Questions Required by Enactment of the Sarbanes-Oxley Act

Section 604 of the Sarbanes-Oxley Act amended the Act by adding new categories of ''statutory disqualification.'' Under the expanded definition, members and their associated persons may be subject to a statutory disqualification (*i.e.*, may be required to obtain regulatory approval before becoming a member of NASD or becoming associated with an NASD member) if they are subject to certain orders issued by a state securities commission or state insurance commissioner (or any agency or officer performing like functions); state authorities that supervise or examine banks, savings associations, or credit unions; an appropriate federal banking authority, or the National Credit Union Administration. Specifically, persons (including members) may be subject to a statutory disqualification based on orders issued by the above agencies that (1) bar a person from association or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities or (2) are based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.[7]

The Form U–4 has historically been the vehicle for the reporting of events that may cause a person to become subject to statutory disqualification. NASD generally takes the lead in amending the Forms. Accordingly, with the concurrence of a working group of regulators, including state regulators, representatives of other SROs, and SEC observers, NASD is proposing to amend section 14 (Disclosure Questions) of the Form U–4 to elicit reporting of regulatory actions that may now make individuals subject to a statutory disqualification under the expanded definition of ''statutory disqualification'' in the Act created by passage of the Sarbanes-Oxley Act.

The proposed rule change renumbers current Regulatory Action Disclosure Question 14D on the Form U–4 as Question 14D(1), adds Question 14D(2) to mirror the language in section 15(b)(4)(H) of the Act,[8] and modifies the ''Regulatory Action DRP'' on the Forms. To aid in reporting events under Question 14D(2), NASD proposes amending the ''Specific Instructions'' section of the Form U–4 with respect to section 14 (Disclosure Questions). NASD proposes adding two new defined terms, ''final order''[9] and ''federal banking agency,''[10] to the ''Explanation of Terms'' section of the Form U–4. NASD also proposes amending the ''Regulatory Action'' DRP on the Form U–4 to aid in reporting events required to be reported pursuant to the Sarbanes-Oxley Act.

Form U–5 DRP and Question Addition Relating to Terminations for Cause

NASD proposes adding to the Form U–5 a new disclosure question (Question 7F) and corresponding DRP to mirror Question 14J on the Form U–4. This question would allow firms to report that an individual was terminated after allegations of certain violations, fraud, wrongful taking of property, or failure to supervise, and would further clarify the individual's obligation to report the termination on the Form U–4. Currently, NASD staff must rely on the reason for termination or a firm-initiated internal review as reported (by the former employing firm) on an individual's Form U–5 to determine whether that individual is required to answer Question 14J (on the Form U–4) affirmatively. The new Question 7F on the Form U–5 should clarify for NASD staff and terminated individuals the basis for and circumstances surrounding the termination (and whether it requires an affirmative answer on the corresponding Form U–4 question) and will enable firms appropriately to identify and provide supporting details regarding terminations for cause. Similarly, NASD proposes adding ''resign or resigned'' as an explained term on the Form U–5 to parallel the same term on the Form U–4 for purposes of the new Question 7F.

Modifications to the Form U–4 Relating to Fingerprinting Requirements

NASD proposes to streamline the language associated with questions under section 2 (Fingerprint Information) and section 6 (Registration Requests with Affiliated Firm) on the Form U–4 to clarify fingerprinting requirements, including electronic filing representations, exceptions to the fingerprint requirement, and fingerprint requirements for investment adviser representative only applicants. In conjunction with the proposed changes relating to the fingerprint questions, NASD is proposing to amend the ''Specific Instructions'' section of the Form U–4 with respect to section 2 (Fingerprint Information) and Section 6 (Registration Requests with Affiliated Firms).

Under section 2 (Fingerprint Information), NASD proposes to modify the ''Electronic Filing Representation'' subsection to address two situations that are not adequately covered by the current language. The first involves a firm's submitting fingerprint results on behalf of an individual whose fingerprints were processed through another SRO, in lieu of submitting fingerprint cards. The second occurs when a firm is seeking registration for an individual who (1) is currently employed by the firm (usually in an unregistered capacity) and (2) previously has been fingerprinted (either through NASD or another SRO).

The current electronic filing representation states that the firm is submitting or will promptly submit fingerprint cards as required by applicable SRO rules. In the two situations described above, firms will not be submitting fingerprint cards contemporaneously with, or within 30 days of, filing a Form U–4. The proposed language will allow firms and individuals to represent that the filing firm has continuously employed the individual since the last submission of a fingerprint card to NASD (and therefore is not required to resubmit a card at this time) or has continuously employed the individual since the individual had his or her fingerprints processed through another SRO, and the individual will submit (or has submitted) the processed results to the Central Registration Depository (''CRD'') system.

Also, under section 2 (Fingerprint Information), NASD proposes to modify the ''Exceptions to the Fingerprint Requirement'' subsection. Currently, firms can claim an exception to the fingerprint requirement by affirming that the individual has been continuously employed by the filing firm in an unregistered capacity (and had previously submitted a fingerprint card in connection with that employment) or meets one or more exemptions under SEC Rule 17f–2.[11] The proposed modification to the ''Exceptions to the Fingerprint Requirement'' questions would allow a firm to select the specific permissive exemption under SEC Rule 17f–2(a)(1)(i)

[7] Section 15(b)(4)(H) of the Act, 15 U.S.C. 78o(b)(4)(H).

[8] *Id.*

[9] The new term ''final order'' is to be defined in the Form U–4 as follows: FINAL ORDER, for purposes of Question 14D(2), means a written directive or declaratory statement issued by an appropriate federal or state agency (as identified in Question 14D(2)) pursuant to applicable statutory authority and procedures, that constitutes a final disposition or action by that federal or state agency.

[10] The new term ''federal banking agency'' is to be defined in the Form U–4 as follows: FEDERAL BANKING AGENCY shall include any Federal banking agency as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

[11] 17 CFR 240.17f–2.

and/or (a)(1)(iii).[12] Additional proposed changes to section 2 (Fingerprint Information) will clarify fingerprint filing requirements for investment adviser representative only applicants.

Individuals use the Form U–4 to register with states in an investment adviser representative capacity (shown as ''RA'' on the Form U–4). Some states have advised NASD that individuals are confused about which radio button[13] to select when applying solely for registration as an investment adviser. In some cases, these individuals have previously submitted a fingerprint card for registration with a broker-dealer. NASD proposes to amend the ''Investment Adviser Representative Only Applicants'' section by adding additional instructions under the heading ''Fingerprint Information for Affiliated Firms'' that will explain the fingerprint filing requirements for these applicants.

The proposed language will clarify the circumstances under which an individual may need to file a fingerprint card when submitting an application for state licensure as an investment adviser representative notwithstanding having previously submitted a fingerprint card with an unaffiliated broker-dealer. The proposed language will also address situations in which an investment adviser representative previously has satisfied a state fingerprint requirement by allowing the representative to make that representation on the Form U–4.[14]

Under section 6 (Registration Requests With Affiliated Firms) of the Form U–4, NASD is proposing to add a fingerprint question to section 6 (Registration Requests with Affiliated Firms) on the Form U–4 to create appropriate options for individuals requesting new registrations with a firm affiliated with the filing firm.[15] The proposed ''Electronic or Other Filing Representation'' subsection will provide three additional radio buttons. Filers can select the current standard representation (*i.e.*, ''I am submitting, have submitted, or promptly will submit to the appropriate SRO a fingerprint card * * *''). In the alternative, the proposed representations would enable the individual to indicate that (1) he or she has been employed continuously by the filing firm since the last submission of a fingerprint card and he or she is not required to resubmit a fingerprint card; or (2) the individual has been employed continuously by the filing firm and his or her fingerprints have been processed by an SRO other than NASD and the individual is submitting, has submitted, or promptly will submit the processed results for posting to the CRD. Section 6 (Registration Requests With Affiliated Firms) will also contain a radio button that allows the applicant to select an exemption to the fingerprint requirement pursuant to SEC Rule 17f–2.[16]

Conforming Changes

(1) NASD proposes replacing all references to ''NASD Regulation'' or ''NASD Regulation, Inc.'' with ''NASD'' consistent with NASD's current corporate structure. NASD also proposes changing ''U–4'' to ''U4'' and ''U–5'' to ''U5.''

(2) NASD proposes making grammatical and other modifications that will make the Form U–4 and Form U–5 more consistent and better clarify the disclosure information that is required to be reported on the Forms. For example, NASD proposes rewording the summary field of the DRPs on the Form U–4 and Form U–5 to emphasize that those fields are optional for comments by representatives and firms, respectively.

(3) NASD proposes modifying the Customer Complaint DRP on both Forms to distinguish the fields that are required for reporting a customer complaint, arbitration and/or litigation. The proposed changes add instructions and rearrange the questions in a more logical order; however, the content of the customer complaint disclosure question and DRP fields will not change.

(4) NASD proposes revising the language in Question 14F (on Form U–4) to clarify the intent of the reporting obligation.[17]

(5) NASD proposes changes to the current hair and eye color codes to match the codes used by the Federal Bureau of Investigation's fingerprint system.

(6) NASD proposes other consistency changes that relate to bolding or highlighting certain instructions in the DRPs to facilitate appropriate reporting on the Forms.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)[18] of the Act, which requires, among other things, that the Association's rules 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. NASD believes that the proposed rule change is designed to accomplish these ends by making changes to the Forms that would (1) add disclosure questions to elicit reporting of events that may cause a person to be subject to a statutory disqualification as a result of the expansion of the federal definition of statutory disqualification based on the enactment of the Sarbanes-Oxley Act; (2) add a DRP and a question to the Form U–5 (new Question 7F) that parallels Question 14J on the Form U–4 DRP relating to terminations for cause; (3) streamline the language associated with questions on the Form U–4 relating to fingerprinting requirements; and (4) make other technical, clarifying, and conforming changes that are intended to facilitate accurate reporting.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

[12] SEC Rule 17f–2, 17 CFR 240.17f–2, governs the fingerprinting requirements of securities personnel. SEC Rule 17f–2(a)(1)(i), 17 CFR 240.17f–2(a)(1)(i), permits an exemption for persons who are not engaged in the sale of securities; do not regularly have access to the keeping, handling, or processing of securities, monies, or books and records; and do not have supervisory responsibility over persons engaged in such activities. SEC Rule 17f–2(a)(1)(iii), 17 CFR 240.17f–2(a)(1)(iii), generally exempts the partners, directors, officers, and employees of a broker-dealer that is engaged exclusively in the sales of certain securities, such as variable contracts, limited partnership interests, and unit investment trusts.

[13] A ''radio button'' is a navigation and selection device that allows a filer to select a particular option in an electronic filing environment.

[14] This addition should be particularly helpful to investment adviser representatives who became licensed in a jurisdiction through the submission of a hard copy Form U–4 before that jurisdiction accepted electronic filings via the Investment Adviser Registration Depository and who are now being ''transitioned'' onto an electronic system via an electronically filed Form U–4 amendment.

[15] The new term ''Affiliated Firm'' is to be defined in the Form U–4 as follows: AFFILIATED FIRM means a broker-dealer under common ownership or control with the filing firm.

[16] 17 CFR 240.17f–2.

[17] Currently, Question 14F asks, ''Has your authorization to act as an attorney, accountant or federal contractor ever been revoked or suspended?'' The proposed Question 14F asks, ''Have you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended?''

[18] 15 U.S.C. 78*o*–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, as amended, or

B. institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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–2003–57 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–13938 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47930; File No. SR–NASD–2003–66]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Rebate Certain Past Primex Auction System Logon Charges for Certain Participants

May 27, 2003.

On April 2, 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''), 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 rebate certain past Primex Auction System (''Primex'') logon charges for certain participants. Specifically, Nasdaq proposes to modify NASD Rule 7010(r) to enable Nasdaq to waive all Primex logon charges for the period of August 2002 through November 2002 for participants who, in connection with their participation in Primex during that period, were customers of the Brass Service Bureau and Order Management System (''Brass'').

The proposed rule change was published for comment in the **Federal Register** on April 24, 2003.[3] The Commission received no comments on the proposal.

After careful review, 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 association.[4] Specifically, the Commission finds that the proposed rule change promotes the objectives of Section 15A(b)(5) of the Act[5] which requires that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission believes that the proposed waiver of certain Primex logon charges for the named period is equitable because Primex participants, who are users of Brass, were unable to route orders to Primex and were therefore effectively unable to use the full range of Primex services.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2003–66) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13944 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47692 (April 17, 2003), 68 FR 20197 (April 24, 2003).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47925; File No. SR–NASD–98–80]

Self-Regulatory Organizations; Order Granting Approval to the Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3, 4, and 5 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish a Two-Year Pilot Program Relating to the Issuance of Temporary Cease and Desist Orders

May 23, 2003.

On October 28, 1998, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] Under its proposal, NASD establishes procedures to enable it to issue temporary cease and desist orders. The proposed rule change and Amendment No. 1[3] to the proposal were published for comment in the **Federal Register** on December 30, 1998.[4] The Commission received five comment letters on the proposal.[5] On May 17, 1999, August 19,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The first amendment to the proposal included changes to the evidentiary standard and the tenure of a temporary cease and desist order. *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 15, 1998 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 40826 (December 22, 1998), 63 FR 71984. On December 22, 1998, the NASD submitted a written extension of time for the public comment period as Amendment No. 2. The amendment is not subject to notice and comment. *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated December 21, 1998.

[5] *See* Letters to Jonathan G. Katz, Secretary,

2002, and April 15, 2003, the NASD filed Amendment Nos. 3, 4 and 5 respectively.[6] The Commission is approving the proposed rule change, and is publishing notice of, and granting accelerated approval to, Amendment Nos. 3, 4, and 5 to the proposed rule change.

I. Description of the Proposal

NASD is proposing to establish, for a two-year period, procedures to enable NASD to issue temporary cease and desist orders. The proposal also would provide NASD with the authority to issue permanent cease and desist orders. Furthermore, the proposed rule change would grant NASD authority to initiate non-summary proceedings when temporary or permanent cease and desist orders are violated.

1. Due Process Procedures

NASD recognizes that temporary cease and desist orders are powerful measures that should be used very cautiously. Consequently, the NASD states that it has designed the rules to ensure that the proceedings are used to address only the most serious types of misconduct and that the interests of respondents are protected. For example, to ensure that temporary cease and desist proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the proposed rules require the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs to issue written authorization before NASD Department of Enforcement (''Enforcement'') or the Department of Market Regulation (''Market Regulation'') can institute a temporary cease and desist proceeding.

In addition, NASD has proposed limiting use of this tool to what it views as the most serious offenses. Under the proposal, a temporary cease and desist proceeding can be initiated only with respect to alleged violations of certain sections of the securities laws and certain NASD rules.[7]

Moreover, the proposed rules are based upon the rules that govern NASD disciplinary proceedings, with certain modifications made to reflect that temporary cease and desist proceedings are expedited proceedings. The NASD believes, therefore, that the proposed rules provide respondents with many procedural protections.

In addition, once the initiation of a temporary cease and desist proceeding has been authorized, Enforcement or Market Regulation must file a notice with the Office of Hearing Officers and serve the respondent with a copy of the notice. The notice must set forth the rule or statutory provision the respondent is alleged to have violated, must include a declaration of facts that specifies the acts or omissions that constitute the alleged violation,[8] and must include a proposed order that contains the required elements of a temporary cease and desist order.[9] In addition, if Enforcement or Market Regulation has not already issued a complaint under NASD Rule 9211 against the respondent relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provisions specified in the notice initiating the temporary cease and desist proceeding, Enforcement or Market Regulation must serve the complaint with the notice initiating the temporary cease and desist proceeding.

Further, a hearing to determine whether a temporary cease and desist order should be issued must be held within 15 days after service of the notice (unless a Hearing Officer or Hearing Panelist is recused or disqualified or the parties agree to extend the 15-day period for good cause shown),[10] and the respondent must be served with notice of the date, time, and location of the hearing not later than seven days before the hearing, unless the Hearing Officer orders otherwise.[11]

Each hearing panel would be appointed by NASD's Chief Hearing Officer, and would be comprised of a hearing officer and two panelists. The two panelists would be selected from a roster of candidates that is comprised of current or former members of the National Adjudicatory Council, NASD Board of Governors, or NASD Regulation Board of Directors, and at least one panelist would have to be an associated person. A hearing officer, who is an attorney and an employee of NASD, would preside over each proceeding and would have the authority to do all things necessary and appropriate to discharge his or her duties as set forth in NASD Rule 9235.

The proposed rules also set a specific standard that must be met before a hearing panel can issue an order. A hearing panel must find by a preponderance of the evidence that the alleged violation has occurred, which is the same evidentiary standard used in the underlying disciplinary proceeding. The hearing panel also must find that the violative conduct or the continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors before completion of the disciplinary proceeding under the Rule 9200 and 9300 Series. The NASD states that this standard is designed to ensure

Commission, from: Dan Jamieson, dated December 29, 1998 (''Jamieson Letter''); Sam Scott Miller, Orrick, Herrington & Sutcliffe, dated February 9, 1999 (''Orrick Letter''); Peter C. Hildreth, President, North American Securities Administrators Association, Inc., dated March 2, 1999 (''NASAA Letter''); Barbara M.G. Lynn, Chair, Section of Litigation, and James H. Cheek III, Chair, Section of Business Law, Ad Hoc Task Force of the American Bar Association's Sections of Litigation and Business Law, dated March 8, 1999 (''ABA Sections Letter''); and Lee B. Spencer, Chairman, Federal Regulation Committee, R. Gerald Baker, Chairman, Self Regulation & Supervisory Practices Committee, and James Tricarico, President, Compliance & Legal Division, Securities Industry Association, dated March 5, 1999 (''SIA Letter'').

[6] *See* Letters to Katherine A. England, Assistant Director, Division, Commission, from Alden S. Adkins, Sr. Vice President and General Counsel, NASD Regulation, dated May 14, 1999 (''Amendment No. 3''), from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, dated August 16, 2002 (''Amendment No. 4''), and from Sarah J. Williams, Associate General Counsel, NASD, dated April 14, 2003 (''Amendment No. 5''). In Amendment No. 3, the NASD responded to comments and clarified the context in which the NASD would seek a permanent cease and desist order. In Amendment No. 4, the NASD (i) proposed that the rule change operate for a two-year period, unless extended or permanently adopted before the expiration of the two-year period; (ii) extended the minimum amount of time between service of notice of a hearing and the hearing from four to seven days; (iii) supplemented the discussion of the applicability of Section 19(d) of the Act to a temporary cease and desist order; (iv) made certain technical changes to the rule language to conform the proposal to current NASD practices; and (v) made further non-substantive changes to the discussion of the proposed rule change. In Amendment No. 5, the NASD responded to comments and clarified the discussion of Rule 9850 in which a respondent may seek to have a temporary cease and desist order modified, set aside, limited or suspended and how a respondent may seek to challenge the order, and, in recognition of the U.S. Court of Appeals for the District of Columbia's denial of reconsideration of the SEC's decision against KPMG, LLP, the NASD provided clarifying discussion of the context in which a permanent cease and desist order would be sought.

[7] The sections and rules are specified in proposed NASD Rule 9810(a) and are limited to alleged violations of Section 10(b) of the Act and Rule 10b–5 thereunder; Rules 15g–1 through 15g–9 under the Act; or NASD Rules 2110, 2120, or 2330. The alleged violations of NASD rules for which a temporary cease and desist proceeding can be initiated are further limited. For NASD Rule 2110, which governs standards of commercial honor and just and equitable principles of trade, the alleged violations are limited to violations of Section 17(a) of the Securities Act of 1933 or circumstances involving unauthorized trading or misuse or conversion of customer assets. For NASD Rule 2330, which governs members' use of customers' securities or funds, the alleged violations for which a temporary cease and desist proceeding can be initiated are limited to circumstances involving misuse or conversion of customer assets.

[8] The declaration of facts must be signed by a person with knowledge of the facts contained in the declaration.

[9] The required elements of a temporary cease and desist order are set forth in proposed Rule 9840(b).

[10] *See* Proposed Rule 9830(a).

[11] *See* Amendment No. 4.

that a temporary cease and desist order cannot be issued for technical violations of rules; it can be issued only if the violative conduct or the continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors before completion of the underlying disciplinary proceeding.

A hearing panel must issue a written decision within ten days of receiving the transcript of the hearing, unless otherwise extended by the Hearing Officer with the consent of the Parties upon a showing of good cause. If a hearing panel decides that a temporary cease and desist order should be issued, the order must direct the respondent to cease and desist from violating a specific rule or statutory provisions, and, where applicable, to cease and desist from dissipating or converting assets or causing other harm to investors. The order also must set forth the alleged violation and the significant dissipation or conversion of assets or other significant harm to investors that is likely to result without the issuance of the order, and it must describe in reasonable detail the act or acts the respondent is to take or refrain from taking. A temporary cease and desist order issued to stop unauthorized trading, for example, would order a respondent to cease and desist from violating NASD Rule 2110 by directing the respondent to stop the practice of executing unauthorized trades for customers' accounts. The order would not instruct the respondent to cease and desist conducting business with customers.

2. Publicizing Issuance of a Temporary Cease and Desist Order

If a hearing panel issues a temporary cease and desist order, NASD would publicize the issuance of the order, just as it publicizes the issuance of decisions in disciplinary proceedings that result in significant sanctions. Accordingly, the proposed rule change modifies IM–8310–2 to permit the release of this information. When issuance of a temporary cease and desist order is made public, if applicable, a statement would accompany the public release indicating that the decision could still be appealed to the SEC or that the appeal is pending.

3. Duration of Temporary Cease and Desist Orders

Once a temporary cease and desist order has been issued, it will remain in effect until a decision is issued in the underlying disciplinary proceeding.[12] In any disciplinary proceeding for which a temporary cease and desist order has been issued, every hearing shall be held and every decision shall be rendered at the earliest possible time.

In addition, if a respondent believes the underlying disciplinary proceeding is not being conducted on an expedited basis, the respondent may seek to have the order modified, set aside, limited or suspended under proposed Rule 9850.[13]

Further, the respondent may seek to challenge a temporary cease and desist order by filing an application for review with the SEC pursuant to Section 19 of the Act.[14] A respondent's application to challenge an order, however, will not stay the effectiveness of the order, unless otherwise ordered by the Commission.[15]

4. Enforcement of Cease and Desist Orders

The proposed rule change provides the NASD with the authority to suspend or cancel a respondent's membership or association if it is found, after a proceeding pursuant to the Rule 9510 Series,[16] that a respondent violated a temporary cease and desist order or a permanent cease and desist order. The proposed rule change provides that a proceeding to suspend or cancel a respondent's association or membership for violating an order cannot be initiated unless it is authorized in writing by the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs. NASD believes that this provision ensures that decisions that can have a significant impact on a respondent are made only at the highest staff level.

In addition, in any proceeding initiated pursuant to the Rule 9510 Series to sanction a member or associated person for violating a temporary or permanent cease and desist order, NASD would be required to specifically identify in the notice initiating the proceeding the provision of the temporary or permanent cease and desist order that is alleged to have been violated, and the notice must contain a statement of facts specifying the alleged violation.

5. Two-Year Trial Period for Proposed Rule Change

NASD recognizes that temporary cease and desist orders are new and powerful enforcement tools. Therefore, NASD believes the proposed rule change should be adopted on a trial basis, for a two-year period.[17] At the expiration of the two-year period, NASD will review its experience with temporary cease and desist orders, and, if it believes the proposed rule change should be extended or adopted on a permanent basis, NASD will file a proposed rule change with the Commission seeking an extension or adoption. The proposed rule change will describe the staff's experience with the rule and its basis for seeking extension or adoption.

6. Context in Which Permanent Cease and Desist Orders Will Be Sought

NASD staff does not anticipate seeking permanent cease and desist orders on a routine basis. Factors that NASD staff will consider in determining whether a permanent cease and desist order is appropriate include whether the party's violation was isolated or part of a pattern, whether the violation was flagrant and deliberate or merely technical in nature, and whether the party's business will present opportunities to engage in future violative conduct.[18]

II. Summary of Comments

The Commission received five comment letters on the proposed rule change.[19] While all of the commenters applauded the NASD's objective of effective enforcement and fair regulation

[12] The Hearing Panel issuing the decision in the underlying disciplinary proceeding, however, may issue a permanent cease and desist order as part of any sanctions imposed pursuant to the underlying disciplinary proceeding. NASD will not stay the effectiveness of a permanent cease and desist order if the respondent appeals the decision in the underlying disciplinary proceeding.

[12] *See* Amendment No. 5.

[14] Section 19 of the Act provides for the appeal of final disciplinary sanctions imposed by self-regulatory organizations (''SROs'').

[15] *See* Amendment No. 5.

[16] The Rule 9510 Series sets forth the procedures for summary and non-summary suspension, cancellation, bar, limitation, or prohibition. Pursuant to the proposed amendment to Rule 9511, the sanctions for a violation of a temporary or permanent cease and desist order are limited to suspension or cancellation of the membership of a member or the registration of a person.

[17] *See* Amendment No. 4.

[18] *See* Amendment No. 3. *Cf. In Re KPMG,* Exchange Act Release No. 43862 (Jan. 12, 2001), *petition denied*, 289 F.3d 109 (D.C. Cir. 2002), where the SEC indicated that in determining whether a cease and desist order is appropriate, it would consider factors that provide some showing of risk of future violation, although such showing need not be as great as that required for the imposition of an injunction. The NASD staff states that nothing in this proposed rule change is intended to impose any standards on NASD staff in exercising its prosecutorial discretion in any particular matter, nor is it intended to require that Hearing Officers find that the standards advocated by the SEC in the *KPMG* litigation described above are met in imposing a permanent cease and desist order. *See* Amendment No. 5.

[19] *See supra* note 5.

of the securities industry, especially in the area of microcap securities fraud, only NASAA generally supported the proposal. The remaining commenters expressed a number of concerns regarding certain provisions of the proposed rule change. The comments submitted to the Commission, and the NASD's response to the comments, are summarized by issue below.

1. Consistent with the Act

NASAA stated its belief that the proposed rule change would be consistent with the provisions of the Act relating to member enforcement, promotion of fair practices and appropriate disciplinary actions by an SRO against its members.[20] Three commenters disagreed, questioning the existence of statutory authority for a grant of temporary cease and desist power to NASD.[21] Two of these commenters argued that this authority falls outside the definition of the term ''sanction'' under Section 15A of the Act,[22] with one of these commenters contending that temporary cease and desist orders are quasi-judicial powers primarily intended to preserve the status quo pending a formal decision, not sanctions.

NASD responded that several provisions of the Act provide SROs with the authority to issue temporary cease and desist orders. Section 15A(b)(2) of the Act, among other things, requires that an association of brokers and dealers have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the association. In addition, Section 15A(b)(6) of the Act requires that the rules of an association 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. Finally, section 15A(b)(7) of the Act permits an association to sanction its members and persons associated with members through the imposition of any ''fitting sanction,'' and Section 15A(b)(8) of the Act, among other things, requires that the rules of an association, in general, provide a fair procedure for disciplining members and persons associated with members. The NASD contends, therefore, that the proposed rules are consistent with NASD's obligations under Section 15A(b)(2), (6), (7) and (8) of the Act because temporary cease and desist orders are fitting sanctions designed to stop violative conduct that is likely to cause significant dissipation or conversion of assets or other significant harm to investors.

2. Justification for Temporary Cease and Desist Powers

The Commission specifically requested public comment on whether the NASD has sufficiently justified the need for temporary cease and desist powers. NASAA responded that the exponential growth of the securities markets and in the number of participants, particularly in the area of microcap securities, justifies the need for regulators to utilize all of the enforcement tools available, including the authority to issue a temporary cease and desist order.[23] Three commenters contend, however, that the NASD has not sufficiently justified the need for the extraordinary power to issue temporary cease and desist orders.[24] One commenter noted that no other SRO has ever requested temporary cease and desist authority and the Commission has used its cease and desist authority only once in eight years, thereby casting doubt on its usefulness as an enforcement tool.[25] Two commenters questioned why the NASD could not refer any matter for which a temporary cease and desist order may be appropriate, along with the supporting documentation required to be recited in the notice and underlying complaint, to the Commission or appropriate state regulator.[26]

In response, the NASD stated that there is a clear need for an additional tool to stop members' or associated persons' misconduct where NASD believes significant dissipation or conversion of assets or other significant harm to investors is likely to occur before a disciplinary proceeding under NASD Rules 9100–9300 is concluded. The NASD notes that, under its current rules, it takes a minimum of four months to complete a disciplinary proceeding. Without a temporary cease and desist rule, NASD believes it has no immediate remedy to order cessation of egregious, ongoing violative conduct.

With respect to its current authority, the NASD notes that it can summarily suspend a member or associated person only in the limited situations that are described in Section 15A(h)(3) of the Act, which do not include the types of situations NASD is attempting to address with the temporary cease and desist rules. Similarly, the NASD's non-summary suspension rules[27] are designed to limit or stop a member's or associated person's ability to conduct business, whereas temporary cease and desist orders are designed to stop ongoing, violative conduct while an underlying disciplinary proceeding is being litigated.

With respect to referring cases to the SEC or a state regulatory authority for prosecution where an emergency exists, NASD responds that its experience demonstrates that this is not a viable alternative to the proposed rule. Even though NASD, the SEC and other regulators have made great strides in coordinating their respective enforcement efforts, this is not a substitute for temporary cease and desist authority. The NASD believes that there are situations where it is in the best position to take immediate action, based on its preexisting investigation and access to case-specific information. In such situations, having to refer the case to another regulatory authority might result in unacceptable delay and would not be an efficient use of NASD's or other regulators' resources.

3. Scope of Predicate Violations

The Commission specifically requested public comment on whether the scope of possible violations should be narrowed. NASAA responded that the scope of predicate violations should not be limited beyond the current restrictions in the proposed rule change because all of the possible violations raise concerns of fraudulent or manipulative conduct or the need for preservation of investor assets and funds.[28]

Three commenters believe, however, that the predicate rule violations are overly broad. Two of these commenters argued that the predicate violations are broad enough to encompass virtually any alleged violation of securities laws and rules because the proposed violations include basic anti-fraud and manipulation provisions.[29] One of the commenters argued that, if the purpose is primarily to protect against potential customer losses, the predicate violations should be limited to alleged violations involving microcap securities.[30] In particular, this commenter felt that many alleged cases of unauthorized

[20] *See* 15 U.S.C. 78o–3(b)(2), (6) and (7). *See* NASAA Letter, p. 2.

[21] *See* Jamieson Letter, p. 1, Orrick Letter, p. 5, and SIA Letter, p. 2.

[22] *See* Orrick Letter, p. 5, and SIA Letter, p. 2.

[23] *See* NASAA Letter, p. 3.

[24] *See* ABA Sections Letter, pgs. 6–7, Orrick Letter, p. 3, SIA Letter, p. 1.

[25] *See* ABA Sections Letter, p. 2.

[26] *See* Orrick Letter, p. 3, and SIA Letter, p.

[27] NASD Rules 9511(a)(2) and 9513.

[28] *See* NASAA Letter, p. 2.

[29] *See* SIA Letter, p. 3 and Orrick Letter, p. 3.

[30] *See* ABA Sections Letter, pgs. 7–8.

trading and fraudulent markups are inappropriate for temporary cease and desist proceedings.

In response, the NASD noted that the proposal does not permit it to seek a temporary cease and desist order for any securities law violation because Rule 10b-5 under the Act requires a showing of fraud. In addition, the NASD believes the proposed rule only addresses the forms of misconduct most likely to result in rapid dissipation of investor funds, such as unauthorized trading and charging fraudulent, excessive markups.

4. Due Process

While NASAA believes the proposed rule change contains sufficient safeguards to ensure adequate due process,[31] Orrick contends that the timetable for a hearing on a temporary cease and desist order fails to give the respondent an adequate amount of time to prepare for the hearing.[32] In response to Orrick's concerns, the NASD extended the minimum amount of time between service of notice of a hearing and the hearing date from four to seven days.[33]

5. Standard for Issuance of a Temporary Cease and Desist Order

Two commenters believe that the ''preponderance of evidence'' standard, alone, is an inadequate basis for granting the extraordinary relief of a temporary cease and desist order.[34] These commenters contend that there should be a finding that investors will be irreparably harmed or that their chances of subsequent recovery will be damaged by the standard disciplinary process. One commenter further believes that, in cases that do not involve potential investor losses, there should be a finding that there is a substantial likelihood that respondents will engage in future violations. Another commenter contends that the standard for issuance of a temporary cease and desist order invites arbitrary imposition of orders based on subjective interpretation of the standard.[35]

NASD responds that the ''likelihood of success'' standard is an inappropriate standard in the context of the other required showings, and that an irreparable harm standard would frustrate its attempt to stop ongoing fraudulent activity. Under such a standard, as long as a member could show that it is solvent and, at the time the disciplinary action is proceeding, could pay any potential arbitration or mediation awards, NASD would be unable to stop the ongoing fraudulent activity until the completion of the regular disciplinary proceeding. The NASD notes that the member's financial condition often significantly changes after the conclusion of the disciplinary proceeding. Finally, NASD believes that once it has been shown that the violative conduct or the continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors, the potential harm to the respondent if an order is issued is overshadowed by the harm that is likely to occur if the order is not issued.

6. Review of Temporary Cease and Desist Order

Two commenters noted that, unlike a temporary cease and desist order issued by the Commission, entry of a temporary cease and desist order issued by the NASD cannot be immediately appealed to a U.S. District Court. These commentators raised a concern about the ability of a respondent to appeal decisions issuing temporary cease and desist orders to the SEC because it was unclear whether temporary cease and desist orders are final disciplinary decisions of NASD.[36]

NASD responded that it believes a temporary cease and desist order should be considered a final disciplinary sanction of NASD under Section 19(d) of the Act and, therefore, should be appealable to the SEC as soon as the order is issued. A temporary cease and desist order is issued after notice and an opportunity for a hearing and upon a finding by a preponderance of the evidence that a violation of a statutory provision or rule has occurred. The temporary cease and desist order is an ''other fitting sanction'' under Section 15A(b)(7) of the Act because the order directs a respondent to cease violating a rule, to cease specified violative conduct, and, as appropriate, to cease and desist dissipating or converting assets. In addition, NASD notes that a temporary cease and desist order is immediately effective and enforceable and, moreover, a respondent that violates the terms of a temporary cease and desist order can have its membership or registration suspended or canceled.[37]

7. Permanent Cease and Desist Authority

One commenter strongly opposed the provision that allows the NASD to impose a permanent cease and desist order on the grounds that the industry and other interested parties had not been provided adequate notice of the provision.[38] This commenter further stated that the NASD has not articulated either a purpose or need for permanent cease and desist powers, a compelling justification for the authority, the circumstances in which a permanent cease and desist order would be sought, or the evidentiary standard for issuance.

The NASD responded that it did not highlight the issue of permanent cease and desist authority because it believes it already has the authority to issue them as an ''other fitting sanction'' under NASD Rule 8310. In response to the commenter's concerns, however, the NASD added language that it does not anticipate seeking permanent cease and desist orders on a routine basis, and listed the factors the NASD will consider in determining whether a permanent cease and desist order is appropriate.[39]

8. Collateral Consequences

The Commission solicited comments on what impact, if any, the issuance of a temporary cease and desist order will have on other laws (other than the federal securities laws). Two commenters responded that the proposal did not contain any consideration of the potential collateral consequences of a temporary cease and desist order.[40] These commenters contend that the NASD should evaluate the potential collateral consequences of the issuance of a temporary cease and desist order and report the results before Commission approval of the proposed rule change.

NASD responded that it believes the use of temporary cease and desist authority will have limited collateral effects. The NASD reviewed the state securities laws and did not find any state statute that would mandate the denial, suspension, or revocation of a broker-dealer's registration based on the

[31] *See* NASAA Letter, p. 2.

[32] *See* Orrick Letter, p. 4.

[33] *See* Amendment No. 4.

[34] *See* ABA Sections Letter, p. 9, and Orrick Letter, p. 4.

[35] *See* SIA Letter, p. 4.

[36] *See* SIA Letter, p. 4, and Orrick Letter, p. 4.

[37] NASD believes that its view that temporary cease and desist orders are subject to Commission review under Section 19(d) of the Act is further supported by the Commission's Order Accepting Jurisdiction issued *In the Matter of the Application of Martin Lee Eng,* Release No. 42962 (June 20, 2000). NASD states that the Commission found that it had jurisdiction to review NASD's imposition of a letter of caution in a disciplinary action because the letter of caution constituted a ''sanction'' under Section 19(d). The NASD contends that the Commission based its finding of jurisdiction on the fact that the letter of caution resulted from a finding in a formal NASD disciplinary proceeding that the respondent violated an NASD rule and that the letter of caution had been reported to the Central Registration Depository (''CRD'').

[38] *See* ABA Sections Letter, pgs. 17–19.

[39] *See* Amendment Nos. 3 and 5.

[40] *See* ABA Sections Letter, pgs. 14–15, and SIA Letter, pgs. 4–5.

imposition of a cease and desist order by the NASD.[41] In addition, the NASD does not believe that respondents will be collaterally estopped from contesting issues in customer disputes because arbitrators are not required to apply the same legal standards as the courts. Finally, the NASD stated that it would work with other regulators in coordinating the use of the cease and desist authority as an enforcement tool to help prevent regulators from ''piling'' sanctions on respondents.

III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)[42] of the Act, in general, and furthers the objectives of Section 15A(b)(6),[43] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[44] The Commission believes that the proposed rule change will protect investors and the public interest by improving the NASD's capability to prevent fraudulent and manipulative acts and practices, such as unauthorized trading in a customer's account.

The Commission further finds that the proposed rule change is a ''fitting sanction'' under Section 15A(b)(7) of the Act. One commenter's argument that temporary cease and desist orders are ''quasi-judicial powers primarily intended to preserve the status quo'' and are ''not designed to function as sanctions'' is not accurate in this context. For the Commission to issue a temporary cease and desist order under Section 21C of the Act, it must only find that an alleged or threatened violation specified in the permanent cease-and-desist complaint is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest before completion of the permanent cease-and-desist proceeding. Thus, unlike a NASD issued temporary cease and desist order, the Commission does not have to find an actual violation before issuing a temporary cease and desist order.

The NASD's proposal requires the NASD to prove its case by finding an actual violation by a preponderance of the evidence; in other words, there is a ruling on the merits. Accordingly, the imposition of a temporary cease and desist order can be a ''sanction'' for the finding of wrongdoing under Section 15A(b)(7) of the Act.

The Commission further finds that the proposed rule change is consistent with Section 15A(b)(8) of the Act in that it provides for a fair procedure for disciplining members and persons associated with members. Temporary cease and desist proceedings are designed to occur on an expedited basis to help stop ongoing violations that are likely to result in a significant dissipation or conversion of assets or other significant harm to investors. In response to a commenter's concerns that there was inadequate time to prepare for a hearing, however, the NASD extended the minimum amount of time between service of notice of a hearing and the hearing date from four to seven days. This should give respondents sufficient time to prepare a response to the NASD's detailed allegations set forth in the notice.

Commenters also believe that the ''preponderance of evidence'' standard, alone, is an inadequate basis for granting a temporary cease and desist order. The preponderance of the evidence standard, however, is consistent with the standard in civil actions generally, including Commission actions.[45]

With respect to the ability of the NASD to impose a permanent cease and desist order, the NASD has articulated the factors it will consider before imposing an order. The Commission notes in *In Re KPMG* that, in determining whether a cease and desist order is appropriate, it would consider factors that provide some showing of risk of future violation, although such showing need not be as great as that required for the imposition of an injunction.[46]

IV. Accelerated Approval of Amendment Nos. 3, 4 and 5

The Commission finds good cause for approving Amendment Nos. 3, 4 and 5 prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that NASD has responded adequately to commenters' concerns and suggestions by incorporating certain commenters' recommendations into the proposed rule language and discussion in Amendment Nos. 3, 4 and 5, and by explaining why it was not incorporating others. Further, the Commission notes that there were no language changes to the rule in Amendment Nos. 3 and 5, and the only substantive changes to the rule language in Amendment No. 4 are the implementation of the proposal relating to the temporary cease and desist orders as a two-year pilot program and the extension of the minimum amount of time between the notice of the hearing and the hearing date. Both of these changes were made in response to commenters' concerns. Thus, the substance of the proposed rule change was provided in the Notice and has been the subject of a full comment period. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act,[47] to approve Amendment Nos. 3, 4 and 5 to the proposal on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3, 4 and 5, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at 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 No. SR–NASD–98–80 and should be submitted by June 25, 2003.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–98–80) as amended by Amendment No. 1 be, and it hereby is, approved, and that Amendment Nos. 3, 4 and 5 to the proposed rule change be, and they hereby are, approved on an accelerated basis. With respect to the NASD's authority to issue a temporary cease and desist order, it is hereby approved on an accelerated basis as a two-year pilot

[41] *See* Amendment No. 3.

[42] 15 U.S.C. 78o–3(b).

[43] 15 U.S.C. 78o–3(b)(6).

[44] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[45] *See Steadman* v. *Securities and Exchange Commission*, 450 U.S. 91 (1981); *Seaton* v. *Securities and Exchange Commission*, 670 F.2d 309 (D.C. Cir. 1982).

[46] *See also* footnote 18.

[47] 15 U.S.C. 78f(b) and 78s(b).

program. The NASD will publish a Notice to Members announcing the effectiveness of the temporary cease and desist order pilot. The pilot will expire two years after the date of publication of Notice to Members.[48]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[49]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13945 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47935; File No. SR–NSCC–2003–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Balance Order Transaction Data Reporting and Other Technical Corrections

May 28, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 10, 2003, National Securities Clearing Corporation (''NSCC'') 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 primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC Procedure V to allow NSCC to report Balance Order transaction data on the Consolidated Trade Summary delivered to participants. The proposed rule change will also correct errors in NSCC Procedure VII.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As part of NSCC's straight through processing development efforts, NSCC is revising its Continuous Net Settlement and Balance Order processing. As part of this initiative, NSCC has decided to modify the manner in which it reports Balance Order transaction data to participants in order to make such information more readily available in a more efficient and cost effective manner. Starting on July 25, 2003, Balance Order information will be reported on the Consolidated Trade Summary.

The proposed modification to Procedure V, ''Balance Order Accounting Operation,'' implements this change. In addition, the proposed rule change clarifies that the Consolidated Trade Summary is issued on each day that is a settlement day. The proposed rule change further corrects erroneous cross references and a typographical error in Procedure VII, section E, subsections 4(a) and (b), respectively.

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] and the rules and regulations thereunder because it will enable NSCC to report Balance Order transaction data to its participants in an easier, more cost efficient manner thereby facilitating the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC consulted with the Securities Industry Association's Straight Through Processing Subcommittee in developing the reporting modifications. NSCC advised participants of the proposed modifications in Important Notice A 5482, P&S 5052 (September 25, 2002). NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change will take effect on July 25, 2003, pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] thereunder because the proposed rule effects a change in an existing service of NSCC which neither (1) adversely affects the safeguarding of securities or funds in NSCC's custody or control or for which NSCC is responsible nor (2) significantly affects the rights or obligations of NSCC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2003–07. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of

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[48] *See* Amendment No. 4.

[49] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q(b)(3)(F).

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–2003–07 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13943 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47937; File No. SR–Phlx–2003–21]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to a Disclaimer by Susquehanna Indices, LLP

May 28, 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 April 2, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. On May 23, 2003, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt new Rule 1104A, *Susquehanna Indices, LLP Indexes,* to provide a disclaimer with regards to SIG Investment Managers Index™ (''Index''). Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

Susquehanna Indices, LLP Indexes

Rule 1104A. Susquehanna Indices, LLP makes no warranty, express or implied, as to results to be obtained by any person or any entity from the use of the SIG Investment Managers Index or any data included therein in connection with the trading of option contracts thereon, or for any other use. Susquehanna Indices, LLP makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to the SIG Investment Managers Index or any data included therein.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx is proposing to adopt new Phlx Rule 1104A, which applies to the Index developed and maintained by Susquehanna Indices, LLP (''SI'').[4] The Index is a modified capitalization-weighted index that reflects the performance of 19 publicly traded investment management companies. The composition of the Index includes managers of mutual funds; trust banks, and broker-dealers with substantial asset management components. According to the Phlx, SI selects component securities for the Index, and is also responsible for all necessary maintenance of the Index. The Phlx currently lists options on the Index pursuant to a license agreement with SI and Phlx Rule 1009A(b).[5]

The Exchange is filing this proposed rule change pursuant a requirement in the license agreement. Proposed Rule 1104A would provide that SI makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of the Index and that SI makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to the Index or any data included therein. The Exchange believes that the disclaimer proposed in Rule 1104A is appropriate given that it is similar to disclaimer provisions of American Stock Exchange LLC (''Amex'') Rule 902C relating to index options listed on the Amex.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(5) of the Act[7] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule should encourage SI to develop and maintain stock indexes that may qualify for options trading on the Exchange, thereby providing investors with new investment opportunities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx, to Lisa N. Jones, Attorney, Division of Market Regulation, Commission, dated May 22, 2003 (''Amendment No. 1''). Amendment No. 1: (1) Clarifies in the proposed rule text that the proposed disclaimer specifically applies to the SIG Investment Managers Index; and (2) provides more detail on the Susquehanna Indices, LLP disclaimer in the purpose section of the proposal.

[4] SIG Investment Managers Index™ is a trademark of Susquehanna Indices, LLP.

[5] On June 3, 1994, the Commission approved a Phlx proposed rule change adopting Phlx Rule 1009A(b) in accordance with the Generic Index Option Approval Order for the listing and trading of narrow-based index options. Under Rule 1009A(b), the Exchange may trade options on a narrow-based index without filing a proposed rule change under Section 19(b)(2) of the Act if certain conditions are satisfied.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–21 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–13936 Filed 6–3–03; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47940; File No. SR–Phlx–2002–77]

Self-Regulatory Organizations; The Philadelphia Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto to Adopt a Specialist Revenue Sharing Program for Trades in the Nasdaq-100 Index Tracking Stock

May 29, 2003.

On December 16, 2002, The Philadelphia Stock Exchange, Inc. (''Phlx'' 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] a proposed rule change to adopt a Specialist Revenue Sharing Program for trades in the Nasdaq-100 Index Tracking Stock SM (''QQQ''). The Phlx amended the proposed rule change on February 28, 2003.[2] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on March 13, 2003.[3] The Commission received one comment on the proposal.[4] On May 14, 2003, the Phlx responded to the NYSE Letter.[5]

The Exchange proposes a Specialist Revenue Sharing Program in which it would share with the QQQ specialist unit a portion of the revenues that the Exchange receives under the Consolidated Tape Association (''CTA'') Plan attributable to the QQQ (which is reported on Tape B).[6] The Exchange proposes to apply its program as of November 1, 2002.

As set forth in its July 2, 2002 Order of Summary Abrogation (''Abrogation Order''),[7] the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. The Phlx has proposed to operate market data revenue sharing program that is similar to existing programs at other self-regulatory organizations.[8] Thus, the Commission believes it is reasonable to allow the Phlx to operate a market data revenue sharing program as outlined in the proposal.

Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[9] and, in particular, the requirements of section 6 of the Act[10] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,[11] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the Phlx to establish the market data revenue sharing program described in this proposed rule change, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2002–77), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–13937 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] *See* letter from Cynthia K. Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 27, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety.

[3] *See* Securities Exchange Act Release No. 47456 (March 6, 2003), 68 FR 12138.

[4] *See* April 3, 2003 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. (''NYSE''), to Jonathan G. Katz, Secretary, Commission (''NYSE Letter''). The NYSE Letter asked the Commission to institute disapproval proceedings and to also eliminate all market data rebate programs in both the equities and options markets. Because the NYSE Letter does not specifically address the Phlx proposed rule change, the Commission has not included a full summary of comments in this Order. The NYSE Letter is available for review in the Public Reference Room at the Commission.

[5] *See* May 14, 2003, letter from Edith Hallahan, Deputy General Counsel, Phlx, to Jonathan G. Katz, Secretary, Commission (''Phlx Response Letter''). The Phlx Response Letter is available for review in the Public Reference Room at the Commission.

[6] This proposal applies only to QQQ and to no other Tape B security, nor any Tape A security.

[7] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37)(Order of Summary Abrogation).

[8] *See e.g.,* Securities Exchange Act Release Nos. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999)(SR–CSE–99–03), 46911 (November 26, 2002), 67 FR 72251 (December 4, 2002)(SR–BSE–2002–10), and 46938 (December 3, 2002), 67 FR 72993 (December 9, 2003)(SR–NASD–2002–149).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5)

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47942; File No. SR–PHLX–2003–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend the Exchange's Rule 229 To Provide for the Automatic Execution of Odd-Lot Market and Marketable Limit Orders Received Over PACE During Locked and Crossed Markets at the PACE Quote

May 29, 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 April 23, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 229,[3] Supplementary Material .08 to modify the Philadelphia Stock Exchange Automated Communication and Execution (''PACE'') System[4] to provide for the automated execution of odd-lot market and marketable limit orders received over PACE during locked markets[5] and crossed markets[6] at the PACE Quote.[7] Below is the text of the proposed rule change. Proposed new text is *italicized* and proposed deleted text is [bracketed].

* * * * *

Rule 229 Philadelphia Stock Exchange Automated Communications and Execution System (PACE).

PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis in accordance with the provisions of this Rule. Securities admitted to dealings on the equity floor are eligible for trading on the PACE System in which equity specialists and member organizations may choose to participate. The conditions under which orders will be accepted and executed are set forth below. When used in the Rule, PRL means a combined round-lot and odd-lot order, and PACE Quote means the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') quote, as appropriate. The PACE rules, conditions and guidelines do not apply to orders not on the system, and existing rules governing orders not on the system are not affected hereby.

Supplementary Material

.01–.07 No change.

.08 Odd-lot market orders entered after the opening will be executed on the PACE [q]*Quote. When the PACE Quote is locked, odd-lot market orders and marketable limit odd-lot orders entered after the opening will be executed at the locked price. If the PACE Quote is crossed, and the bid is higher than the offer by $ .05 or less, odd-lot market and marketable limit orders will be executed at the mean of the crossed bid and offer. If the mean does not fall at a one-cent increment, the execution will be rounded up to the nearest $ .01. If a crossed market exists and the bid is higher than the offer by more than $ .05, then the odd-lot order will not be automatically executed by the PACE system, but will be executed manually at the price of the next unlocked and uncrossed PACE Quote.*

.09–.22 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the handling and execution of certain odd-lot orders sent over the PACE System to increase efficiency. At the present time, during a locked and/or crossed market, odd-lot market orders in all securities entered after the opening of trading are not executed automatically, but instead are handled manually by the specialist. The Exchange now proposes to change this by providing for automated handling of these orders. The Exchange believes that this, in turn, would increase the efficiency of order handling, relieving the burden of specialists of dealing with manual orders of less than a round-lot during periods of locked and crossed markets. Furthermore, the Exchange believes that the quality of execution of these orders would be improved and enhanced, because execution time of these orders would be reduced while the orders would still receive the best bid or offer. The Exchange states that the speed of execution is an important aspect of the best execution of orders. In terms of price, the Exchange believes the proposed pricing procedure for odd-lot market orders after the opening when markets are locked or crossed should result in a customer receiving execution prices that accurately reflect market conditions. For instance, an execution at the PACE Quote when it is locked reflects the current market price, notwithstanding that it is locked.

In automating the execution of odd-lot market orders during locked and certain crossed markets, the Exchange determined that such orders should be executed at the PACE Quote, or in the case of crossed market, when the bid is higher than the offer by $ .05 or less, at the mean of the crossed best bid and offer. If the mean does not fall at a one-cent increment, the execution would be rounded up to the nearest $ .01. The Exchange states that this simple algorithm may enable the few crossed market orders that are actually received on the Exchange to be automatically executed at a fair execution price. The Exchange has determined that the $ .05

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange states that its proposed rule change to Phlx Rule 229, Supplementary Material .08 is substantially similar to a pilot filed by the American Stock Exchange, LLC (''Amex'') for Amex Rule 118 (Trading in Nasdaq National Market Securities) and Rule 205 (Manner of Executing Odd-Lot Orders). *See* Securities Exchange Act Release No. 46304 (August 2, 2002), 67 FR 51903 (August 9, 2002).

[4] PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities.

[5] A locked market is when the bid and offer for the security are the same.

[6] A crossed market is when the bid exceeds the offer.

[7] The PACE Quote is the best bid/ask quote among the American Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange, Chicago Stock Exchange, New York Stock Exchange, Pacific Stock Exchange or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted execution System (''ITS/CAES'') quote, as appropriate.

is a reasonable spread between a crossed market to select a price that reflects current market conditions. In contrast, in crossed markets that exceed the $ .05 parameter, true market conditions are less clear and require manual handling and, perhaps, price discovery, by a trading professional. The Exchange believes that this proposal may even reduce such conditions by executing an incoming marketable order against a locked or crossed bid or offer.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [8] in general, and furthers the objectives of section 6(b)(5)[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by providing for automatic execution of certain odd-lot market orders for equities traded over the PACE system, thereby increasing automated handling.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with regard to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the 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 Phlx. All submissions should refer to File No. SR–Phlx–2003–31 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14048 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47924; File No. SR–SCCP–2002–06]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of its Pilot Program to Implement its Existing Fee Schedule for Electronic Communications Networks

May 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 30, 2002, the Stock Clearing Corporation of Philadelphia (''SCCP'') 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 primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends SCCP's pilot program for an additional one year period thereby continuing the existing SCCP fee waivers for SCCP participants for trades executed on the Philadelphia Stock Exchange, Inc. (''Phlx'') for Electronic Communications Networks (''ECNs'').[2] The current pilot program expires on January 23, 2003.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP previously filed with the Commission a proposed rule change to adopt a fee schedule for ECNs.[5] Pursuant to that proposed rule change, SCCP waived certain dues, fees, and charges, including trade recording fees, value fees, and treasury transaction charges and Nasdaq 100 Trust, Series 1 (''QQQ'') charges,[6] but not account fees,

[1] 15 U.S.C. 78s(b)(1).

[2] ECN shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter (''OTC'') market maker and permits such orders to be executed against in whole or in part except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times or any system operated by or on behalf of an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal other than riskless principal.

[3] Exchange Release No. 45533 (March 11, 2002), 67 FR 11739 (March 15, 2002) (SR–SCCP–2002–02).

[4] The Commission has modified parts of these statements.

[5] Securities Exchange Act Release No. 45145 (December 10, 2001), 66 FR 65017 (December 17, 2001) (SR–SCCP–2001–01).

[6] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq® The Nasdaq Stock Market®, Nasdaq 100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠ and QQQ℠ are trademarks or

research fees, computer transmission/tape charges, or miscellaneous charges on its fee schedule.[7] At this time, SCCP proposes to continue the existing fee schedule for ECNs through January 24, 2004.

This rule change affects ECN trades not related to an ECN acting as a Phlx specialist or floor broker. Thus, an ECN may incur specialist or floor brokerage transaction fees if it acts in that capacity. Currently, no ECN operates from Phlx's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the Phlx equity trading floor, it could be subject to various SCCP fees respecting its non-ECN floor operation.[8] In addition, an ECN's transactions as a floor broker would be subject to the applicable SCCP fee as would any ECN's specialist trades. Even if the ECN is acting as a floor broker or specialist with respect to some trades, those trades for which it is not acting as a floor broker or specialist, but rather as an ECN, would be eligible for this waiver.

The proposed rule change extends SCCP's existing fee schedule for ECNs for an additional one year period in order to have the opportunity to fully review and evaluate the overall structure of the ECN program, including whether to impose volume threshold requirements.

SCCP believes that its current ECN fee schedule provides competitive fees with appropriate incentives thus proving a reasonable method to attract large order flow providers such as ECNs to Phlx and SCCP. Additional order flow should enhance liquidity and improve Phlx's and therefore SCCP's competitive position in equity trading and clearing.

SCCP believes that its proposal to extend its current pilot program for one year, thereby continuing the existing SCCP fee waivers described above for ECNs, is consistent with section 17A(b)(3)(D) of the Act[9] because it provides for the equitable allocation of reasonable dues, fees, and other charges. SCCP believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to Phlx. Specifically, SCCP points out that ECNs operate a unique electronic agency business similar to a securities exchange as opposed to directly executing orders for their own customers as principal or agent.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b-4(f)(2) thereunder.[11] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–SCCP–2002–06. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13939 Filed 6–3–03; 8:45 am]

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service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-200 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising or calculating the Index or in modifying in any way its method for determining, comprising or calculating the Index in the future.

[7] Certain provisions of the SCCP fee schedule do not apply to ECNs because they apply to specialists and/or relate to margin financing, such as specialist discount, margin account interest, P&L statement charges, buy-ins, PACE specialist credit, and specialist QQQ charges. At this time, SCCP is also adding to its fee schedule the language ''except ECNs'' next to the fees applicable to trades in the QQQs, which was missing due to an oversight; the waiver has applied to these QQQ fees because the ECN fee waiver has always applied to transaction fees.

[8] For example, an ECN acting as a specialist would be subject to the trade recording fee for specialist trades matching with PACE trades.

[9] 15 U.S.C. 78q–1(b)(3)(D).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47923; File No. SR–SCCP–2003–02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for Processing Transactions in DIAMONDS® Exchange Traded Funds

May 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 24, 2003, the Stock Clearing Corporation of Philadelphia (''SCCP'') 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 primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends SCCP's schedule of dues, fees, and charges to adopt fees for the processing of participant transactions in DIAMONDS® Exchange Traded Funds (''DIAMONDS®'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change provides for SCCP fees that will apply to trading of DIAMONDS®. The proposed rule change amends SCCP's fee schedule to adopt: (1) a non-specialist charge of $0.30 per trade side for non-PACE executions with no charge for PACE executions and (2) a specialist charge of $0.50 per trade for the first 1,000 trades and $0.25 per trade for all subsequent trades with no further volume discounts.[3] No other SCCP transaction fees will apply to trades in DIAMONDS®. This proposal is scheduled to become effective for transactions upon the implementation of trading in DIAMONDS®.

SCCP believes that these competitively priced fees should encourage trading of DIAMONDS®, which should provide market participants with a more affordable market for the trading of this product. SCCP further believes that a more affordable, competitive market for trading should attract more order flow in the DIAMONDS® to the Philadelphia Stock Exchange, Inc., which should, in turn, further increase liquidity of DIAMONDS® and create a tighter, more liquid market. Increased market competition should both benefit investors and protect the public interest in general.

SCCP believes that the proposed rule change is consistent with 17A(b)(3)(D) of the Act[4] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants because the fee structure proposed herein applies to all participants that would be trading the DIAMONDS®.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2) thereunder.[6] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–SCCP–2003–02. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13940 Filed 6–3–03; 8:45 am]

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[2] The Commission has modified parts of these statements.

[3] This is the same fee schedule that is currently in effect for the processing of Units of Beneficial Interest in the Nasdaq 100 Trust, Series 1, traded under the symbol and widely known as QQQ and Standard & Poor's Depositary Receipts''. *See* Securities Exchange Act Release No. 44218 (April 25, 2001), 66 FR 21803 (May 1, 2001) (SR–SCCP–00–06) and SR–SCCP–2003–01.

[4] 15 U.S.C. 78q–1(b)(3)(D).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47922; File No. SR–SCCP–2002–08]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Recording Fees and Value Fees for Pace Trades

May 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 31, 2002, the Stock Clearing Corporation of Philadelphia (''SCCP'') 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 primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend SCCP's schedule of dues, fees, and charges to clarify the definition of a PACE trade as it relates to the imposition of SCCP's trade recording

[1] 15 U.S.C. 78s(b)(1).

fees and value fees.[2] Currently, SCCP does not charge trade recording fees or value fees for PACE trades. SCCP proposes to define a PACE trade with greater specificity in order to clarify the imposition of trade recording fees and value fees as they relate to PACE trades only.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

First, the proposed rule change clarifies that the trade recording fees and value fees apply in situations where an order, after being delivered to Phlx by the PACE system, is executed by way of an outbound Intermarket Trading System (''ITS'') commitment[4] when such outbound ITS commitment reflects the PACE order's clearing information. In this situation, the trade is not considered to be a PACE trade for purposes of the imposition of trade recording fees and value fees and thus becomes subject to both charges.

Secondly, the proposed rule change clarifies that the trade recording fees and value fees do not apply where a PACE trade was executed against an inbound ITS commitment. The execution on the Phlx against an inbound ITS commitment is considered a PACE trade and therefore, SCCP trade recording fees and value fees do not apply to these transactions.

Lastly, the proposed rule change rebates to any participants that were charged trade recording fees or value fees for PACE trades that were executed against an inbound ITS commitment for the months of September, October, November, and December 2002.

SCCP believes that not charging SCCP participants these fees for PACE trades that are executed against an inbound ITS commitment should encourage greater use of the PACE system which in turn should promote a more active and liquid equities market. Also, SCCP believes that this clarification should help to avoid any participant confusion.

Previously, SCCP's billing system charged trade recording fees and value fees for PACE trades executed against an inbound ITS commitment due to the difficulties in identifying executions of orders in this manner. Due to advances in billing, SCCP can now more readily identify PACE trades that are executed against inbound ITS commitments. SCCP believes that by not charging trade recording fees and value fees and by providing a rebate, as described above for the months of September through December 2002, it will encourage future use of the PACE system and will reimburse participants who were charged the trade recording fees and value fees when the application of these charges may not have been clear. Also, SCCP believes that going forward for trades settling on or after January 2, 2003, there should be no charge for these PACE trades due to the fact that the method of execution of these trades is outside of the customer's control.

SCCP believes that its proposal is consistent with Section 17A(b)(3)(D) of the Act[5] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b-4(f)(2) thereunder.[7] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–SCCP–2002–08. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13941 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[2] PACE is the acronym for the Philadelphia Stock Exchange Inc.'s (''Phlx'') automated communication and execution system. It is Phlx's order routing, delivery, execution, and reporting system for its equity trading floor. *See* Phlx Rules 229 and 229A.

[3] The Commission has modified parts of these statements.

[4] ITS means the application of the system that permits intraday trading in eligible listed securities between participant markets as set forth in the ITS Plan. *See* Phlx Rule 2001.

[5] 15 U.S.C. 78q–1(b)(3)(D).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47921; File No. SR–SCCP–2003–01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for Processing Transactions in Standard & Poor's Depositary Receipts®

May 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 14, 2003, the Stock Clearing Corporation of Philadelphia (''SCCP'') 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 primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends SCCP's fee schedule to adopt new fees for the processing of participant transactions in Standard & Poor's Depositary Receipts® (''SPDRs''). The proposed rule change also makes minor clarifying amendments to its fee schedule regarding trades matching with PACE trades on the opening.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change adopts: (1) A non-specialist charge of $0.30 per trade side for non-PACE executions, with no charge for PACE executions and (2) a specialist charge of $0.50 per trade for the first 1,000 trades and $0.25 per trade for all subsequent trades with no further volume discounts.[3] No other SCCP transaction fees will apply to trades in SPDRs.[4] The proposed rule change also makes minor amendments to its fee schedule to clarify that the non-specialist charge of $0.30 is assessed per trade side and that the specialist charges of either $0.50 per trade and $0.25 per trade are not applicable to specialist trades matching with PACE trades on the opening.[5]

The purpose of the proposed rule change is to specifically provide for SCCP fees that will apply to trading of SPDRs. SCCP believes that these competitively priced fees should encourage trading of SPDRs, which should provide market participants with a more affordable market for the trading of this product. SCCP states that a more affordable, competitive market for trading should attract more order flow in the SPDRs to the Philadelphia Stock Exchange, Inc., which should, in turn, further increase liquidity of SPDRs and create a tighter, more liquid market. Increase market competition should both benefit investors and protect the public interest in general. This proposal is scheduled to become effective for transactions upon the implementation of trading in SPDRs.

SCCP believes that the proposed rule change is consistent with 17A(b)(3)(D) of the Act[6] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants because the fee structure proposed herein applies to all participants that would be trading the SPDRs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder.[8] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–SCCP–2003–01. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] This is the same fee schedule that is currently in effect for the processing of Units of Beneficial Interest in the Nasdaq 100 Trust, Series 1, traded under the symbol and widely known as QQQ. *See* Securities Exchange Act Release No. 44218 (April 25, 2001), 66 FR 21803 (May 1, 2001) (SR–SCCP–00–06).

[4] Specialists will be eligible for a SCCP credit for specialist trades matching with PACE trades on the opening. *See* Securities Exchange Act Release No. 44278 (May 8, 2001), 66 FR 27193 (May 16, 2001) (SR–SCCP–2001–05). Additionally, there are optional services offered by SCCP to which a specialist firm may subscribe, such as research requests.

[5] *See* supra note 5.

[6] 15 U.S.C. 78q–1(b)(3)(D).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13942 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 7, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Application for Small Business Size Determination.

No: 355.

Frequency: On Occasion.

Description of Respondents: Small Businesses.

Responses: 10,500.

Annual Burden: 42,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–13982 Filed 6–3–03; 8:45 am]

BILLING CODE 8025–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice of Pre-Disaster Mitigation Loans (Pilot Program)

As a result of the Pre-Disaster Mitigation Loans Final Rule published in the **Federal Register** October 7, 2002, the SBA is announcing the availability of Pre-Disaster Mitigation Loans. This notice establishes the application filing period for Pre-Disaster Mitigation Loans. Effective June 16, 2003, small businesses located in eligible participating communities determined by the Federal Emergency Management Agency may apply for low interest, fixed rate loans for the purpose of implementing mitigation measures that will protect their commercial real property (building) or leasehold improvements or contents from disaster related damage. The filing period for small businesses to apply for Pre-Disaster Mitigation Loans ends on July 16, 2003. The interest rate for eligible small businesses is 2.953 percent.

Applications for Pre-Disaster Mitigation Loans may be obtained and filed at the addresses listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Niagara Falls, NY 14303, 1–800–659–2955.

Area 1 serves the following: Connecticut, District of Columbia, Delaware, Maryland, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia, Puerto Rico, Virgin Islands (Dec. # M103).

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, 1–800–359–2227.

Area 2 serves the following: Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, Wisconsin (Dec. # M203).

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 75155, 1–800–366–6303.

Area 3 serves the following: Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Montana, North Dakota, Nebraska, New Mexico, South Dakota, Oklahoma, Texas, Utah, Wyoming (Dec. # M303).

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795. 1–800–488–5323.

Area 4 serves the following: Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, the Federated States of Micronesia, Guam, Republic of the Marshall Islands, Commonwealth of the Northern Mariana Islands (Dec. # M403).

(Catalog of Federal Domestic Assistance Program No. 59008.)

Dated: May 28, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13983 Filed 6–3–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 23, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15273.

Date Filed: May 23, 2003.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 EUR 0519 dated 16 May 2003
Within Europe Expedited Resolutions 002bi, 078y r1–r2.

PTC2 EUR 0522 dated 23 May 2003
Within Europe Expedited Resolutions r3–r–19.

PTC2 EUR 0523 dated 23 May 2003
Within Europe Expedited Resolution 002bn r20.

PTC2 EUR 0524 dated 23 May 2003
Within Europe Expedited Resolution 002bt r21.

PTC2 EUR 0525 dated 23 May 2003
Within Europe Expedited Resolution 002br r22.

PTC2 EUR 0526 dated 23 May 2003
Within Europe Expedited Resolution 002bs r23.

Minutes—PTC2 EUR 0521 dated 23 May 2003.

Intended effective date: 15 June, 1 July, 1 August, 1 September, 1 October, 1 November 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–14026 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Initial Maintenance Inspection (IMI) Test for Turbine Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed advisory circular (AC) number 33.90–1, Initial Maintenance Inspection (IMI) Test for Turbine Engines.

DATES: Comments must be received on or before August 29, 2003.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, at the above address; telephone: (781) 238–7120; fax: (781) 238–7199; e-mail: *marc.bouthillier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT** or by downloading the proposed AC from the following Internet Web site: *http://www.airweb.faa.gov/rgl.* The FAA invites interested parties to comment on the proposed AC. Comments should identify the subject of the AC and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all communications received by the closing date before issuing the final AC.

Background

This AC describes acceptable methods, but not the only methods, for demonstrating compliance with the test requirements of 14 CFR 33.90, Initial maintenance inspection (IMI). This AC provides guidance for the following: Test methods and procedures, test pass/fail criteria; and entry-into-service (EIS) IMI or overhaul requirements or recommendations established for the type design.

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

Issued in Burlington, Massachusetts, on May 28, 2003.

Francis Favara,

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

[FR Doc. 03–14074 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Updated Noise Exposure Maps and Request for Review of the Noise Compatibility Program for Guam International Airport, Guam

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by A.B. Won Pat Guam International Airport Authority for Guam International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as ''the Act'') and 14, Code of Federal Regulation (CFR), Part 150, are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Guam International Airport under Part 150 in conjunction with the Noise Exposure Maps, and that this program will be approved or disapproved on or before November 15, 2003.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the Noise Exposure Maps and of the start of its review of the associated Noise Compatibility Program is May 19, 2003. The Public comment period ends on July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Gordon Wong, Western-Pacific Region, Honolulu Airports District Office, Federal Aviation Administration, Box 50244, Honolulu, Hawaii 96850–0001, Telephone: 808–541–1232, Street Address: 300 Ala Moana Boulevard, Honolulu, Hawaii 96813. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Guam International Airport are in compliance with applicable requirements of Federal Aviation Regulation (FAR), Part 150, effective May 19, 2003. Further, FAA is reviewing a proposed noise compatibility program for that airport, which will be approved or disapproved on or before November 15, 2003. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Act, an airport operator may submit to the FAA Noise Exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional non-compatible uses.

A.B. Won Pat Guam International Airport Authority submitted to the FAA on March 18, 2003, noise exposure maps, descriptions and other documentation which were produced during Guam International Airport's March 2003 noise compatibility study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the Noise Exposure Maps and related descriptions submitted by A.B. Won Pat Guam International Airport Authority. The specific maps under consideration are Figure 5.1, ''Noise Exposure Map—2003'' and Figure 5.2, ''Noise Exposure Map—2008,'' in the submission. The FAA has determined that these maps for the Guam International Airport are in compliance with applicable requirements. This determination is effective on May 19, 2003. FAA's acceptance of an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map, submitted under Section 103 of the Act, it should be noted that the FAA is not

involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the Noise Compatibility Program for Guam International Airport, effective on May 19, 2003. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 15, 2003.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, Community and Environmental Needs Division, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Boulevard, Hawthorne, California 90261.

Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, Room 7–128, Honolulu, Hawaii 96813.

Mr. William R. Thompson, Executive Manager, A.B. Won Pat Guam International Airport Authority, 355 Chalan Pasaheru, Tamuning, Guam 96911.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on May 19, 2003.

Mark McClardy,

Acting Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 03–14073 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Weight and Balance Control Program Committee; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for participation; correction.

SUMMARY: This document makes corrections to the notice of request of participation published in the **Federal Register** on May 28, 2003 (68 FR 31740), which announces the formation of the Weight and Balance Control Program Aviation Rulemaking Committee to conduct a review of AC 120–27C and other related guidance, and provide advice and recommendations.

FOR FURTHER INFORMATION CONTACT: Mr. Darcy Reed, 202–267–9948, or e-mail: *Darcy.D.Reed@faa.gov.*

Correction

In the notice FR Doc. 03–13243, published on May 28, 2003 (68 FR 31740), make the following correction:

On page 31741, in the first column, fourth full paragraph, line two, correct ''docket number FAA–2003–XXXX'' to read ''docket number FAA–2003–15281.''

Issued in Washington, DC on May 30, 2003.

Carol E. Giles,

Assistant Division Manager, Air Maintenance Division, Flight Standards Service.

[FR Doc. 03–14072 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–34]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 24, 2003.

ADDRESSES: Send comments on any petition 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–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, 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 Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the

Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 29, 2003.

Richard D. McCurdy,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–14910.

Petitioner: Conrad Kropf.

Section of 14 CFR Affected: 14 CFR 61.3(a)(2).

Description of Relief Sought: To permit Conrad Kropf to obtain a private pilot certificate without having a photo identification that is in his possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization.

[FR Doc. 03–14063 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–33]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 24, 2003.

ADDRESSES: Send comments on any petition 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-XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, 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 Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 29, 2003.

Richard D. McCurdy,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15115.

Petitioner: Martinaire, Inc.

Section of 14 CFR Affected: 14 CFR 135.105(c)(1).

Description of Relief Sought: To permit Martinaire, Inc., to carry passengers, specifically certified airmen employed by other airlines, on board their aircraft with a 2 axis autopilot installed and operating.

Docket No.: FAA–2002–13131.

Petitioner: Starfighters, Inc.

Section of 14 CFR Affected: 14 CFR 91.319(a).

Description of Relief Sought: To permit Starfighters, Inc. to use its Lockheed F–104 Starfighter aircraft, which has an experimental airworthiness certificate, to conduct spaceflight orientation training and to receive compensation for such training.

[FR Doc. 03–14064 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–32]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 21, 2003.

ADDRESSES: Send comments on any petition 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–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, 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 Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 29, 2003.

Richard D. McCurdy,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13573.

Petitioner: Regional Aviation Partners.

Section of 14 CFR Affected: 14 CFR 119.21(a)(1).

Description of Relief Sought: To permit Regional Aviation Partners to conduct domestic operations with airplanes having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, to comply with the provisions of § 119.21(a)(4) and part 135 rather than part 121.

[FR Doc. 03–14065 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–31]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 29, 2003.

Richard D. McCurdy

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12947.

Petitioner: Trans States Airlines, Inc. d.b.a. American Connection and U.S. Airways Express.

Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought: To permit Trans States Airlines, Inc. d.b.a. American Connection and U.S. Airways Express to substitute a qualified and authorized check airman or aircrew program designee for an FAA inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing. *Grant, 05/13/2003, Exemption No. 8054.*

Docket No.: FAA–2002–13224.

Petitioner: Petersen Aviation.

Section of 14 CFR Affected: 14 CFR 135.269(b)(5).

Description of Relief Sought: To allow Petersen Aviation to operate on-demand charter flights of more than 10 hours but less than 12 hours without having adequate sleeping facilities on the aircraft for the relief pilot. *Denial, 05/14/2003, Exemption No. 8053.*

[FR Doc. 03–14066 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–04–C–00–IND To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Indianapolis International Airport, Indianapolis, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Indianapolis International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 7, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Lisa Cottingham, Treasurer, Indianapolis Airport Authority, at the following address: Indianapolis International Airport, 2500 S. High School Road, Suite 100, 5th Floor Administration, Indianapolis, Indiana 46241–4941.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Indianapolis Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Regan, Program Manager, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (847) 294–7525. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Indianapolis International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 20, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Indianapolis Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 26, 2003.

The following is a brief overview of the application.

Proposed charge effective date: October 1, 2022.

Proposed charge expiration date: November 1, 2022.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $59,000.

Brief description of proposed project: Impose and Use—Preparation costs of PFC application and amendment (2003).

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $443,870,000.

Brief description of proposed project: Use Only—Midfield Terminal.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Non-scheduled on-demand air carriers (formerly called air taxi/commercial operators-ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Indianapolis Airport Authority.

Issued in Des Plaines, Illinois, on May 27, 2003.

Robert A. Huber,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 03–14076 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To impose and Use the Revenue From a Passenger Facility Charge (PFC) at Reno/Tahoe International Airport, Reno, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Reno/Tahoe International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 7, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Christopher Horton, Manager of Finance, Airport Authority of Washoe County, at the following address: 2001 East Plumb Lane, Reno, NV 89502. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Airport Authority of Washoe County under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Lingsch, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Reno/Tahoe International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 16, 2003, the FAA determined that the application to impose and use a PFC submitted by the Airport Authority of Washoe County was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 20, 2003.

The following is a brief overview of the impose and use application No. 03–07–C–00–RNO:

Level of proposed PFC: $4.50.

Proposed charge effective date: November 1, 2003.

Proposed charge expiration date: March 1, 2006.

Total estimated PFC revenue: $21,188,948.

Brief description of the proposed impose only project: Southern Central Disposal Facility; Airfield Maintenance Replacement Facilities; 3.6 Acres Wetlands Mitigation Bank; and 10 Acres Wetlands Mitigation Bank. Brief description of the proposed impose and use projects: Design of Terminal Apron Reconstruction; Terminal Apron Reconstruction-Phase VI; Replace Four Jet Bridges; Ground Service Equipment Ramp Pavement Reconstruction; Replace Chiller No. 2 Mechanical System Master Plan; Geographic Information System; and Second Floor Concourse Build Out.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Nonscheduled/on-demand air carriers filling FAA Form 1800–31 and Foreign Flag Carriers filing DOT Form T–100(F).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Airport Authority of Washoe County.

Issued in Hawthorne, California, on May 16, 2003.

Mark McClardy,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 03–14075 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In April 2003, there were four applications approved. This notice also includes information on three applications, one approved in January 2003, and the other two approved in March 2003, inadvertently left off the January 2003 and March 2003 notices, respectively. Additionally, 11 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Albany-Dougherty Aviation Commission, Albany, Georgia.

Application Number: 03–03–C–00–ABY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $454,849.

Earliest Charge Effective Date: August 1, 2003.

Estimated Charge Expiration Date: July 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Southwest Georgia Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Install airfield fencing and replace locks.

Baggage claim enclosure.

Terminal environmental (phase I) update air handlers.

PFC application charges.

Construct air cargo apron—phases I and II (design).

Install runway visual guidance system.

Purchase rapid response aircraft rescue and firefighting (ARFF) vehicle and ARFF generator.

Construct air cargo apron—phases I and II.

Decision Date: January 31, 2003.

For Further Information Contact: Philip Cannon, Atlanta Airports District Office, (404) 305–7152.

Public Agency: Monterey Peninsula Airport District, Monterey, California.

Application Number: 03–09–C–00–MRY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $688,938.

Earliest Charge Effective Date: July 1, 2003.

Estimated Charge Expiration Date: June 1, 2004.

Class of Air Carriers Not Required To Collect PFC's: Unscheduled Part 135 air taxi operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Monterey Peninsula Airport.

Brief Description of Projects Approved for Collection and Use:

Access security control.

Extension of fire alarm system to safety building.

Acquisition of property at 2825 Salinas/Monterey Highway.

Passback security system.

Terminal improvements and modifications.

Terminal fire door replacements, phase 2.

Generator power to security gate, phase 2.

Terminal expansion—second level.

Environmental impact report—airport roadway circulation projects (terminal road, north access road, and 28L service road).

Decision Date: March 28, 2003.

For Further Information Contact: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: City of St. George, Utah.

Application Number: 03–03–C–00–SGU.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,354,902.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: October 1, 2011.

Class of Air Carriers Not Required To Collect PFC'S: Non-scheduled, on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at St. George Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Acquire ARFF vehicle.

Acquire a self-contained regenerative air airfield sweeper.

ARFF building improvements.

Replacement airport planning.

Replacement airport environmental impact statement.

Replacement airport phase II environmental impact statement.

Brief Description of Project Approved for Collection and Use: Construct replacement airport.

Decision Date: March 31, 2003.

For Further Information Contact: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: County of Houghton, Hancock, Michigan.

Application Number: 03–09–C–00–CMX.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $104,266.

Earliest Charge Effective Date: October 1, 2005.

Estimated Charge Expiration Date: May 1, 2007.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Snow removal equipment, 4 by 4 pickup truck with plow.

Access road lighting.

Airport directional signage and entrance road sign.

New electrical service to ARFF building.

Public address system rehabilitation in passenger terminal.

Terminal landside entrance rehabilitation.

Airport terminal apron pavement crack sealing.

Terminal airside entrance rehabilitation.

Thermal imaging cameras.

Unicom radio procurement.

Brick screen wall.

Runway 13 protection zone hazard removal.

PFC application preparation reimbursement.

Wildlife control/security fencing with perimeter road.

Snow removal equipment procurement, multi-purpose tractor with power broom.

Terminal bathroom rehabilitation.

Decision Date: April 1, 2003.

For Further Information Contact: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Public Agency: Burbank-Glendale-Pasadena Airport Authority, Burbank, California.

Application Number: 03–05–C–00–BUR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $17,509,405.

Earliest Charge Effective Date: January 1, 2008.

Estimated Charge Expiration Date: November 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Burbank-Glendale-Pasadena Airport.

Brief Description of Project Approved for Collection and Use: Terminal security enhancements.

Decision Date: April 11, 2003.

For Further Information Contact: Ruben Cabalbag, Western Pacific Region Airports Division, (310) 725–3630.

Public Agency: City of Greenville, Mississippi.

Application Number: 03–03–I–00–GLH.

Application Type: Impose a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $88,495.

Earliest Charge Effective Date: August 1, 2003.

Estimated Charge Expiration Date: June 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Air tax/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Mid-Delta Regional Airport.

Brief Description of Projects Approved for Collection:

Terminal area drainage improvement and parking lot reloation.

Rehabilitate runway 9/27 and convert to taxiway.

Terminal building fire escape stairwell.

Decision Date: April 11, 2003.

For Further Information Contact'' Patrick D. Vaught, Jackson Airports District Office, (601) 664–9885.

Public Agency: Port of Chelan County and Port of Douglas County, Wenathee, Washington.

Application Number: 03–04–C–00–EAT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $123,500.

Earliest Charge Effective Date: May 1, 2003.

Estimated Charge Expiration Date: June 1, 2004.

Class of Air Carriers Not Required To Collect PFC's:

None.

Brief Description of Projects Approved for Collection and Use:

Phase II pavement overlay—taxiway G slurry seal.

Equipment garage.

Security fencing.

Acquire vacuum runway sweeper.

Acquire curb sweeper.

Segmented circle and wind tee.

Update master plan.

Runway snow blower.

Decision Date: April 25, 2003.

For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–04–MRY, Monterey, CA	03/21/03	$4,077,754	$4,104,131	10/01/00	10/01/00
00–06–C–01–MRY, Monterey, CA	03/21/03	335,031	376,338	10/01/01	10/01/01
02–08–C–01–MRY, Monterey, CA	03/21/03	320,122	341,066	05/01/03	07/01/03
*00–03–C–01–CSG, Columbus, GA	04/01/03	1,251,387	1,251,387	11/01/04	11/01/04
99–04–C–01–PBI, West Palm Beach, FL	04/02/03	18,933,000	11,999,332	12/01/00	03/01/01
93–01–C–01–MTJ, Montrose, CO	04/04/03	1,461,745	1,422,535	02/01/09	08/01/03
92–01–C–04–STL, St. Louis, MO	04/10/03	71,642,933	67,933,947	08/01/95	08/01/95
95–01–C–03–LYH, Lynchburg, VA	04/18/03	296,723	185,940	08/01/98	07/01/96
00–02–C–01–LYH, Lynchburg, VA	04/18/03	832,756	827,616	06/01/02	06/01/02
01–03–C–02–LYH, Lynchburg, VA	04/18/03	705,654	705,654	06/01/05	06/01/05
00–01–C–02–VPS, Valparaiso, FL	04/21/03	34,278,718	34,407,710	11/01/19	08/01/18

Note: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Columbus, GA, this change is effective on June 1, 2003.

Issued in Washington, DC, on May 29, 2003.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 03–14077 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2003–14504]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 29 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, you may contact Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov*.

Background

On April 21, 2003, the FMCSA published a Notice of its receipt of applications from 29 individuals, and requested comments from the public (68 FR 19598). The 29 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Michael C. Boyne, Clifford D. Carpenter, Bobby R. Carter, Sr., Darryl D. Cassatt, Timothy H. Dubois, Robert E. Ezell, Jr., Orasio Garcia, Reginal Gillis, Raymond D. Gromley, Dennis K. Harris, Donald E. Howell, Tommy T. Hudson, William D. Johnson, Raymond T. Jones, Jr., Edward J. Kasper, Jimme D. Kline, Phillip L. Mangen, Paul V. Mattingly, Steven M. Montalbo, Bernard E. Roche, Charles J. Rowsey, Vincent Rubino, Randy G. Spilman, Wyatt W. Thayer, Jr., Thomas S. Thompson, Robert A. Wegner, John E. Wertz, John W. Williams, and Christopher D. Yates.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 29 applications on their merits and made a determination to grant the exemptions to all of them. The comment period closed on May 21, 2003. One comment was received, and its contents were carefully considered by the FMCSA in reaching the final decision to grant the exemptions.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red,

green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (*See* Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., ''Visual Requirements and Commercial Drivers,'' October 16, 1998, filed in the docket, FHWA–98–4334.) The panel's conclusion supported the agency's view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 29 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal and macular scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but 10 of the applicants were either born with their vision impairments or have had them since childhood. The 10 individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 33 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 29 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 42 years. In the past 3 years, four of the drivers have had convictions for traffic violations. Two of these convictions were for speeding and two were for ''failure to obey stop sign.'' Four drivers were involved in an accident but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 21, 2003 notice (68 FR 19598). Since there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published at 68 FR 19598.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket. (FHWA–98–3637)

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (*See* 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (*See* Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (*See* Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 29 applicants receiving an exemption, we note that the applicants have had only four accidents and four traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian

and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 29 applicants listed in this notice.

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 29 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received one comment in this proceeding. The comment was considered and is discussed below.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

After considering the comments to the docket and based upon its evaluation of the 29 exemption applications, the FMCSA exempts Michael C. Boyne, Clifford D. Carpenter, Bobby R. Carter, Sr., Darryl D. Cassatt, Timothy H. Dubois, Robert E. Ezell, Jr., Orasio Garcia, Reginal Gillis, Raymond D. Gromley, Dennis K. Harris, Donald E. Howell, Tommy T. Hudson, William D. Johnson, Raymond T. Jones, Jr., Edward J. Kasper, Jimme D. Kline, Phillip L. Mangen, Paul V. Mattingly, Steven M. Montalbo, Bernard E. Roche, Charles J. Rowsey, Vincent Rubino, Randy G. Spilman, Wyatt W. Thayer, Jr., Thomas S. Thompson, Robert A. Wegner, John E. Wertz, John W. Williams, and Christopher D. Yates from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: May 29, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. 03–14008 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15291]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel C.J. VICTORIA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15291 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to

properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15291. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel C.J. VICTORIA is:

Intended Use: ''Charter Fishing. My home port is Winthrop. I will be fishing all over Mass bay and points south and north. Charter fishing will be Mass Bay''.

Geographic Region: ''State of Massachusetts''.

Dated: May 29, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13951 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORATION

Maritime Administration

[Docket Number: MARAD 2003–15294]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FANDANGO.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15294 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15294. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FANDANGO is:

Intended Use: ''Carry passengers for Eco-tourism along the Florida Gulf Coast.''

Geographic Region: ''Panama City, Fl. To Tarpon Springs, Fl.''

Dated: May 29, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13948 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15293]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel INTEGRITY.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15293 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15293. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will

be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel INTEGRITY is:

Intended Use: ''Charter services near Galveston, Texas, coastal waters.''

Geographic Region: ''Texas Gulf Coast.''

Dated: May 29, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13949 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15292]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LADYHAWKE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15292 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15292. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LADYHAWKE is:

Intended Use: ''The intended use of the vessel is to operate as a tour boat offering tours in shallow waters where other vessels cannot operate. This craft rides on a cushion of air 30 inches above the surface producing no wake and having no negative impact on the environment. Our intention is to work the craft on the East Coast during summer and then work our way to Florida when the weather gets cooler on the East Coast.''

Geographic Region: ''The geographic region for the operation is in the following States; Florida, Georgia, South Carolina, New York and New England States. I would be providing tours in areas not accessible by other conventional boats. We presently have a MARAD waiver to operate this craft in waters from Miami to the Keys. Docket No. 2002–13047.''

Dated: May 29, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13950 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15289]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LEID BACK.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15289 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15289. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LEID BACK is:

Intended Use: ''Private chartered catamaran sailing with an inter-island service in the ''Leeward Oahu'' geographic area of Hawaii.''

Geographic Region: ''Coastwise trade in Hawaii.''

Dated: May 29, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13953 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15290]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SECOND WIND.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15290 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15290. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SECOND WIND is:

Intended Use: ''Charter & day trips.''.

Geographic Region: ''Florida.''.

Dated: May 29, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13952 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20999]

National Express Corporation—Intra-Corporate Family Transaction Exemption

National Express Corporation (NEC), a noncarrier, has filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1182.9.[1] The exempt transaction involves the corporate restructuring of NEC's student transportation division, which, in addition to providing exempt school bus services, also provides charter passenger carrier services to the public.[2]

Under the transaction, NEC, a Delaware corporation merged certain directly and indirectly controlled subsidiaries into a single Delaware limited partnership, Durham School Services, L.P. (DSSLP), a motor passenger carrier. As part of the reorganization, Durham Transportation, Inc., a California corporation (DTI CA) was re-incorporated as Durham Transportation, Inc., a Delaware corporation (DTI DE), through the incorporation of DTI DE in Delaware and the merger of DTI CA into DTI DE. NEC assigned shares of DTI DE to Durham Holding I, L.L.C. (Durham Holding I), a noncarrier and a limited partner of DSSLP, in exchange for the sole membership interest in Durham Holding I, and it assigned the remaining shares of DTI DE to Durham Holding II, L.L.C. (Durham Holding II), a noncarrier and the general manager of DSSLP, in exchange for the sole membership interest in Durham Holding II. DTI DE was converted into Durham School Services, L.P. (DSSLP), a Delaware limited partnership with Durham Holding I and Durham II as its limited and general partner, respectively. NEC merged its second-tier subsidiaries, Winkels Transportation Co., School Services and Leasing of Massachusetts, Inc., and Student Bus Services, Inc., into its first tier subsidiaries, Crabtree-Harmon Corporation, Robinson Bus Services, Inc., Educo Transit Company, Kenneth E. Bauman Bus, Inc., School Services and Leasing, Inc., Helweg & Farmer Transportation Co., Inc., and Stock Transportation L.L.C. All of the outstanding shares of the first tier operating subsidiaries were contributed to Newco, a newly formed Delaware corporation. The first-tier operating subsidiaries were merged into Newco and Newco was merged into DSSLP. NEC retains ultimate ownership and control of DSSLP because DSSLP is the sole member of Durham Holding I and Durham Holding II.

The transaction was consummated on or about December 31, 2002.[3]

[1] The Board exempted intra-corporate family transactions of motor carriers of passengers that do not result in significant operational changes, adverse changes in service levels, or a change in the competitive balance with carriers outside the corporate family in *Class Exemption for Motor Passenger Intra-Corporate Family Transactions,* STB Finance Docket No. 33685 (STB served Feb. 18, 2000).

[2] The Board previously exempted the acquisition of control of five motor passenger carriers by National Express Group plc, NEC's parent, and NEC in *National Express Group plc, et al.—Control Exemption—School Services and Leasing, Inc., et al.,* STB Docket No. MC–F–20968 (STB served Aug. 28, 2000).

[3] NEC states that it completed the transaction without the benefit of transportation counsel. Upon learning that the transaction is subject to the Board's jurisdiction, NEC consulted with and

Continued

According to NEC, the transaction will provide for certain financial, operational and other efficiencies. As a result of the reorganization, NEC states that it will be able to maximize the value of each of the business segments, position the business segments for strategic alliances and/or growth, and protect intellectual property assets. NEC also states that the reorganization will simplify accounting and accountability for revenue, expenses, and profits of the operations.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1182.9. NEC states that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. NEC also states that, because it directly or indirectly holds all of the stock of the affected entities, no agreement or contract was entered into, except for the corporate documentation and filings required to implement the reorganization. NEC further states that there will be no effect upon employees because all of them will be retained.

If the verified notice contains false or misleading information, the Board shall summarily revoke the exemption and require divestiture. Petitions to revoke the exemption under 49 U.S.C. 13541(d) may be filed at any time. *See* 49 CFR 1182.9(c).

An original and 10 copies of all pleadings, referring to STB Docket No. MC–F–20999, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas W. Wilcox, Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: May 23, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–13674 Filed 6–3–03; 8:45 am]

BILLING CODE 4915–00–P

retained counsel and then filed this notice of exemption.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 404X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Webster County, NE

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 9.28-mile line of railroad between BNSF milepost 87.02, near Blue Hill, and milepost 96.30, near Bladen, in Webster County, NE. The line traverses United States Postal Service Zip Codes 68928 and 68930.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1105.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 4, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 16, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152. 28 must be filed by June 24, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to the applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 9, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, D.C. 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by June 4, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 22, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A Williams,

Secretary.

[FR Doc. 03–13538 Filed 6–3–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1102.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed new privacy act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Internal Revenue Service, gives notice of a proposed new system of records entitled ''Treasury/IRS 22.012—Health Coverage Tax Credit Program Records.''

DATES: Comments must be received no later than July 7, 2003. This new system of records will be effective July 14, 2003, unless the IRS receives comments, which would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for inspection and copying upon request in the Freedom of Information Reading Room (1621), at the above address.

FOR FURTHER INFORMATION CONTACT: Ed Reniker, HCTC Program Manager, Union Center Plaza (CNN Building) 820 First Street, NE., Washington, DC, (202) 962–0540 (not a toll free number).

SUPPLEMENTARY INFORMATION: This system of records is for implementation of health coverage tax credit provisions of sections 201 and 202 of Public Law 107–210, Trade Act of 2002. The proposed system will allow the IRS to administer the health care credit provisions of Public Law 107–210.

The Health Coverage Tax Credit (HCTC) is a federal tax credit that equals 65 percent of the premium paid by eligible individuals for ''qualified'' health coverage. Sections 201 and 202 of The Trade Act of 2002 created the credit to help pay for private health coverage for two categories of persons: (1) Displaced workers certified to receive certain Trade Adjustment Assistance (TAA) benefits and (2) individuals receiving benefits from the Pension Benefit Guaranty Corporation (PBGC). The HCTC can also be used to help purchase health coverage for an eligible individual's spouse and family members that can be claimed on the individual's tax return as dependents.

The IRS is responsible for administering the HCTC program in cooperation with the Department of the Treasury. It is anticipated that a broad range of HCTC information and services will be provided by the IRS'' contractor at the Customer Contact Center located in Waterloo, IA. HCTC financial and accounting operations will be performed by the IRS'' contractor at the HCTC Delivery Center located in Houston, TX.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The proposed new system of records entitled ''Treasury/IRS 22.012—Health Coverage Tax Credit Program Records,'' is published in its entirety below.

Dated: May 29, 2003.

W. Earl Wright Jr.,

Chief Management and Administrative Programs Officer.

Treasury/IRS 22.012

SYSTEM NAME:

Health Coverage Tax Credit Program Records-Treasury/IRS.

SYSTEM LOCATION:

(1) IRS Martinsburg Computing Center (MCC) in Martinsburg, WV; (2) Production System located in Sterling, VA; (3) Customer Contact Center located in Waterloo, IA; (4) HCTC Delivery Center located in Houston, TX; (5) HCTC Program Office in Washington DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for, and are eligible for the credit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records required to administer the Health Coverage Tax Credit program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 201 and 202 of Public Law 107–210, The Trade Act of 2002, codified at 26 U.S.C. 35, 6103(l)(18) and 7527, Credit for Health Insurance Cost of Eligible Individuals, and the Department of the Treasury, under Title II, grants authority for maintenance of the HCTC system.

PURPOSE(S):

The purpose is to administer the health care credit provisions of sections 201 and 202 of Public Law 107–210, Trade Act of 2002. The program assists in the payment for private health coverage for displaced workers certified to receive certain Trade Adjustment Assistance (TAA) benefits, and for individuals receiving benefits from the Pension Benefit Guaranty Corporation (PBGC) and their qualifying family members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may only be disclosed as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, electronic and magnetic media.

RETRIEVABILITY:

By name, taxpayer identification number, health care insurance policy number.

SAFEGUARDS:

Access controls will not be less than those provided for by the Manager's Security Handbook, IRM 1.16 and the Automated Information System Security Handbook, IRM 25.10.2.

RETENTION AND DISPOSAL:

Record retention will be established in accordance with the National Archives and Records Administration Regulations Part 1228, Subpart B-Scheduling Records.

SYSTEM MANAGER(S) AND ADDRESS:

HCTC Program Manager, Union Center Plaza (CNN Building), 820 First Street, NE., Washington, DC., (202) 962–0540 (not a toll free number).

NOTIFICATION PROCEDURE:

Individuals may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager address listed above.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager address listed above.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Individuals Eligible under HCTC program; Internal Revenue Service Taxpayer Account Information; Health

Coverage Providers; Department of Labor; Pension Benefit Guaranty Corporation; State workforce agencies, and the Department of Health and Human Services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–14006 Filed 6–3–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 107

Wednesday, June 4, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1470–P]

RIN 0938–AL89

Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates

Correction

In proposed rule document 03–11966 beginning on page 27154 in the issue of Monday, May 19, 2003, make the following correction:

On page 27154, in the first column, under **DATES**, in the last line ''July 18, 2003'' should read ''July 15, 2003''.

[FR Doc. C3–11966 Filed 6–3–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15077; Airspace Docket No. 03–ACE–45]

Modification of Class E Airspace; Pocahontas, IA

Correction

In rule document 03–13047 beginning on page 28121 in the issue of Friday, May 23, 2003, make the following corrections:

1. On page 28121, in the second column, in the first paragraph, in the second line, after the word ''revealed'' add ''discrepancies in the Pocahontas Municipal Airport airport reference point used in the legal''.

2. On the same page, in the same column, under the **SUPPLEMENTARY INFORMATION** heading, in the 11th line, after the word ''revised'' add ''Pocahontas Municipal Airport airport reference point and brings the legal description of the''.

[FR Doc. C3–13047 Filed 6–3–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15078; Airspace Docket No. 03–ACE–46]

Modification of Class E Airspace; Red Oak, IA

Correction

In rule document 03–13045 beginning on page 28123 in the issue of Friday, May 23, 2003, make the following correction:

On page 28123, in the third column, under the **SUMMARY** heading, in the seventh line, after the word ''area.'' add the sentence ''This action corrects the discrepancies by modifying the Red Oak, IA Class E airspace area.''.

[FR Doc. C3–13045 Filed 6–3–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
June 4, 2003

Part II

Department of Agriculture

Forest Service

36 CFR Part 215

Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 215

RIN 0596–AB89

Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the notice, comment, and appeal procedures for projects and activities implementing land and resource management plans on National Forest System lands. The final rule changes the procedures in the current rule to clarify and reduce the complexity of certain provisions, to improve efficiency of processing appeals, to encourage early and effective public participation in the environmental analysis of projects and activities, and to ensure consistency with the provisions of the statutory authority. Changes address emergency situations; notice and comment procedures and time periods; substantive comments; who may appeal; Deciding Officers; content of an appeal; and the formal disposition process.

EFFECTIVE DATE: This rule is effective June 4, 2003, except for those provisions concerning electronic comments and electronic appeals at 36 CFR 215.5(b)(vi–vii), 215.6(a)(4)(iii), 215.7(b)(2)(i) and (iii), and 215.15(c)(1) and (3), which are effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Segovia, Assistant Director for Appeals and Litigation, Ecosystem Management Coordination, telephone (202) 205–1066.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service is responsible for managing 192 million acres in National Forests, National Grasslands, and other areas known collectively as the National Forest System. The Chief of the Forest Service, through a line organization of regional foresters, forest supervisors and district rangers, manages the surface resources and, in some instances, the subsurface resources of these lands.

The United States Department of Agriculture (Department), at its own discretion, provides processes by which persons or organizations may appeal or object to significant amendment, revision, or approval of a land and resource management plan (36 CFR part 219). For plans prepared using the 1982 planning regulations, Appendix A to § 219.35(b) provides the option to select the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000). A separate process for notice, comment, and appeal of National Forest System projects and activities was mandated by section 322 of Interior and Related Agencies Appropriation Act of Fiscal Year 1993 (Pub. L. 102–381, 106 Stat. 1419) (hereinafter ''Appeals Reform Act'' (ARA)), with implementing regulations promulgated on November 4, 1993 at 36 CFR part 215 (58 FR 58904).

On December 18, 2002, the Forest Service published a proposal to amend the rule at 36 CFR part 215 (67 FR 77451). A 60-day comment period was provided. In addition, the Forest Service gave direct notice of the proposed amendment and invited comment from more than 150 national organizations and Federal agencies. Approximately 25,000 comment letters were received from individuals; representatives of Federal, State, and local government agencies; environmental groups; Indian tribes; professional associations; and both commodity and non-commodity industry groups. The responses were form letters as well as unique individual letters, some sent electronically and others mailed hard copy. All suggestions and comments have been reviewed and considered in preparation of this final rule.

General Comments

Comments were received from those who favored and those who disagreed with the same proposed changes, addressing many of the same issues from opposing viewpoints. Many requests for clarifications were received as well as numerous suggestions for additional changes.

Those who generally supported the proposed rule changes stated that the changes would improve procedural effectiveness and efficiency, reduce the abuse of the appeals process, and improve forest health.

Those who generally opposed the proposed rule changes contended that the changes would reduce a citizen's right to participate in the project planning process, might result in increased litigation, and would decrease forest health.

Comments were received on nearly every section asserting that various portions of the proposed rule were in violation of the Appeals Reform Act (ARA). Rather than answer each ARA violation assertion individually, the Department is choosing to respond generally. The Department does not believe that any provision, requirement, section, or paragraph is in violation of the ARA. The Department has carried out the intent of Congress with this rule and the changes in the final rule reflect that intent. The preamble to the proposed rule (67 FR 77451, December 18, 2002) contains an extensive discussion of the ARA and the response to the ARA provisions in the development of the 1993 rule (58 FR 58904, November 4, 1993) and the changes proposed to the rule in 2002.

Native American tribes commented on almost every aspect of the proposed rule. The tribes expressed a general concern that the proposed rule failed to recognize particular rights granted under various statutes, treaties, and other legal instruments. They believed that tribal participation in many Forest Service decisions would be greatly reduced by the proposed changes, and that consultation is required to negotiate a process for harmonizing the proposed rule with their concerns. Because the concerns expressed were primarily general in nature, the Department is responding generally, rather than including a response in every section. Native Americans have a special and unique legal and political relationship with the United States government, including the Department of Agriculture and the Forest Service. Tribal governments are sovereign governments that are separate and distinct from other governmental entities. In addition, land and resources hold a special and unique meaning in the spiritual and everyday lives of many Native Americans. National Forest System lands contain many traditional, historic, and contemporary use areas of critical importance to Native Americans. Tribal cultural practices occur commonly on National Forest System lands. Thus, it is critical that the Forest Service respect and work with all tribes in a Government-to-Government relationship during project planning and engage in consultation regarding Government actions affecting tribal rights and interests, consistent with Government policy. However, the Department does not believe it is appropriate to include special provisions relating to tribes in the final rule.

After publication of the proposed rule, the Department became aware of an inconsistency with the use of the terms ''substantive comment'' and ''comment.'' Respondents noted this inconsistency also. Throughout the final rule, only the phrase ''substantive comment(s)'' is used, as defined at § 215.2.

Section-by-Section Comments

The following discusses and responds to the public comments on the proposed changes to 36 CFR part 215 received during the Department's 60-day comment period. It also discusses differences between the proposed rule and the final rule and why those changes were made. The final rule has been reorganized. As a result, some sections have new titles and/or a new designation as shown in the table below:

BILLING CODE 3410–11–P

Proposed section number and title	Final section number and title
§215.1 Purpose and scope	§215.1 Purpose and scope
§215.2 Definitions	§215.2 Definitions
§215.3 Proposed actions subject to legal notice and opportunity to comment	§215.3 Proposed actions subject to legal notice and opportunity to comment
§215.4 Proposed actions not subject to legal notice and opportunity to comment	§215.4 Proposed actions not subject to legal notice and opportunity to comment
§215.5 Legal notice of proposed action and opportunity to comment	§215.5 Legal notice of proposed actions
§215.6 Consideration of comments	§215.6 Comments on proposed actions
§215.7 Legal notice of decision	§215.7 Legal notice of decision
	§215.8 Appeal Deciding Officer
§215.8 Decision implementation	§215.9 Decision implementation
§215.9 Emergency situations	§215.10 Emergency situations
§215.10 Decisions subject to appeal	§215.11 Decisions subject to appeal
§215.11 Decisions and actions not subject to appeal	§215.12 Decisions and actions not subject to appeal
§215.12 Who may appeal	§215.13 Who may appeal
§215.13 Where to file appeals	[incorporated in §215.8]
§215.14 Appeal time periods and process	[redesignated at §215.15]
§215.15 Appeal content	§215.14 Appeal content
	§215.15 Appeal time periods and process
§215.16 Dismissal of appeal without review	§215.16 Dismissal of appeal without review
§215.17 Informal disposition	§215.17 Informal disposition
§215.18 Formal review and disposition procedures	§215.18 Formal review and disposition procedures
§215.19 Appeal Deciding Officer's authority	[redesignated at §215.8]
§215.20 Appeal Reviewing Officer's responsibilities	§215.19 Appeal Reviewing Officer
§215.21 Secretary's authority	§215.20 Secretary's authority
§215.22 Judicial proceedings	§215.21 Judicial proceedings
§215.23 Applicability and effective date	§215.22 Applicability and effective date
§215.24 Information collection requirements	[removed]

BILLING CODE 3410–11–C

Proposed section 215.1 discussed the purpose and scope of the rule.

Comment. Some of the respondents believed that the purpose should include a reference to the public law or statute that established the requirement for the rule; others wanted to know which phase of public comment was affected by this rule; and some wondered what scope of activities were covered, specifically activities concerning special uses.

Response. Every rule is required to cite its authority. The Authority citation (including the U.S. Code, public law, and statute) for this rule follows the table of contents and precedes § 215.1.

The 30-day comment period provided for proposed actions documented in an environmental assessment (EA) is not a ''phase of public comment'' pursuant to the National Environmental Policy Act (NEPA). It is a separate action mandated by the Appeals Reform Act (ARA). In the case of proposed actions documented in a draft environmental impact statement (EIS), the requirements of the ARA for notice and comment utilize existing procedures in NEPA's implementing regulations at 40 CFR parts 1503 and 1506.10 and agency policy in Forest Service Handbook (FSH) 1909.15.

In response to confusion about the scope of activities covered, specifically activities affecting special uses, the final rule clarifies in § 215.1(b) that decisions which affect an authorized use or occupancy of National Forest System lands are subject to appeal procedures in either part 215 or part 251, subpart C, but not both. Also, in response to public comment, the final rule removes the issue preclusion language from paragraph (b); the proposed rule at §§ 215.1 and 215.15 would have limited appeals to those issues raised during the comment period. The reason for this change is discussed further under § 215.15 below.

Proposed section 215.2 clarified and revised definitions for specific terms used in the proposed rule. The proposed revision added six new definitions, removed three definitions, and revised and updated several other definitions from the 1993 rule.

Comment. Several comments were received regarding both the proposed changes and definitions without proposed changes. One definition that generated a number of comments, both supporting and disagreeing with the change, was emergency situation. Those supporting the proposed definition believe that the threat of substantial economic loss to adjacent communities and property owners, as well as the loss of resource value, should be factored into an emergency situation determination. Some of those commenting believed that it minimized the economic burden ''shouldered by local communities'' that ''results from delayed decisions.'' Those disagreeing with the proposed definition were unhappy that the definition had been broadened to include substantial loss of economic value as a factor in determining emergency situations. They believe this change places economic interests above environmental and social concerns. Others said that it would lead to increased logging because the definition has been broadened to the point that almost any timber sale would fit the new definition. Others believe that the new definition was arbitrary and capricious, and that it violated the ARA. Some respondents wanted the reference ''to the Government'' omitted because potential economic losses to anyone should be considered. Others wanted the definition to apply to county- or State-declared emergencies because such actions are aligned with the Department philosophy of cooperation, consideration, and collaboration with local governments.

Response. The ARA does not provide a statutory definition for emergencies nor does it specify particular criteria for making such determinations. The definition in the 1993 rule attempted to provide the necessary guidance. Experience has shown there is a need for refinement and clarification because of the belief by some that emergencies were limited to those situations included as examples. The result has sometimes been additional taxpayer cost when timber could not be sold, but was still in need of removal for fuel reduction. Fire-impacted forest ecosystems and damaged watersheds impose a variety of environmental and economic costs to communities, particularly when immediate action is not taken. These implementation delays often result in lost opportunities for the Department to address resource problems in an environmentally sound and fiscally responsible manner. The Department believes the intent of an emergency situation determination is to allow immediate implementation of all or part of a proposed action when necessary to remedy these problems.

Comment. In addition to comments related to emergencies discussed above, one commenter suggested changing the definition of the Appeal Deciding Officer to specify that the Appeal Deciding Officer is only one level above the ''decisionmaking officer's'' (Responsible Official) position.

Response. After careful consideration, the Department concurs. The Department believes that it is appropriate that the position deciding an appeal should be at the field level. The final rule reflects this change. A corresponding change is made in § 215.8 Appeal Deciding Officer.

Comment. Other commenters believed there was a need for both further clarification and new definitions.

Response. The final rule adds 10 new definitions that did not appear in the 1993 rule. The final rule also revises 13 definitions, removes 4 definitions, and leaves 4 definitions unchanged from the 1993 rule. The Department believes these changes will help clarify the requirements and intent of the rule.

The 10 new definitions are: *Address, Appeal disposition, Emergency situation, Lead appellant, Name, National Forest System land, Newspaper(s) of record, Projects and activities implementing a land and resource management plan, Substantive comments,* and *Transmittal letter.*

The 13 revised definitions are: *Appeal, Appeal Deciding Officer, Appeal period, Appeal record, Appeal Reviewing Officer, Appellant, Categorically excluded (CE), Comment period, Decision documentation, Environmental Assessment (EA), Forest Service line officer, Proposed action,* and *Responsible Official.*

The 4 removed definitions are: *Decision document, Decision Memo, Interested party,* and *Proposed timber harvest categorically excluded from documentation under Forest Service Handbook 1909.12, section 31.2, paragraph 4.*

The 4 unchanged definitions are: *Decision Notice (DN), Environmental Impact Statement (EIS), Finding of No Significant Impact (FONSI),* and *Record of Decision (ROD).*

Proposed section 215.3 discussed projects and activities subject to legal notice and opportunity to comment.

Comment. Respondents questioned the term ''nonsignificant amendment to a land and resource management plan'' (part 219) and whether ''private party actions'' are subject to this part.

Response. The term ''nonsignificant amendment to a land and resource management plan'' is a term used in the Department's 1982 implementing regulation at part 219 for the National Forest Management Act (as discussed in the **Background** section). Any proposed action implementing a land and resource management plan and resulting in a Decision Notice (DN) or Record of Decision (ROD) is subject to part 215, including those referred to by respondents as ''private party actions'' and ''private projects,'' assuming that the respondents were referring to special use authorizations.

Proposed section 215.4 revised current regulatory text concerning actions not subject to legal notice and comment. The proposed rule redefined **paragraph (b)** on categorical exclusions and added **paragraph (d)** addressing determinations by the Responsible Official concerning revision of an environmental assessment. **Proposed paragraph (a)** excluded from notice and comment draft environmental impact statements (EIS) because notice and comment procedures are provided pursuant to CEQ's regulations at 40 CFR parts 1500–1508.

Comment. Those commenting believed that the rule should state that these documents are subject to notice and comment but clarify that it may be a different mechanism.

Response. After review of the comments, the Department concurs that it may be confusing to say that draft EISs are excluded from notice and comment. In the final rule, proposed paragraph (a) is now § 215.3(b) and the remaining paragraphs in § 215.4 are redesignated accordingly.

Comment. Respondents requested clarity or questioned all of the actions not subject to legal notice and comment.

Proposed paragraph (b), which discussed proposed actions categorically excluded from documentation in an environmental assessment (EA) or environmental impact statement (EIS), generated the majority of the comments related to this section. Respondents supportive of this provision felt it was consistent with the intent and purpose of the ARA. Those opposed raised a variety of concerns, including their belief that categorical exclusions not being subject to this part would increase litigation, exempt a majority of projects from comment, and preclude proper analysis.

Some questioned specifically why Categorical Exclusion 4, Timber Harvest, is no longer included in this section.

Response. While respondents questioned all of the actions not subject to legal notice and comment, it should be noted that only one is new; the remainder have been in place since the rule was promulgated in 1993 (58 FR 58904). Regarding categorical exclusions (paragraph (b)), Congress did not express a specific intent regarding where the ''line should be drawn'' regarding which activities would be subject to notice, comment, and appeal. While both agency policy in FSH 1909.15 and regulations at 40 CFR 1508.4 made provision for public involvement in categorically excluded actions for many years prior to passage of the ARA, Congress knew that not every decision of the Forest Service was subject to appeal before they passed the ARA. There was no indication in the ARA that Congress intended to extend the notice, comment, and appeal requirements to all classes of categorically excluded activities. This was a determination left to the discretion and judgment of the Secretary. It is evident in the language of the ARA that Congress granted the Secretary authority to establish a flexible process through rulemaking. The Department believes that Congress used the phrase ''proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans'' to delineate between administrative appeals of forest plans and project level decisions, rather than define a comprehensive or precise set of activities. Congress could, of course, have provided a specific definition; but Congress did not do so. The Department believes that both the current and revised regulations are within the scope of the Secretary's delegated authority to establish a notice, comment, and appeal process as set forth in the ARA. Further, this assumption is supported by the fact that during the 10 years of implementation of the current regulations, Congress has not sought to amend the ARA to adjust the agency's implementation.

It is important to note that, absent a statutory definition, the courts have recognized that agencies are free, indeed expected, to fill in the gaps and that such regulatory interpretations are due deference. Through the 1993 rulemaking process, the Secretary concluded that the Forest Service's categorically excluded activities were generally not of the sort for which Congress intended to apply additional notice, comment, and appeal requirements given the generally minor potential for environmental effects. By their very nature, activities that have been categorically excluded generally have no significant environmental effect. Proposed actions that are categorically excluded were determined not to cross the NEPA ''significance threshold'' based on the agency's experience, judgment, and analysis from implementing similar activities over many years. Therefore, they typically do not include preparation of extensive records; in fact, decision documents or project files are not required by Forest Service procedures to be maintained for many categorical exclusions. Congressional intent was to streamline the appeal process, not entangle the agency in a costly and time-consuming exercise for minor decisions by Forest Service decisionmakers. While projects and activities that the Forest Service categorically excludes are not subject to this rule, nothing in this part exempts them from NEPA. Agency procedures at FSH 1909.15, Chapter 10, section 11 state that, ''Although the Council on Environmental Quality (CEQ) Regulations require scoping only for EIS preparation, the Forest Service has broadened the concept to apply to all proposed actions.'' The Department believes that including affected and interested individuals in project planning early in the process is more effective than applying the additional procedures for notice, comment, and appeal contained in this rule and that applying the provisions of this rule to categorically excluded actions is neither intended nor required by the ARA. Thus, proposed activities that are categorically excluded are exempt from the final rule.

Regarding Categorical Exclusion 4, Timber Harvest, the preamble of the proposed rule discussed Categorical Exclusion 4 being removed because the Forest Service no longer used a timber harvest categorical exclusion of that nature. That situation remains true. However, subsequent to publication of the proposed revision to part 215, the Forest Service published proposals for new categorical exclusions for limited timber harvest (67 FR 1026, January 8, 2003) and for fire management activities (67 FR 77038, December 16, 2002). It is important to note that the proposed categorical exclusions are not of the same nature and not intended to replace the former Categorical Exclusion 4. These new categorical exclusions are limited by size and application and are more specific about the types of harvest methods when compared to the Forest Service's former Categorical Exclusion 4. The proposed categorical exclusions are, therefore, much more limited in scope than the former Categorical Exclusion 4.

Comment. Several comments referenced the *Heartwood, Inc.* v. *United States Forest Service* litigation, Civ. No. 99–4255 (S.D. Ill).

Response. On September 15, 2000, a Federal District Court approved an agreement to settle litigation challenging the Department's 1993 regulations at 36 CFR part 215 implementing the ARA. In that agreement, the Forest Service agreed to provide notice, comment, and appeal opportunities for certain defined categories of projects and activities. The Forest Service agreed to make these procedural opportunities available, first through a nationwide directive published in the **Federal Register**. On October 17, 2000, the Forest Service, in compliance with section I(A) of the settlement agreement, published the nationwide directive in the **Federal Register** (65 FR 61302) announcing the terms of the settlement and notifying the public that notice, comment and appeal procedures would be applied to the projects and activities set forth in the settlement agreement for decisions made after October 24, 2000. Second, the Forest Service agreed to issue an interim final rule announcing the same procedural changes, with opportunity for public comment, within 5 months from the date the District Court issued an order approving the terms of the settlement. The settlement anticipated that a subsequent rulemaking process, with an opportunity for public comment, would supersede these interim procedures.

On September 27, 2000, several groups filed motions with the District Court to intervene and set aside the settlement agreement. The District Court subsequently allowed the intervention and on February 6, 2001, the District Court vacated the order approving the settlement agreement. In response, the Forest Service reinstated the procedures for notice, comment, and appeal, as they

existed prior to the settlement. The Heartwood plaintiffs appealed the District Court's orders involving intervention and setting aside the settlement agreement. On January 14, 2003, the United States Circuit Court of Appeals for the Seventh Circuit reversed and remanded the District Court's intervention order and vacated the District Court's February 6, 2001, order that vacated the settlement agreement.

During the pendency of the Heartwood appeal in the Seventh Circuit, the Forest Service commenced the current rulemaking process. This process was envisioned by the parties to the settlement as a final step in addressing the Forest Service's 1993 rule governing notice, comment, and appeal procedures at part 215. In other words, the Heartwood settlement resolved those plaintiffs' legal challenge to the Forest Service's 1993 rule for notice, comment, and appeal at part 215 by establishing interim procedures that provided additional notice, comment, and appeal opportunities for a set of defined types of activities, that, under the 1993 rule, would not be required. These interim measures, however, would remain viable only as long as the 1993 rule was in place.

Prior to the District Court's vacation of the settlement and subsequent to the Seventh Circuit's reinstatement of the settlement, the Forest Service began implementation of the settlement agreement's ''initial commitment'' phase allowing for notice, comment, and appeal of certain projects and activities that may not have been previously subject to these procedures. However, the current rulemaking for part 215 constitutes a step anticipated by the settlement agreement whereby the Forest Service would promulgate new regulations that would replace both the existing regulations and the interim measures set forth in the settlement agreement. This rulemaking was commenced during the time that the settlement agreement was vacated, but was anticipated by all parties as a final step that would supersede the interim procedures provided by the settlement agreement. Therefore, upon the effective date of this final rule, the Forest Service will cease to implement the procedures set forth in the ''interim'' provisions and the settlement agreement will no longer have any applicability.

Comment. Other paragraphs in § 215.4 that generated comments were proposed paragraphs (d), (e), and (f). Some commenters felt that determinations not to revise an EA or supplement an EIS, based on new information or changed circumstances, should be subject to notice, comment, and appeal. Comments related to proposed paragraph (e) included the belief that Forest Service Manual and Handbook changes should be subject to this rule. Those expressing concerns about proposed paragraph (f) questioned why nonsignificant amendments to a land and resource management plan made separately were excluded from notice and comment.

Response. With regard to proposed paragraph (d), determinations regarding whether or not to revise an EA are not ''decisions'' of the nature discussed in the ARA. Guidance for making such determinations is found in FSH 1909.15, Chapter 10, section 18. With regard to paragraph (e), changes to the Manual and Handbooks are not subject to this part because they also are not projects or activities implementing a land and resource management plan. Similarly, in regard to proposed paragraph (f), these types of amendments are not associated with a proposed action; therefore, they are not the type of decision discussed in the ARA. However, as discussed above, they are subject to either the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (*see* 36 CFR parts 200 to 299, Revised as of July 1, 2000).

Proposed section 215.5 described the requirements for legal notice of proposed actions and the opportunity to comment. **Proposed paragraph (a)** gave the Responsible Official discretion to determine the most effective timing for providing the 30-day comment period.

Comment. Those favoring the proposed change believed that it would help focus participation earlier in the process and allow for more effective decisionmaking. Those who disagreed thought the proposed change would reduce the public's ability to be involved, was contrary to NEPA, and were concerned that it would be applied unevenly. Some respondents wanted a longer comment period, while others wanted a shorter one.

Response. It is critical to achieving the goals of the ARA that those interested in or affected by a proposed action make their concerns and objections known to the Responsible Official when they can be considered and responded to meaningfully, *i.e.*, before a decision has been made. The change in the final rule is intended to clarify and highlight this important point. And, allowing the Responsible Official flexibility in determining when to give legal notice for the opportunity to comment meets the intent of the ARA. It provides a clearly defined, uniform period when public comment on specific Forest Service projects and activities is solicited. Comments referring to the ''removal of the current two or three scoping periods allowed presently'' lead the Department to believe further clarification is needed here to differentiate between the notice and comment provisions of this rule pursuant to the ARA and scoping pursuant to NEPA. The 30-day comment period in this section meets the requirements of the ARA. This rule is not related to nor does it affect anything in the implementing regulations for NEPA (40 CFR parts 1500–1508) or agency policy in FSH 1909.15. Further, nothing in the proposed rule or this final rule inhibits public participation in project planning. In the case of EISs, the Department has chosen to meet the ARA requirements by utilizing the notice and comment period on a draft EIS required by 40 CFR parts 1503 and 1506.10 rather than provide two separate comment periods. Forest Service Handbook 1909.15 and 40 CFR parts 1500–1508 do not specify a comment period for EAs.

Proposed section 215.5, paragraph (b) described giving notice. One proposed change was that the actual date the comment period ended would not be stated in the legal notice. Other changes included a provision for accepting electronic comments, specifying that the 30 days could not be extended, and noting that appeal eligibility is tied to providing substantive comments during the 30-day comment period.

Comment. Those responding had concerns about not publishing the actual end date of the comment period in the legal notice and not allowing for extension of the 30-day period.

Response. Currently, the rule directs that the last date for submission of public comment must be published. As a result, in many cases the agency has had to estimate the date of publication when preparing legal notices. While the agency can request that newspapers publish legal notices on a certain date, a publication date is not guaranteed. When publication occurs on a different date than estimated, the result has been conflicting dates and confusion. The Department believes that removing this requirement resolves the potential for conflicts and leaves all parties with the same information.

In the final rule, proposed paragraph (b)(1)(iv) is modified to apply only to proposed actions documented in an EA. A new paragraph (b)(1)(v) is added for proposed actions documented in draft EISs, and the remaining subparagraphs are redesignated accordingly. These changes are made to accommodate the change discussed in § 215.4 above. New paragraph (b)(1)(vii) is modified to say

that the legal notice shall include the business hours for the Responsible Official's office for those wishing to hand-deliver their comments. The final rule also modifies paragraph (b)(2)(ii) to state that if the proposed action is a Regional Forester or Chief's decision, notice shall be given in the appropriate newspaper(s) of record for the affected Forest Service unit(s) and to explicitly state that the newspaper of record is the exclusive means for calculating the time to submit comments for EAs and the Notice of Availability in the **Federal Register** is the exclusive means for calculating the time to submit comments for EISs. Here and throughout the rule, the term ''principal newspaper'' is changed to ''newspaper of record.'' While the term ''principal newspaper'' has been used since the rule was promulgated, the Department believes the term ''newspaper of record'' better defines this concept.

Proposed section 215.5, paragraph (c) described the requirements regarding the content of comments, including the submission of substantive comments. Other changes included requiring signatures and clarifying where and how oral comments will be accepted. Also included was a provision noting that if an organization provides comments, then only the organization is eligible to appeal. Individual members of the organization would not be eligible to appeal simply by membership in that organization.

Comment. Those supporting the changes thought they would be instrumental in ensuring the Forest Service is aware of who is providing comments and their specific issues. Those disagreeing with the changes expressed concerns regarding the signature requirement and oral commenters. Several respondents questioned why an organization's comments did not apply to an individual member's appeal.

Response. Because appeal eligibility is linked to commenting, the Department must be able to verify who submitted substantive comments. However, after reviewing the public comment on the proposal to require a signature, the final rule clarifies that verification of the commenter's identity is required for appeal eligibility but that a signature will normally satisfy that requirement. If a signature is not provided or is illegible, the commenter may be asked to verify authorship. With regard to those who provide oral comments, the final rule addresses the concern of verification in the same manner as those providing comments by other means.

Concerning the comments about why an organization's comments did not apply to an individual member's appeal eligibility, the ARA discusses ''a person who was involved in the public comment process though submission * * * of written or oral comments.'' The Department believes an organization is its own entity for purposes of submitting comments. There is nothing in this section that prohibits individual members of an organization from submitting the same or similar comments.

After additional review of the proposed rule, the Department determined it would add clarity if the requirements for legal notice were separate from the requirements for commenting. Therefore, in the final rule this section is now titled ''Legal notice of proposed actions'' and is reorganized. Paragraph (a) outlines the Responsible Official's duties and paragraph (b) describes legal notice procedures. While paragraph (a) is new, the contents are not. Proposed paragraph (c) is moved to § 215.6.

Proposed section 215.6 set out procedures for the consideration of comments, emphasizing that while the Responsible Office accepts all comments, only substantive comments would be considered for project planning purposes.

Comment. The proposed requirement that comments must be substantive generated a number of comments. While some were supportive, ''a must to have responsible and constructive comments,'' the majority did not support this change. Those disagreeing gave a variety of reasons, including: The definition for ''substantive comment'' was too vague; it limited the public's ability to participate; substantive issues may arise after the comment period is past; the Department would label comments in opposition to the proposed action as non-substantive and therefore unfairly limit the public's ability to appeal; and the Department wants to reduce the number of comments it has to consider. The question of who would decide whether or not a comment was substantive was also asked.

Response. As discussed in a Congressional colloquy during enactment of the ARA and in the **Federal Register** notice announcing the proposed revision to this rule (67 FR 77451), the notice and comment period is intended to solicit information, concerns, and any issues specific to the proposed action and to provide such comments to the Responsible Official before the decision is made. Experience has shown that when comments are received that are not within the scope of the proposed action or are not specific to the proposed action, or do not include supporting reasons for concerns, they are not useful for consideration in project planning. The intent in requiring substantive comments is to obtain meaningful and useful information from individuals about their concerns and issues, and use it to enhance project analysis and project planning. If new information comes to light after the decision, the agency provides guidance for this eventuality in FSH 1909.15, Chapter 10, section 18.

In the final rule, this section is now titled ''Comments on proposed actions.'' Paragraph (a) discusses the opportunity to comment in terms of time period, computation of the time period, comment requirements, and evidence of timely submission (proposed § 215.5(b)(5)). In conjunction with the changes discussed in proposed § 215.4 and § 215.5 concerning draft environmental impact statements (EIS), the final rule modifies paragraph (a)(1)(i), addressing only environmental assessments (EAs); adds a new paragraph (a)(1)(ii) addressing draft EISs; and redesignates the remaining paragraphs accordingly. Paragraph (a)(2) is modified to accommodate computation of both time periods. Paragraph (a)(4)(i) is rewritten to clarify the difference between EAs and EISs as discussed earlier and to indicate that the end of the calendar day is 11:59 p.m.; paragraph (4)(ii) is clarified to indicate that for hand-delivered comments the end of the calendar day is the close of the business day; and paragraph (4)(iii) is rewritten to be consistent with the e-mail provisions in § 215.15(c), clarifying that when comments are submitted electronically, the sender should receive an automatic acknowledgment. This was an oversight in the proposed rule. The final rule revises the definition of the term ''substantive comments'' (§ 215.2) to clarify the meaning and address the concerns about this definition. And, § 215.5(a)(6) clarifies that it is the Responsible Official's responsibility to determine if comments received meet the definition of ''substantive comments.'' Paragraph (b) discusses consideration of comments (proposed § 215.6).

Proposed section 215.7 detailed the content of the legal notice for the decision. **Proposed paragraph (a)** changes included a provision that the ending date for the appeal period would not be stated in the legal notice and a provision for acceptance of electronic appeals.

Comment. Concerns similar to those expressed for § 215.5 regarding legal

notice, were expressed in regard to not having the deadline to file an appeal stated in the legal notice. Those wanting the deadline published said it is just as easy for the Forest Service to calculate as it is for members of the public and that not publishing it places an undue burden on potential appellants. Some respondents stated that the appeal period should start when the appeal decision is made; others wanted it to state that a dated photocopy of the legal notice is an exception to not using information provided by any other source. Some commenters objected to what they described as the Forest Service requiring them to subscribe to each newspaper of record for every Forest for which they have an interest. Some respondents stated that the appeal period should start when the appeal decision is made.

Response. While the Department is sympathetic to those having to subscribe to several different newspapers of record, the requirement for publishing the legal notice in the newspaper of record is not a change. The Department believes the rule as stated is the most accurate method for potential appellants to know the filing end date. The Department made the decision to link the appeal period to publication of a legal notice when the final rule was promulgated in 1993 to give those wishing to appeal the benefit of a level playing field, even though the ARA does not require a notice as it does for requesting comments. There is no need to address acceptance of a dated photocopy of the legal notice because nothing in this paragraph prohibits it. In fact, the legal notice is the exclusive means for calculating the time to file an appeal. The reasons for not stating the date of publication in the legal notice are addressed in the response to § 215.5. The Department believes that past inconsistencies in informing the public of the correct date resulted in more problems than will occur with having the appellant calculate the appeal filing deadline.

Proposed section 215.7, paragraph (b) required the decision documentation to be mailed to those who requested it and those who commented.

Comment. Respondents questioned when the mailing of the decision document would occur, being of the opinion that it should occur before the legal notice so that time would not be lost within the 45-day appeal period. Other respondents wanted a requirement that each unit keep a list of persons who are interested in Forest Service decisionmaking and mail them a copy of all decisions.

Response. Inadvertently, the order of the paragraphs made it appear that the notice would be published prior to mailing the decision notice. In the final rule, proposed paragraphs (a) and (b) are reversed to indicate that the documents should be mailed prior to the legal notice being published. New paragraph (b)(2)(i) is modified to include the business hours for the Deciding Officer's office for those wishing to hand-deliver their appeals and paragraph (b)(2)(ii) now states that the newspaper of record is the exclusive means for calculating the time to submit comments. Maintaining a list of persons interested in Forest Service project planning is outside the scope of this rulemaking. However, some units may choose to maintain such a list.

Proposed section 215.8 discussed decision implementation.

Comment. Comments were received on proposed paragraph (b), opposing automatic stays of projects during the appeal process.

Response. The stay provisions in paragraph (b) implement a statutory requirement of the ARA and cannot be changed. In the final rule, paragraph (a) is rewritten for clarity and proposed § 215.8 is now § 215.9.

Proposed section 215.9 set out procedures for emergency situations in a separate section for ease of use in finding all pertinent information quickly. Additionally, the proposed rule clarified that an emergency situation determination can be delegated to the Regional Forester or Station Director, and the examples were removed.

Comment. Those supporting the proposed change stated that it made sense to place the decision at the local level with those familiar with the situation and that it would improve the Forest Service's ability to address emergency situations in a timely manner. Some of those not supporting this change said they believed that it was not allowed by the ARA and expressed the concern that it may not be equally applied and could be abused. Some of those commenting asked that some of the examples be retained.

Response. Authorities granted by statute to the Chief may be delegated to subordinate officials within the Forest Service to carry out, unless the Chief specifically reserves the authority or is prohibited by law, regulation, or order from delegating the authority. The ARA does not prohibit delegation of the authority granted by this act. Delegations of authority and responsibility to Forest Service officials are provided in the agency's regulations and directives, with the broad delegations set out in Forest Service Manual (FSM) Chapter 1230. This chapter delegates to the Associate Chief the authority to perform all duties and exercise all functions vested in the Chief (except for those the Chief reserves or is prohibited from delegating). The final rule has been revised to acknowledge that the Associate Chief, by virtue of the authority inherent in this position, is authorized to carry out the Chief's responsibilities related to determinations of emergency situations. The final rule also identifies the officials to whom the Chief or Associate Chief may delegate the authority for emergency situation determinations. The Secretary of Agriculture and the Chief expect those responsible for making emergency situation determinations as provided in this rule do so in a judicious manner, applying the provisions of this rule in a professional and equitable way.

The final rule clarifies that the Chief or the Associate Chief may delegate the authority for making emergency situation determinations and that this authority may be delegated only to the Deputy Chief for National Forest System and Regional Foresters. The rule also clarifies that persons acting in these positions may exercise this authority for making emergency situation determinations only when they are filling vacant positions and have been formally delegated full acting authority for the positions; persons acting in positions during temporary absences of the incumbents shall not be delegated this authority. Station Directors were inadvertently included in the proposed rule, and this reference is removed in the final rule. Also, proposed § 215.9 is redesignated § 215.10 in the final rule; paragraph (a) is split in the final rule into paragraph (a), titled Authority, and paragraph (b), titled Determination.

Comment. Some of those commenting wanted clear standards established for making emergency situation determinations. Some respondents thought that the determination should be subject to appeal, while other respondents suggested that appeals should not be allowed when an emergency situation determination has been made. Some respondents commented that when an emergency situation is not stayed it should be declared the final agency action so that the appellant is free to go to court.

Response. There is no indication that Congress intended that the determination itself would be subject to appeal. The final rule sets out the procedures and criteria by which agency officials will determine whether an emergency situation exists. The ARA itself makes an exception to the

automatic stay provision for emergency situations. While the determination that an emergency situation exists eliminates the automatic stay, it does not exempt the activity from appeal.

Proposed section 215.9, paragraph (b) clarified when implementation of the project or activity may begin and differentiated between decisions documented in a ROD and a DN.

Comment. Some commenters suggested that the implementation requirements for decisions documented in a DN be the same as for a ROD.

Response. The regulations at 40 CFR 1506.10(b)(2) govern implementation of decisions documented in a Record of Decision. However, this rule governs implementation of decisions documented in an appeal. In the final rule, this paragraph is now paragraph (c) of § 215.10.

Proposed section 215.9, paragraph (c) clarified how legal notice for emergency situations would occur.

Comment. This paragraph elicited concern that the Responsible Official could notify the public of emergency situation determinations only when the legal notice of the decision was published.

Response. The Responsible Official has the discretion to request an emergency situation determination as the need arises. However, if an emergency determination has been requested or determined when public comment is sought on a proposed action (§ 215.5), then the Responsible Official is required to so state in the legal notice. In the final rule, this paragraph is now paragraph (d) of § 215.10.

Comment. As noted in § 215.2 above, the proposed rule included substantial loss of economic value as a consideration in determining an emergency situation. Some respondents commented that the Department has not demonstrated the need for using economics as a factor in emergency situation determinations. Quite a few comments disagreed with adding economic considerations as a factor in determining an emergency situation.

Response. These comments are addressed earlier in § 215.2.

The final rule designates proposed § 215.9 Emergency situation as § 215.10.

Proposed section 215.10 addressed decisions subject to appeal. Two paragraphs were added: **paragraph (a)(2)** concerning new decisions resulting from new information or changed circumstances and **paragraph (a)(3)** concerning decisions affecting National Forest System lands made in conjunction with other Federal agencies.

Comment. Commenters responding to *proposed paragraph (a)(2)* expressed the opinion that if a new decision results from new information or changed circumstances, then the entire decision should be subject to appeal, not just the portion that changed.

Response. Agency guidance in FSH 1909.15 Chapter 10, section 18 provides that upon completion of a revised EA, the original decision must be reconsidered based on the EA and FONSI. When a Responsible Official issues a new decision, it may address all or a portion of the original decision. It is this new decision that is subject to appeal.

Comment. Some respondents suggested that *proposed paragraph (b)*, regarding holders of special use authorizations, should be deleted. They believed that it allowed such parties to appeal the same decision twice using the two appeal processes.

Response. It is appropriate to have paragraph (b). Many decisions affecting special use authorizations implement a land and resource management plan, meeting the intent of the ARA. Allowing a holder of a permit to choose between part 251, subpart C and this rule does not make two methods of appeal available. Paragraph (b) specifically says that holders may use one appeal process or the other but not both for a given decision.

In the final rule, proposed paragraphs (a)(1)–(3) are designated (a)–(c), proposed paragraph (b) is designated (d); and proposed § 215.10 is designated § 215.11.

Proposed section 215.11 listed decisions not subject to appeal. Two new paragraphs were added in the proposed rule: (b) new information not requiring a new decision, and (g) concurrences and recommendations to other Federal agencies.

Comment. Some of those commenting on the proposed section requested that additional types of decisions be included in this section. They cited the following: Emergency situations; catastrophic damaged timber; certain low impact operations; decisions that may affect treaty rights and trust resources (federally recognized Indian tribes); and a determination that a new decision is not needed when an EIS is modified (paragraph (b)). Other respondents thought there should be fewer decisions listed, citing all the decisions currently not subject to appeal.

Response. The decisions and actions listed in § 215.11 as not subject to appeal, with the exception of paragraphs (b) and (g), have been in effect since 1993. The Department has reviewed what is listed, as well as the additions and deletions suggested, and believes those listed in the final rule meet the intent of the ARA.

Comment. A number of commenters said they believed that *proposed paragraph (e)* regarding categorical exclusions should not be included.

Response. Similar comments were received about categorical exclusions not being subject to notice and comment. All comments concerning categorical exclusions are addressed in § 215.4.

Comment. Some of those commenting believed that the addition of *proposed paragraph (g)* regarding concurrences and recommendations to other Federal agencies, meant that Forest Service ''terms and conditions'' under section 4(e) of the Federal Power Act (FPA) would no longer be appealable under this rule.

Response. This paragraph was added to clarify situations when the agency was asked for concurrences and/or recommendations on other Federal agencies' projects where the Forest Service had no jurisdiction for making a decision. The preamble for the proposed rule incorrectly referred to ''concurrences and recommendations from other agencies'' instead of ''concurrences and recommendations to other agencies'' as stated correctly in the text of the proposed rule.

The addition of proposed paragraph (g) ''concurrences and recommendations to other agencies'' has no bearing upon the Forest Service's issuance of terms and conditions under section 4(e) of the FPA. The proposed language was intended to clarify that there would be no appeal opportunity in those instances where the Forest Service is only concurring with another agency's decision or issuing non-binding recommendations. The proposed language of paragraph (g) is inapplicable in the FPA context, as the Forest Service's issuance of 4(e) terms and conditions does not constitute a ''concurrence'' with the Federal Energy Regulatory Commission's (FERC's) licensing decision and is binding in nature. The Forest Service is in the process of reviewing its Hydropower Manual and Handbook, in coordination with the current ongoing FERC hydropower licensing rulemaking and will clarify portions addressing NEPA disclosure documents.

Additional comments on section 4(e) terms and conditions of the FPA were beyond the scope of this rule; *e.g.*, comments suggesting how the Forest Service should develop 4(e) terms and conditions and what should and should

not be included. These comments were referred to appropriate agency officials.

The final rule makes clear in paragraph (a) that if an amendment, revision, or adoption of a land and resource management plan has a project embedded in it, the project decision will be subject to this rule after the appeal/objection process is completed on the land and resource management plan decision. Proposed § 215.11 is designated as § 215.12 in the final rule; paragraph (c) is split and a new paragraph (d) is added; and paragraphs (d) through (g) in the proposed rule are redesignated as (e) through (h) in the final rule.

Proposed section 215.12 designated who can appeal. The proposed revision removed the provision for ''interested party'' because the Department does not believe the provision fulfills the intent of the ARA.

Comment. Comments both supported and opposed this change. Those supporting the change stated that interested parties should be involved early in project planning. Those opposed believed that this change could lead to more appeals and that it would restrict public involvement. They believed there is no other way for non-appellants to be involved in settlement meetings with appellants. Others said that interested parties provide helpful information to the Reviewing Officer. Some of those commenting believed that the appeal process was a continuation of public involvement. There was a suggestion that parties who receive funding from the Forest Service or who have a contractual involvement with the proposed action should not be allowed to appeal Forest Service decisions.

Response. The ARA provides distinct provisions regarding predecisional notice and comment and post decisional appeal opportunities. The intent is for interested persons to participate early in the project planning process and not wait until after the decision has been issued to become involved. While the appeal process is an opportunity to voice concerns about a decision, it is more advantageous to both the Responsible Official and the public for those who have helpful and important information that could affect a decision, to bring it forward during project planning. The belief that informal disposition meetings between the Responsible Official and an appellant are ''settlement agreement meetings'' is a misconception. The informal disposition meeting between an appellant(s) and Responsible Official is not for the purpose of making a new decision. Rather, it is an opportunity for the Responsible Official and appellant(s) to discuss the appeal, agree on facts, and explore opportunities to resolve the issues by means other than formal review and decision on the appeal. As an example, there have been occasions when appellants had a better understanding of the decision after meeting with the Responsible Official and withdrew their appeal.

Proposed section 215.12, paragraph (a) restricted appeal eligibility to those who submitted substantive comments during the comment period and included a provision making it clear that membership in an organization submitting comments on behalf of the organization does not grant appeal eligibility to individuals with membership in that organization.

Comment. Those supporting the change stated that it facilitated the intent of the ARA and strengthened constructive and meaningful public participation. Some respondents suggested that the Forest Service should impose additional requirements for those who wish to appeal. Those opposing the change cited such reasons as substantive comments are not easily defined; it denies ''standing'' to appeal to persons who submitted comments deemed to be nonsubstantive or ''expressed an interest'; and it was not right to not allow individual members of an organization to appeal when the organization submitted comments because the organization represents its members.

Response. The Department believes that an ''expression of interest,'' such as someone who simply requests a copy of the decision, does not meet the Congressional intent for participation by those who have the ''right to appeal'' as expressed in the ARA language. This conclusion is based on a reading of those portions of the ARA and the Congressional colloquy regarding the appeal process, which make clear that an individual's participation in the statutorily mandated public comment period is required to establish standing to appeal. One of the basic goals of this rulemaking was to encourage early and meaningful public participation when it is most useful to the Responsible Official during project planning. The proposed rule restructured both the comment and appeal procedures to encourage early and meaningful public involvement by requiring the submission of substantive comments and linking appeal eligibility to those who submitted substantive comments. The Department believes it is appropriate to require individual members of an organization to meet appeal eligibility standards. The ARA itself does not mention ''organizations''; it makes reference to ''a person who was involved in the public comment process.'' However, as discussed in the response to similar comments in § 215.5, the Department has always considered an organization the same as a ''person.'' While the Department believes it is appropriate to accord an organization eligibility to appeal as an organization when it submits substantive comments, it is not appropriate to give individual members in that organization appeal eligibility just because their organization submitted comments.

Proposed section 215.12, paragraph (b) clarified that if an appeal listed multiple names or multiple organizations, each individual or organization listed must meet the test of having submitted comments during the comment period.

Comment. One commenter asked if a new group formed of individuals and groups who provided comments could appeal.

Response. The ability to appeal as a newly formed group rests on whether each member of the group met the comment requirements as individuals during the notice and comment period.

Proposed section 215.12, paragraph (c) does not allow Federal agencies to appeal.

Comment. Those who commented on this paragraph suggested Federal agencies should have the opportunity to appeal under this part.

Response. Other avenues are available to Federal agencies for working through concerns they might have with a proposed action. It is more appropriate, and in fact expected, that the Department and other Federal agencies work cooperatively during project planning.

Proposed section 215.12, paragraph (d) allowed Federal employees to appeal as individuals but limited the information they could use to that information already released to the public.

Comment. One commenter was opposed to the limitation, stating that information available under the Freedom of Information Act (FOIA), even if not released to the public, should be available to Federal employees to use.

Response. The Department agrees, and this was the intent of the proposed paragraph. The final rule clarifies this point. Additionally, the final rule clarifies that the requirements of paragraph (a) of this section must be met also.

In the final rule, proposed section § 215.12 is designated as § 215.13.

Proposed section 215.13 set forth where appeals are filed.

Comment. One supportive comment was received for the inclusion of Research Station Directors as Responsible Officials.

Response. In the final rule, the table in proposed § 215.13 showing Appeal Deciding Officers is revised to reflect the change discussed in § 215.2. In past appeal rules, appeals were filed with the decisionmaker's direct supervisor. When the 1993 rule was promulgated, the Forest Service thought a more centralized approach would promote both better and more efficient appeal decisionmaking. However, the ARA did not require elevating decisions to a central point. The current rule has had unintended adverse consequences. With the agency's decentralized organization, it has interfered with the healthy relationship existing in the chain of command as well as creating disincentives for collaboration at the decisionmaking level. Therefore, in the final rule, the Appeal Deciding Officer is the next level above the Responsible Official. And, proposed § 215.13 and proposed § 215.19 are combined and designated § 215.8, titled Appeal Deciding Officer. This change is made to set forth all the information concerning the Appeal Deciding Officer in one section.

Proposed section 215.14 discussed appeal time periods and process.

Comment. Some comments suggested additional changes such as creating a specific entity to hear Forest Service appeals, similar to the Department of the Interior Board of Land Appeals; requiring a filing fee for appeal submission (to be returned if appeal is upheld); setting a penalty proportional to any timber devaluation as a result of delays caused by appeals that are not upheld; and setting higher fees for Freedom of Information Act (FOIA) requests.

Response. The Department did not address the requested changes because they are beyond the scope of this rulemaking and/or existing authorities granted to the Department.

Proposed section 215.14, paragraph (a) set out the time period for appeals to be filed. **Proposed paragraph (b)** described the computation of the 45-day period, which includes weekends and holidays.

Comment. Some commenters suggested changes or flexibility in filing period and in how the 45-day period is calculated, *i.e.,* not counting holiday or weekend days in the 45-day calculation.

Response. The ARA specifically provides that appeals must be filed within 45 days.

Proposed section 215.14, paragraph (c) described evidence for timely filing, including filing appeals electronically.

Comment. One comment supported electronic filing of appeals, while another said that electronic appeals should not be allowed since an appellant should make the effort to sign an appeal. One comment suggested the rule address what happens if the Forest Service's ''email goes down.'' Respondents also questioned how to determine when an appeal is due.

Response. The proposed rule discusses how timeliness (45 days) is determined for each of the methods available for filing appeals. Concerning the specific requests for addressing potential problems with various means of delivery, the rule is not the appropriate place to address possible scenarios. Each circumstance is more appropriately addressed on a case-by-case basis. The final rule stipulates that if appellants do not receive an automatic acknowledgment electronically that their filing was received, it is their responsibility to file a timely appeal by some other method.

Proposed section 215.14, paragraph (d) specified that there will be no time extensions.

Comment. Several commenters thought that provision should be made allowing for extensions under certain circumstances.

Response. The ARA does not provide for time extensions. In the final rule, paragraphs (a) and (c) are rewritten for clarity and paragraph (d) now requires the Responsible Official to include a list of individuals and organizations who submitted substantive comments during the comment period. This change is linked to appeal eligibility and dismissal. And, proposed § 215.14 is designated § 215.15.

Proposed section 215.15 described appeal content. **Proposed paragraph (b)** of this section and proposed § 215.1(b) limited appeal issues to those raised during the comment period.

Comment. Commenters responding to this proposed paragraph expressed both support and disagreement with the limitation. Some respondents suggested that appeal issues should be limited to those that have a significant effect on the environment, or should be limited to violations of law, regulation, or policy. Those who disagreed expressed several concerns: the inability to raise issues in an appeal that might not arise until after the comment period; changes between a draft and final EIS; the FONSI determination; and loss of the ability to challenge the record.

Response. Limiting appeal issues to those raised during the comment period was proposed as a means of encouraging early participation in project planning rather than raising concerns for the first time after a decision is made. However, after reviewing comments, the Department understands and agrees with the concerns. The final rule removes the requirement from this section and § 215.1 that precluded issues from being raised in an appeal that were not raised during the comment period and paragraph (b) of this section is further rewritten and reorganized. And, as discussed in § 215.19 below, paragraph (b)(3) now asks those filing an appeal with more than one individual or organization to identify a lead appellant as defined in § 215.2.

Proposed section 215.15, paragraph (c) addressed non-acceptance of an appeal.

Comment. Those commenting opposed not accepting an appeal without a signature, and questioned how authors of electronic appeals will be verified. Additional criteria for not accepting appeals were suggested also.

Response. After consideration of the comments, this paragraph has been rewritten in the final rule clarifying the intent of requiring a signature. The phrase ''not accept'' is replaced with ''not process,'' reflecting what was actually intended by ''not accept.'' It is important for the Department to know the identity of appellants and how to contact them. Not having this information has caused problems in the past. The final rule makes clear that if an appeal is filed and the appellant cannot be identified, and a way to contact the appellant has not been provided, the appeal will not be processed. Further, paragraph (c)(1) is added to clarify that if an appeal is deemed illegible for any reason, it will not be processed. The suggested additional criteria for not accepting appeals (a notarized signature, copy of site visit certification, and description of economic or environmental impact the appellant will suffer by approval of the proposed action) are contrary to the ARA. Proposed § 215.15 is designated § 215.14 in the final rule.

Proposed section 215.16 detailed when an appeal would be dismissed. It added allowing dismissal when an appellant withdraws an appeal.

Comment. All of the comments were in the form of suggestions for additional reasons to dismiss or to delete some of the reasons for dismissal. One commenter cautioned that dismissal without review for reasons of insufficient information should be employed judiciously (paragraph (a)(8)).

Response. Many of the suggestions do not comply with the ARA. The Department agrees that proposed paragraph (8) should be used only with great care. Concerning paragraph (a)(1), it was not the intent of the Department to imply in the proposed rule that if an attachment is untimely, the appeal itself is untimely and would be dismissed. Therefore, the final rule makes clear in paragraph (b) that any additional information that is untimely will not be considered as a part of the appeal. Proposed paragraph (b) is designated paragraph (c).

Proposed section 215.17 discussed the informal disposition process.

Comment. Two general suggestions were received. One suggested clarifying whether the Responsible Official is to meet with each of the appellants together or separately. A second suggested making a specific provision for all appellants and interested parties to communicate with the Responsible Official during the informal disposition process.

Response. The Department believes there is a better chance of achieving a successful outcome if the rule does not regulate how such meetings are conducted but rather allows the Responsible Official maximum discretion and flexibility in holding informal disposition meetings. Neither does the Department see a need to impose further regulatory requirements regarding communications between the Responsible Official and the appellant.

Proposed section 215.17, paragraph (a) discussed the Responsible Official's responsibility to contact the appellant with an offer to meet.

Comment. One comment suggested that the Responsible Official be required to contact each appellant when an appeal listed multiple names, while another wondered what the phrase ''as soon as practicable'' meant.

Response. The question about contacting each appellant from an appeal listing multiple names or organizations is clarified in the final rule and explained more fully in § 215.15 above and § 215.19 below. The phrase ''as soon as practicable'' means there is an expectation that it will be done at the earliest possible time.

Proposed section 215.17, paragraph (b) discussed the time and location of informal resolution meetings.

Comment. Comments requested that the Forest Service build discretion into the requirements to ensure that meetings are in a location convenient and accessible to all parties; that time extensions for the initial meeting should be allowed if all parties agree; and a deadline for completion of the informal disposition process should be specified.

Response. While not specifically requiring meetings in a location convenient and accessible to all parties, the agency believes this request is met with the requirement that meetings should generally be held at a location within or near the National Forest. However, when that is not possible, this paragraph allows for teleconference. Concerning the timeframe comments, the ARA statutorily sets the 15-day requirement for meeting. The timeframe for completing informal disposition meetings is limited only by the 45-day requirement for the appeal disposition to be completed.

Proposed section 215.17, paragraph (c) discussed the structure of the meeting.

Comment. Many of the comments received discussed who participates in the informal disposition meeting, including allowing ''other participants'' at informal disposition meetings and having the meeting open to the public. Other comments requested that the recording of informal disposition meetings and telephone meetings be allowed.

Response. After reviewing the comments and the intent of the informal disposition meeting as previously discussed earlier in this section, the final rule omits the reference to ''any other participants.'' However, meetings are still open to the public. Telephone meetings are allowed. Recording of informal disposition meetings is allowed; however, submitting the tape to the Reviewing or Deciding Official is not because the Reviewing Official's recommendation and Deciding Officer's appeal disposition must be based on the same information that was available to the Responsible Official, as well as the appeal.

Proposed section 215.17, paragraph (d) described outcomes.

Comment. There was a suggestion about the ''Forest Service making a good faith effort to resolve the appeal'' should be addressed, and a suggestion to eliminate the requirement for the Responsible Official to advise the Appeal Deciding Officer when an appellant declines to meet. One comment pointed out an inconsistency between paragraphs (d)(1) and (d)(3).

Response. The Department expects Responsible Officials to meet the intent of the ARA and put forth a good faith effort to achieve a successful outcome at the informal disposition meeting. However, it does not see the need to regulate this expectation. The requirement for the Responsible Official to provide information on the outcome of the informal disposition meeting to the Appeal Deciding Officer is necessary as it lets both the Appeal Reviewing Officer and Appeal Deciding Officer know whether the appeal has or has not been resolved and whether formal review should continue. Whether or not an appellant meets with the Responsible Official does not prejudice review of an appeal.

The final rule is rewritten, clarifying that the only information transmitted to the Appeal Deciding Officer is the outcome. It also modifies paragraph (d)(3) to read ''unresolved portion,'' removing the inconsistency pointed out in the comments.

Proposed section 215.18 described the appeal review and disposition process. It added a paragraph clarifying procedures for the Responsible Official when an appeal decision includes instructions and added other clarifications regarding appeal disposition.

Comment. General comments received expressed concerns about what should be in the appeal decision letter and availability of appeal decisions.

Response. The Department believes it is not appropriate for a rule to specify the information an appeal decision should include. However, it is appropriate to provide such guidance through other means, and this has been done through Forest Service guidance. Appeal decisions also are posted on the Forest Service and Regional Office World Wide Web/Internet pages.

Proposed section 215.18, paragraph (b) described the formal disposition process.

Comment. Some of the comments received disagreed with the provision allowing for disposing of an appeal without issuing a decision or giving the reason for not issuing a decision. Other comments addressed length of time (45 days) for responding to an appeal and when notification of an appeal decision occurs.

Response. Paragraph (b)(2) was added to ensure that appellants would be notified of the final agency action. The statutory language in the ARA controls not only the length of time within which an appeal decision must be issued (45 days), but also provides for the disposition of an appeal after 45 days has elapsed without an appeal decision. To alleviate concerns about the timing between when an appeal decision is mailed to the appellant(s) and when implementation of the project begins, the final rule clarifies that an appeal decision (paragraph (b)(1)) must be sent within 5 days of its being rendered.

Proposed section 215.19 detailed the Appeal Deciding Officer's authority.

Comment. Some of those commenting wanted the Appeal Deciding Officer's independence from the Responsible Official clarified; others sought to have the Appeal Deciding Officer publish the procedures under which an appeal is reviewed. Some respondents thought the rule should clarify the level of communication permissible between the Responsible Official and the Appeal Deciding Officer, while others wanted the difference between the Appeal Deciding Officer and Appeal Reviewing Officer roles better defined.

Response. The Department believes the roles of the Appeal Deciding Officer and Appeal Reviewing Officer are clearly defined in the rule. Concerning the question about the level of communication permissible between the Responsible Official and the Appeal Deciding Officer, one must keep in mind the need to maintain a fair and objective review. The Appeal Deciding Officer's decision must be based on the same information that was available to the Responsible Official, as well as the appeal. Therefore, in order to maintain fairness and objectivity, discussions between the Appeal Deciding Officer and the Responsible Official, or between the Appeal Deciding Officer and the appellant(s), concerning the merits of the appeal are not allowed. The rule already states that the Appeal Deciding Officer's review is based on the appeal record and Appeal Reviewing Officer's recommendation, and § 215.2 states what is included in the appeal record and its use by the Appeal Deciding Officer.

Proposed section 215.19, paragraph (a) discussed procedural determinations.

Comment. One suggestion was to make a provision addressing what happens when certain situations are not addressed in the rule.

Response. The Department understands the concern and believes the current policy of addressing unique situations on a case-by-case basis is working. It would be impossible to identify and provide for all possible scenarios.

Proposed section 215.19, paragraph (b) allowed the Appeal Deciding Officer to consolidate appeals and issue one or more appeal decisions while **proposed paragraph (c)** gave the Appeal Deciding Officer the authority to select a representative when an appeal lists multiple names and/or organizations.

Comment. Some respondents wanted clarification for dealing with appeals by multiple groups; some wanted clarification on how paragraph (c) relates to paragraph (b); some wanted the rule to ensure that when multiple appeals are combined, that the combination is based on similar issues, while others stated the Forest Service has no legal authority to consolidate multiple appeals with multiple appellants and multiple issues or appoint a representative. Some respondents did not see the need for the Forest Service to appoint a representative, while others suggested the Appeal Deciding Officer should have the discretion to request appellants to select their own representative.

Response. There is not a direct relationship between proposed paragraph (b) and proposed paragraph (c). For efficiency, proposed paragraph (b) allowed the Appeal Deciding Officer to consolidate appeals for the purpose of issuing one or more appeal decisions. Proposed paragraph (c) allowed the Appeal Deciding Officer to appoint a representative when an appeal lists several different organizations and/or individuals. The Department does have the authority to implement both paragraphs as the ARA left the discretion to the Department to develop and implement a process. If individuals and groups meeting appeal eligibility want to join together to appeal, the Department agrees that it is better for them to appoint their own representative for the purposes of communications. Therefore, in the final rule, § 215.14 (b)(2)(i) now asks those filing an appeal with more than one individual or organization to identify a lead appellant as defined in § 215.2. However, the final rule clarifies in this section that the Appeal Deciding Officer has the authority to appoint the first individual/organization listed if a lead appellant is not identified in the appeal (§ 215.8(b)(2)(ii)).

Proposed section 215.19, paragraph (d) clarified that the Appeal Deciding Officer's decision could be different from the Appeal Reviewing Officer's recommendation.

Comment. The only comment on this proposed paragraph requested that when this happens, it should be disclosed to the appellants.

Response. Currently, the rule already provides for releasing the Appeal Reviewing Officer's recommendation after the appeal decision is rendered. The Appeal Deciding Officer's decision is based on review of the appeal record, including the Appeal Reviewing Officer's recommendation, so releasing it after the decision is appropriate.

In reviewing the proposed rule, the Department determined that it would be more efficient to combine the two sections concerning the Appeal Deciding Officer. Therefore, the final rule combines proposed § 215.13, Where to file appeals, and proposed § 215.19, Appeal Deciding Officer's authority, into one section designated at § 215.8, Appeal Deciding Officer, in the final rule.

Proposed section 215.20 discussed the Appeal Reviewing Officer's responsibilities.

Comment. One respondent wanted to delete the Appeal Reviewing Officer's position.

Response. The Secretary does not have the authority to remove the Appeal Reviewing Officer from the process. The ARA mandates an Appeal Reviewing Officer and the responsibilities.

Proposed section 215.20, paragraph (b) discussed the Appeal Reviewing Officer's recommendation.

Comment. Some of those commenting on the proposed paragraph asked that the Appeal Reviewing Officer address all procedural issues that develop after an appeal is filed. Others thought the Appeal Reviewing Officer should consult with the Responsible Official whenever there is a question about the record; that their recommendation should always be made public; and review procedures they must follow should be detailed.

Response. Because the authority for making the appeal decision lies with the Appeal Deciding Officer, the Department believes it is more appropriate for the Appeal Deciding Officer to make the procedural decisions. While the ARA discusses the Appeal Reviewing Officer's responsibilities, it does not mandate the details of the review process. The Department believes that maximum flexibility should be given to an Appeal Deciding Officer to decide what is expected from the Appeal Reviewing Officer in terms of their recommendation. The final rule does limit the review to the decision documentation and appeal. The current rule already states that the Appeal Reviewing Officer's recommendation is available once the disposition of the appeal is concluded. The appeal process, including the Appeal Reviewing Officer's recommendation, is intended to be an independent review at the same or higher organizational level as the Responsible Official. The integrity of the appeal record must be maintained consistently because the Appeal Reviewing Officer's recommendation must be based on the same information that was available to the Responsible Official, as well as the appeal. To maintain a fair and objective review, communication between the Responsible Official and the Appeal

Reviewing Officer, or between the Appeal Reviewing Officer and the appellant(s), concerning the merits of the appeal is not appropriate.

Proposed section 215.20, paragraph (c) allowed the Appeal Reviewing Officer to consolidate appeals for the purpose of issuing one or more recommendations.

Comment. Those commenting on the proposed paragraph disagreed with this provision, expressing the opinion that it is inequitable for them to have the authority to consolidate multiple appeals and appoint a single individual to represent all appellants on all issues raised in all appeals.

Response. It appears there might be some confusion between combining appeals for purposes of reviewing issues in this section and the Appeal Deciding Officer's authority to select a representative when a single appeal lists multiple names and/or organizations. Appeals may be consolidated for purposes of reviewing issues and rendering one or more recommendations.

The final rule designates proposed § 215.20 as § 215.19 and retitles it Appeal Reviewing Officer, consistent with § 215.8, Appeal Deciding Officer.

Proposed section 215.21 detailed the Secretary's authority. Proposed paragraph (b) exempts decisions signed by the Secretary or Under Secretary of Agriculture from the provisions of this rule.

Comment. All of those responding to this provision opposed it. Reasons cited included concerns that: it evades the appeal process; it excludes local expertise and the public in general; it will cost the taxpayer money because it will cause the public to go directly to court; it violates NEPA, NFMA, and the ARA; it should be a regulatory issue regardless of which administration is in power; sound science will be removed from decisions made at this level; and an entire class of decisions will be exempt from appeal based solely on the origin of the decision.

Response. Congress has charged the Secretary with the responsibility to protect, manage and administer the national forests. The Secretary has delegated that mission to the Under Secretary for Natural Resources and Environment and the Forest Service. USDA's general regulations make it clear that the Secretary and Under Secretary of Agriculture retain authority to make decisions on matters that have been delegated to the Forest Service. Nothing in the ARA alters the Secretary's long-established authority to make decisions affecting the Forest Service. The ARA directed the Secretary to promulgate rules to ''establish a notice and comment process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans * * * and shall modify the procedure for appeals of decisions concerning such projects.'' Secretarial decisions have never been subject to appeal under any of the Forest Service's administrative appeal systems and there is no indication that Congress intended to work such a change through the ARA. Nothing in this section allows a Responsible Official, Departmental or Forest Service, to avoid any applicable notice and comment requirements; for example, circulating a draft or supplemental EIS for comment (40 CFR 1505.2). This should alleviate some of the concerns from the public about not having an opportunity to comment.

The final rule is rewritten to improve clarity; however, the changes do not alter the original intent. Proposed § 215.21 is designated § 215.20 in the final rule.

Proposed section 215.22 discussed judicial proceedings and deleted the opportunity to waive this rule and proceed directly to court.

Comment. The only comment received wanted the waiver of the exhaustion requirement from the current rule retained.

Response. The USDA Reorganization Act of 1993 details when judicial proceedings can occur.

Proposed § 215.22 is designated § 215.21 in the final rule.

Proposed section 215.23 discussed when this rule would become effective.

Comment. No comments were received on this section.

Response: In the final rule, proposed § 215.23 is designated § 215.22, and this section provides that the rule is effective June 4, 2003, except as noted in paragraph (b) discussed below. Pursuant to the requirements of 5 U.S.C. 553, the Department has elected not to delay the effective date of the final rule. In doing so, confusion resulting from implementation of interim procedures established through the settlement agreement cited in the response to § 215.4 will be reduced. See the discussion in paragraph (c) below for further discussion.

Paragraph (a) makes clear that the notice, comment, and appeal procedures of this part apply to all projects and activities for which legal notice is published on or after the effective date of this rule, June 4, 2003, with one exception, discussed in paragraph (b) below.

Paragraph (b) provides for a 30-day delay in implementation of the provisions for electronic comments and appeals (§§ 215.5, 215.6, 215.7, 215.15). Even though the final rule becomes effective immediately, it will take some time to establish electronic mailboxes across the Forest Service to receive electronic comments and appeals, as provided for in the final rule.

Paragraph (c) makes clear that projects and activities for which legal notice is published prior to the effective date of the final rule are subject to the notice, comment, and appeal procedures of part 215 in effect prior to June 4, 2003. This rule can be found in the edition of 36 CFR parts 200 to 299, Revised as of July 1, 2002. As explained in the discussion of § 215.4, effective June 4, 2003, the Forest Service will cease to implement the procedures set forth in the interim provisions of the settlement agreement addressed in the § 215.4 discussion above.

Proposed section 215.24 stated that this rule contained information collection requirements and would be assigned an OMB control number.

Comment. No comments were received on this section.

Response. Subsequent to the publication of the proposed rule, the Forest Service and the Department determined that the proposed rule did not contain any information collection or recordkeeping requirements and therefore is not subject to OMB review pursuant to the Paperwork Reduction Act. *See* ''Controlling Paperwork Burdens on the Public'' in the following Regulatory Certifications for further discussion. Proposed § 215.24 is not included in the final rule.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant action. This final rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this

action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this final rule.

Environmental Impacts

This final rule would revise the administrative procedures and requirements to guide notice, comment, and appeal of projects and activities implementing a land and resource management plan. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction.'' This final rule clearly falls within this category of actions and no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this final rule would revise the administrative procedures and requirements to guide notice, comment, and appeal of projects and activities implementing a land and resource management plan.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and thereby imposes no paperwork burden on the public and is not subject to the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. part 3501 *et seq.*) and implementing regulations at 5 CFR part 1320.

Federalism

The agency has considered this final rule under the requirements of Executive Order 13132, Federalism. The agency has determined that the final rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would 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. Based on comments received on the proposed rule, the Department has determined that additional consultation is not needed with State and local governments prior to adopting a final rule.

Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required before issuance of the final rule.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property. This final rule would only revise the administrative procedures and requirements that guide notice, comment, and appeal of projects and activities implementing a land and resource management plan.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this final rule. Nevertheless, in the event that such a conflict were to be identified, the final rule would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this final rule; and (2) the Department would not require the parties to use administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 215

Administrative practice and procedure, National forests.

■ Therefore, for the reasons set forth in the preamble, revise part 215 of Title 36 of the Code of Federal Regulations to read as follows:

PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

Sec.
215.1 Purpose and scope.
215.2 Definitions.
215.3 Proposed actions subject to legal notice and opportunity to comment.
215.4 Actions not subject to legal notice and opportunity to comment.
215.5 Legal notice of proposed actions.
215.6 Comments on proposed actions.
215.7 Legal notice of decision.
215.8 Appeal Deciding Officer.
215.9 Decision implementation.
215.10 Emergency situations.
215.11 Decisions subject to appeal.
215.12 Decisions and actions not subject to appeal.
215.13 Who may appeal.
215.14 Appeal content.
215.15 Appeal time periods and process.
215.16 Dismissal of appeal without review.
215.17 Informal disposition.
215.18 Formal review and disposition procedures.
215.19 Appeal Reviewing Officer.
215.20 Secretary's authority.
215.21 Judicial proceedings.
215.22 Applicability and effective date.

Authority: 16 U.S.C. 472, 551; sec. 322, Pub. L. 102–381 (Appeals Reform Act), 106 Stat. 1419 (16 U.S.C. 1612 note).

§ 215.1 Purpose and scope.

(a) *Purpose.* The rules of this part have two purposes. First, this part establishes a process by which the public receives notice and is provided an opportunity to comment on proposed actions for projects and activities implementing a land and resource management plan prior to a decision by the Responsible Official. Second, this part establishes an appeal process and identifies the decisions that may be appealed, who may appeal those decisions, the responsibilities of the participants in an appeal, and the procedures that apply for the prompt disposition of the appeal.

(b) *Scope.* The notice of proposed actions and opportunity to comment provides an opportunity for the public to provide meaningful input prior to the decision on projects and activities implementing land and resource management plans. The rules of this part complement, but do not replace, numerous other opportunities to participate in and influence the agency's

project and activity planning, such as those provided by the National Environmental Policy Act of 1969 (NEPA) implementing regulations and procedures at 40 CFR parts 1500–1508, the National Forest Management Act (NFMA) implementing regulations at part 219, and the pertinent requirements at part 216 regarding notice and comment for certain Forest Service Manual (FSM) directives. The appeal process is available to those who submit substantive comments during the comment period. Appeal disposition constitutes the final administrative determination of the United States Department of Agriculture. Throughout this part, references to decisions which affect an authorized use or occupancy of National Forest System lands and meet all other applicable requirements of this part, are subject to appeal by the holders of such authorizations under either this part or part 251, subpart C, but not under both parts. In addition, certain other parties meeting requirements of § 251.86 may also be eligible to appeal projects under either this part or part 251, subpart C, but not under both parts.

§ 215.2 Definitions.

Address—An individual's or organization's current physical mailing address. An e-mail address is insufficient for identification.

Appeal—The written document filed with an Appeal Deciding Officer by someone seeking review of a decision.

Appeal Deciding Officer—The Secretary of Agriculture (USDA) or the USDA or Forest Service designee having the delegated authority and responsibility to render a decision on an appeal filed under this part. The Appeal Deciding Officer is the next higher-level supervisor of the Responsible Official.

Appeal disposition—Either a written appeal decision or written notification in cases where the original decision is the final agency action and no appeal decision is issued.

Appeal period—The 45-calendar-day period following publication of the legal notice in the newspaper of record of a decision during which an appeal may be filed with the Appeal Deciding Officer.

Appeal record—The information upon which review of an appeal is conducted, consisting of the transmittal letter, the appeal, decision documentation, the legal notice of decision, the Responsible Official's documentation of the informal disposition meeting, and the Appeal Reviewing Officer's recommendation.

Appeal Reviewing Officer—A Forest Service line officer or USDA official who reviews an appeal and makes a written recommendation to the Appeal Deciding Officer on disposition of the appeal.

Appellant—An individual or organization filing an appeal who submitted substantive oral or written comments during the comment period on a specific project or activity.

Categorically excluded (CE)—Proposed actions, which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required (40 CFR 1508.4; FSH 1909.15, Chapter 30).

Comment period—The 30-calendar-day period following publication of the legal notice in the newspaper of record of a proposed action, during which the public has the opportunity to provide comments to a Responsible Official on a proposed action subject to this part, except for projects requiring an EIS which follow CEQ procedures for notice and comment (40 CFR parts 1503 and 1506.10; FSH 1909.15, Chapter 20). The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day.

Decision documentation—The Decision Notice (DN) or Record of Decision (ROD) and all relevant environmental and other analysis documentation and records, including all comment letters received, on which the Responsible Official bases a decision under appeal.

Decision Notice (DN)—A concise written record of a Responsible Official's decision based on an environmental assessment and a Finding of No Significant Impact (FONSI) (40 CFR 1508.13; FSH 1909.15, Chapter 40).

Emergency situation—A situation on National Forest System (NFS) lands for which immediate implementation of all or part of a decision is necessary for relief from hazards threatening human health and safety or natural resources on those NFS or adjacent lands; or that would result in substantial loss of economic value to the Federal Government if implementation of the decision were delayed.

Environmental Assessment (EA)—A concise public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact, aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9; FSH 1909.15, Chapter 40).

Environmental Impact Statement (EIS)—A detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).

Finding of No Significant Impact (FONSI)—A document prepared by a Federal agency presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared. It includes the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR1508.13; FSH 1909.15, Chapter 40).

Forest Service line officer—A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions subject to this part.

Lead appellant—For appeals submitted with multiple names, or having multiple organizations listed, the appellant identified to represent all other appellants for the purposes of communication, written or otherwise, regarding the appeal. The use of the generic term ''appellant'' applies to lead appellant also.

Name—The first and last name of an individual or the name of an organization. An electronic username is insufficient for identification of an individual or organization.

National Forest System land—All lands, waters or interests therein administered by the Forest Service (§ 251.51).

Newspaper(s) of record—Those principal newspapers of general circulation annually identified in a list and published in the **Federal Register** by each Regional Forester to be used for publishing notices of projects and activities implementing land and resource management plans.

Projects and activities implementing a land and resource management plan—Site-specific projects and activities, including those for research, on National Forest System lands that are approved in a Decision Notice (DN) or Record of Decision (ROD) by a Forest Service official.

Proposed action—A proposal made by the Forest Service that is a project or activity implementing a land and resource management plan on National Forest System lands and is subject to the notice and comment provisions of this part.

Record of Decision (ROD)—A document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; FSH 1909.15, Chapter 20).

Responsible Official—The Forest Service employee who has the delegated authority to make and implement a decision subject to this part.

Substantive comments—Comments that are within the scope of the proposed action, are specific to the proposed action, have a direct relationship to the proposed action and include supporting reasons for the Responsible Official to consider.

Transmittal letter—The Responsible Official's letter transmitting the decision documentation. The letter shall include only an index of the transmitted documents and identification of those portions of the record that relate to the issues raised.

§ 215.3 Proposed actions subject to legal notice and opportunity to comment.

The legal notice (§ 215.5) and opportunity to comment procedures (§ 215.6) apply only to:

(a) Proposed projects and activities implementing land and resource management plans (§ 215.2) for which an environmental assessment (EA) is prepared;

(b) Proposed projects and activities described in a draft environmental impact statement (EIS), for which notice and comment procedures are governed by 40 CFR parts 1500–1508 also;

(c) Proposed non-significant amendments to a land and resource management plan (pursuant to the 1982 planning regulations) that are included as part of a decision on a proposed action for which an EA is prepared;

(d) A proposed action resulting in a revision of an EA based on consideration of new information or changed circumstances (FSH 1909.15, Chapter 10, section 18) as provided for in § 215.18(b)(1); and

(e) Proposed research activities to be conducted on National Forest System lands.

§ 215.4 Actions not subject to legal notice and opportunity to comment.

The procedures for legal notice (§ 215.5) and opportunity to comment (§ 215.6) do not apply to:

(a) Projects and activities which are categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) pursuant to FSH 1909.15, Chapter 30, section 31;

(b) Proposed amendments to, revision of, or adoption of land and resource management plans that are made separately from any proposed actions, and which are therefore subject to either the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (*see* 36 CFR parts 200 to 299, Revised as of July 1, 2000);

(c) Projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500–1508 and the National Forest Management Act and the implementing regulations at 36 CFR part 219;

(d) Determinations by the Responsible Official, after consideration of new information or changed circumstances, that a revision of the EA is not required (1909.15, Chapter 10, section 18); and

(e) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or policies and procedures issued in the Forest Service Manual and Handbooks (part 216).

§ 215.5 Legal notice of proposed actions.

(a) *Responsible Official.* The Responsible Official shall:

(1) Provide notice of the opportunity to comment on a proposed action implementing the land and resource management plan.

(2) Determine the most effective timing for publishing the legal notice of the proposed action and opportunity to comment.

(3) Promptly mail notice about the proposed action to any individual or organization who has requested it and to those who have participated in project planning.

(4) Publish a legal notice of the opportunity to comment on a proposed action as provided for in paragraph (b)(2).

(5) Accept all written and oral comments on the proposed action as provided for in § 215.6(a)(4).

(6) Identify all substantive comments.

(b) *Legal notice of proposed action.*

(1) *Content of legal notice.* All legal notices shall include the following:

(i) The title and brief description of the proposed action.

(ii) A general description of the proposed action's location with sufficient information to allow the interested public to identify the location.

(iii) A statement that the Responsible Official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the project or activity as provided for in § 215.10, when applicable.

(iv) For a proposed action to be analyzed and documented in an environmental assessment (EA), a statement that the opportunity to comment ends 30 days following the date of publication of the legal notice in the newspaper of record (§ 215.6(a)(2)); legal notices shall not contain the specific date since newspaper publication dates may vary.

(v) For a proposed action that is analyzed and documented in a draft environmental impact statement (EIS), a statement that the opportunity to comment ends 45 days following the date of publication of the notice of availability (NOA) in the **Federal Register** (§ 215.6(a)(2)). The legal notice must be published after the NOA and contain the NOA publication date.

(vi) A statement that only those who submit timely and substantive comments will be accepted as appellants.

(vii) The Responsible Official's name, title, telephone number, and addresses (street, postal, facsimile, and e-mail) to whom comments are to be submitted and the Responsible Official's office business hours for those submitting hand-delivered comments (§ 215.6(a)(4)(ii)).

(viii) A statement indicating that for appeal eligibility each individual or representative from each organization submitting substantive comments must either sign the comments or verify identity upon request.

(ix) The acceptable format(s) for electronic comments.

(x) Instructions on how to obtain additional information on the proposed action.

(2) *Publication.*

(i) Through notice published annually in the **Federal Register,** each Regional Forester shall advise the public of the newspaper(s) of record utilized for publishing legal notices required by this part.

(ii) Legal notice of the opportunity to comment on a proposed action shall be published in the applicable newspaper of record identified in paragraph (b)(2)(i) for each National Forest System unit. When the Chief is the Responsible Official, notice shall also be published in the **Federal Register**. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to submit comments on a proposed action to be analyzed and documented in an EA. The publication date of the NOA in the **Federal Register** is the exclusive means for calculating the time to submit comments on a proposed action that is analyzed and documented in a draft EIS.

§ 215.6 Comments on proposed actions.

(a) *Opportunity to comment.*

(1) *Time period for submission of comments.*

(i) *Environmental Assessment.* Comments on the proposed action shall be accepted for 30 days following the date of publication of the legal notice.

(ii) *Draft Environmental Impact Statement.* Comments on the proposed action shall be accepted for 45 days following the date of publication in the **Federal Register** pursuant to 40 CFR parts 1500–1508.

(iii) It is the responsibility of all individuals and organizations to ensure that their comments are received in a timely manner as provided for in paragraph (a)(4).

(iv) The time period for the opportunity to comment on environmental assessments shall not be extended.

(2) *Computation of the comment period.* The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day (11:59 p.m.).

(i) *Environmental Assessment (EA).* The 30-day comment period for proposed actions to be analyzed and documented in an EA begins on the first day after publication of the legal notice.

(ii) *Draft Environmental Impact Statement (EIS).* The 45-day comment period for proposed actions that are analyzed and documented in a draft EIS begins on the first day after publication of the NOA in the **Federal Register**.

(3) *Requirements.* Individuals and organizations wishing to be eligible to appeal must provide the following:

(i) Name and address.

(ii) Title of the proposed action.

(iii) Specific substantive comments (§ 215.2) on the proposed action, along with supporting reasons that the Responsible Official should consider in reaching a decision.

(iv) Signature or other verification of identity upon request; identification of the individual or organization who authored the comment(s) is necessary for appeal eligibility.

(A) For appeals listing multiple organizations or multiple individuals, a signature or other means of verification must be provided for the individual authorized to represent each organization and for each individual in the case of multiple names, to meet appeal eligibility requirements.

(B) Those using electronic means may submit a scanned signature. Otherwise another means of verifying the identity of the individual or organizational representative may be necessary for electronically submitted comments or comments received by telephone.

(v) Individual members of an organization must submit their own substantive comments to meet the requirements of appeal eligibility; comments received on behalf of an organization are considered as those of the organization only.

(vi) Oral comments must be provided at the Responsible Official's office during normal business hours via telephone or in person, or if during non-business hours, must be at an official agency function (such as a public meeting) which is designed to elicit public comment.

(4) *Evidence of timely submission.* When there is a question about timely submission of comments, timeliness shall be determined as follows:

(i) Written comments must be postmarked by the Postal Service, e-mailed, faxed, or otherwise submitted (for example, express delivery service) by 11:59 p.m. on the 30th calendar day following publication of the legal notice for proposed actions to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(ii) Hand-delivered comments must be time and date imprinted at the correct Responsible Official's office by the close of business on the 30th calendar day following publication of the legal notice for proposed actions to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(iii) For electronically mailed comments, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the comments, it is the sender's responsibility to ensure timely receipt by other means.

(b) *Consideration of comments.*

(1) The Responsible Official shall consider all substantive written and oral comments submitted in compliance with paragraph (a).

(2) All written comments received by the Responsible Official shall be placed in the project file and shall become a matter of public record.

(3) The Responsible Official shall document and date all oral comments received in response to the legal notice (§ 215.5) and place them in the project file.

§ 215.7 Legal notice of decision.

(a) The Responsible Official shall promptly mail the Record of Decision (ROD) or the Decision Notice (DN) and Finding of No Significant Impact (FONSI) to those who requested the decision document and those who submitted substantive comments during the comment period (§ 215.6).

(b) The Responsible Official shall publish a legal notice of any decision documented in a ROD or DN in the applicable newspaper of record (§ 215.5(b)(2)). The legal notice shall:

(1) Include the title of the project or activity and a concise description of the action(s) to be taken, the name and title of the Responsible Official, and instructions for obtaining a copy of the DN and FONSI or ROD.

(2) State that the decision is subject to appeal pursuant to 36 CFR part 215 and include the following:

(i) Name and address of the Appeal Deciding Officer with whom an appeal is to be filed. The notice shall specify a street, postal, fax, and e-mail address, the acceptable format(s) for appeals electronically filed, and the Appeal Deciding Official's office business hours for those filing hand-delivered appeals.

(ii) A statement that the publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an appeal (§ 215.15 (a)) and that those wishing to appeal should not rely upon dates or timeframe information provided by any other source. An actual date shall not be included in the legal notice.

(iii) A statement that an appeal, including attachments, must be filed (regular mail, fax, e-mail, hand-delivery, express delivery, or messenger service) with the appropriate Appeal Deciding Officer (§ 215.8) within 45 days following the date of publication of the legal notice.

(iv) A statement indicating that individuals or organizations who submitted substantive comments during the comment period (§ 215.6) may appeal.

(v) A statement specifying, when applicable, that the Chief of the Forest Service, or a designee, has determined that an emergency situation exists (§ 215.10), and which portion of the project is covered by that determination as provided for in § 215.10.

(vi) A statement indicating how many days following publication of the decision that implementation may begin (§ 215.9), including those portions covered by an emergency situation determination, if applicable (§ 215.10).

(3) When no substantive comments expressing concerns or only supportive comments are received, include a

statement indicating that the decision is not subject to appeal pursuant to § 215.12.

§ 215.8 Appeal Deciding Officer.

(a) *Appropriate Appeal Deciding Officer.* Appeals must be filed with the Appeal Deciding Officer as follows:

If the responsible official who made the decision is:	Then the Appeal Deciding Officer is:
Chief	Secretary of Agriculture.
Regional Forester or Station Director.	Chief of the Forest Service.
Forest Supervisor	Regional Forester.
District Ranger	Forest Supervisor.

(b) *Authority.* The Appeal Deciding Officer makes all procedural determinations. Such determinations are not subject to further administrative review.

(1) *Consolidation of appeal decisions.* In cases involving more than one appeal of a decision, the Appeal Deciding Officer may consolidate appeals and may issue one or more appeal decisions.

(2) *Appeals with multiple names (organization(s) or individuals).*

(i) When an appeal lists multiple names, the Appeal Deciding Officer shall identify all qualified appellants (§ 215.13).

(ii) The Appeal Deciding Officer may appoint the first name listed as the lead appellant (§ 215.2) to act on behalf of all parties to that appeal when the appeal does not specify a lead appellant (§ 215.14(b)(3)).

(3) *Appeal disposition.*

(i) The Appeal Deciding Officer shall render the final disposition on an appeal and notify the appellant(s) in writing concerning the disposition of the appeal (§ 215.15(e)(2)).

(ii) The Appeal Deciding Officer may issue an appeal decision different from the Appeal Reviewing Officer's recommendation.

§ 215.9 Decision implementation.

(a) When no appeal is filed within the 45-day time period, implementation of the decision may begin on, but not before, the 5th business day following the close of the appeal-filing period (§ 215.15).

(b) Except for emergency situations (§ 215.10(c)), when an appeal is filed, implementation may occur on, but not before, the 15th business day following the date of appeal disposition (§ 215.2). In the event of multiple appeals of the same decision, the implementation date is controlled by the date of the last appeal disposition.

(c) When a project or activity decision is not subject to appeal (§ 215.12), implementation may occur as follows:

(1) Immediately after publication (§ 215.7(b)) of a decision documented in a Decision Notice; or

(2) Immediately when documented in a Record of Decision after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2).

§ 215.10 Emergency situations.

(a) *Authority.* The Chief and the Associate Chief of the Forest Service are authorized to make the determination that an emergency situation (§ 215.2) exists, and they may delegate this authority only to the Deputy Chief for National Forest System and to the Regional Foresters. Persons acting in these positions may exercise this authority only when they are filling vacant positions and they have been formally delegated full acting authority for the positions. Persons acting in positions during temporary absences of the incumbents shall not be delegated this authority to make emergency situation determinations.

(b) *Determination.* The determination that an emergency situation exists shall be based on an examination of the relevant information. During the review, additional information may be requested.

(c) *Implementation.* When it is determined that an emergency situation exists with respect to all or part of the decision, implementation may proceed as follows:

(1) Immediately after publication (§ 215.7(b)) of a decision documented in a Decision Notice, for that portion of the decision determined to be an emergency.

(2) Immediately when documented in a Record of Decision, after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2), for that portion of the decision determined to be an emergency.

(d) *Notification.* The Responsible Official shall notify the public in the legal notice of the decision (§ 215.7) that the Forest Service made a determination that all or part of a project decision is an emergency situation.

§ 215.11 Decisions subject to appeal.

The following decisions are subject to appeal under this part:

(a) Decisions for projects and activities implementing land and resource management plans (§ 215.2) documented in a Record of Decision (ROD) or Decision Notice (DN), including those which contain a non-significant amendment to a land and resource management plan as a part of the decision;

(b) A new DN after revision of an environmental assessment (EA), or a new ROD after supplementation or revision of an environmental impact statement (EIS), pursuant to FSH 1909.15, Chapter 10, section 18. However, only that portion of the decision that is changed is subject to appeal.

(c) Decisions made in conjunction with other Federal agencies and meeting the requirements of preceding paragraph (a). However, only that portion of the decision made by the Forest Service affecting National Forest System lands (§ 215.2) is subject to appeal under this part.

(d) Decisions which affect the holders of a special use authorization or certain applicants for special use authorizations for use or occupancy of National Forest System lands (§ 251.86) and meeting the requirements of preceding paragraph (a), are subject to appeal by those same parties under either this part or part 251, subpart C, but not under both parts.

§ 215.12 Decisions and actions not subject to appeal.

The following decisions and actions are not subject to appeal under this part, except as noted:

(a) The amendment, revision, or adoption of a land and resource management plan that includes a project decision, except that the project portion of the decision is subject to this part. The amendment, revision, or adoption portion of a decision is subject to either the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (*see* 36 CFR parts 200 to 299, Revised as of July 1, 2000);

(b) Determination, with documentation, that a new decision is not needed following supplementation of an environmental impact statement (EIS) or revision of an environmental assessment (EA) pursuant to FSH 1909.15, Chapter 10, section 18.

(c) Preliminary findings made during planning and/or analysis processes on a project or activity. Such findings are appealable only upon issuance of a decision document.

(d) Subsequent implementing actions that result from the initial project decision that was subject to appeal.

(e) Projects or activities for which notice of the proposed action and opportunity to comment is published (§ 215.5) and

(1) No substantive comments expressing concerns or only supportive comments are received during the

comment period for a proposed action analyzed and documented in an EA (§ 215.6); or

(2) No substantive comments expressing concerns or only supportive comments are received during the comment period for a draft EIS (40 CFR 1502.19), and the Responsible Official's decision does not modify the preferred alternative identified in the draft EIS.

(f) Decisions for actions that have been categorically excluded from documentation in an EA or EIS pursuant to FSH 1909.15, Chapter 30, section 31.

(g) An amendment, revision, or adoption of a land and resource management plan that is made independent of a project or activity (subject to either the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (*see* 36 CFR parts 200 to 299, Revised as of July 1, 2000)).

(h) Concurrences and recommendations to other Federal agencies.

§ 215.13 Who may appeal.

(a) Individuals and organizations who submit substantive written or oral comments during the 30-day comment period for an environmental assessment, or 45-day comment period for a draft environmental impact statement (§ 215.6, 40 CFR 1506.10; FSH 1909.15, Chapter 20), except as provided for in paragraph (c) of this section, may file an appeal. Comments received from an authorized representative(s) of an organization are considered those of the organization only; individual members of that organization do not meet appeal eligibility solely on the basis of membership in an organization; the member(s) must submit substantive comments as an individual in order to meet appeal eligibility.

(b) When an appeal lists multiple individuals or organizations, each shall meet the requirements of paragraph (a) of this section. Individuals or organizations that do not meet the requirements of paragraph (a) shall not be accepted as appellants.

(c) Federal agencies may not appeal.

(d) Federal employees, who otherwise meet the requirements of this part for filing appeals in a non-official capacity, shall comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees shall not be on official duty nor use government property or equipment in the preparation or filing of an appeal. Further, employees shall not incorporate information unavailable to the public, *i.e.* Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)).

§ 215.14 Appeal content.

(a) It is the appellant's responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why the Responsible Official's decision should be reversed (paragraph (b)(6–9)).

(b) The appeal must be filed with the Appeal Deciding Officer § 215.8 in writing. At a minimum, an appeal must include the following:

(1) Appellant's name and address (§ 215.2), with a telephone number, if available;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);

(3) When multiple names are listed on an appeal, identification of the lead appellant (§ 215.2) and verification of the identity of the lead appellant upon request;

(4) The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;

(5) The regulation under which the appeal is being filed, when there is an option to appeal under either this part or part 251, subpart C (§ 215.11(d));

(6) Any specific change(s) in the decision that the appellant seeks and rationale for those changes;

(7) Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;

(8) Why the appellant believes the Responsible Official's decision failed to consider the substantive comments; and

(9) How the appellant believes the decision specifically violates law, regulation, or policy.

(c) The Appeal Deciding Officer shall not process an appeal when one or more of the following applies:

(1) An appellant's identity is not provided or cannot be determined from the signature (written or electronically scanned) and a reasonable means of contact is not provided.

(2) The appellant has not provided a reasonable means of contact.

(3) The decision cannot be identified.

(4) The appeal is illegible for any reason, including those submitted electronically in a format different from that specified in the legal notice.

§ 215.15 Appeal time periods and process.

(a) *Time to file an appeal.* Written appeals, including any attachments, must be filed with the Appeal Deciding Officer within 45 days following the publication date of the legal notice of the decision in the newspaper of record (§ 215.7). It is the responsibility of appellants to ensure that their appeal is received in a timely manner.

(b) *Computation of time periods.* (1) All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day (11:59 p.m.).

(2) The day after the publication of the legal notice of the decision in the newspaper of record (§ 215.7) is the first day of the appeal-filing period.

(3) The publication date of the legal notice of the decision in the newspaper of record is the exclusive means for calculating the time to file an appeal. Appellants should not rely on dates or timeframe information provided by any other source.

(c) *Evidence of timely filing.* When there is a question about timely filing of an appeal, timeliness shall be determined by:

(1) The date of the postmark, e-mail, fax, or other means of filing (for example, express delivery service) an appeal and any attachment;

(2) The time and date imprint at the correct Appeal Deciding Officer's office on a hand-delivered appeal and any attachments; or

(3) When an appeal is electronically mailed, the appellant should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the appellant does not receive an automated acknowledgment of the receipt of the appeal, it is the appellant's responsibility to ensure timely receipt by other means.

(d) *Extensions.* Time extensions, except as noted in paragraph (b) of this section, are not permitted.

(e) *Other timeframes.* Unless an appeal is resolved through the informal disposition process (§ 215.17), the following timeframes and processes shall apply:

(1) *Transmittal of decision documentation.* Within 15 days of the close of the appeal-filing period, the Responsible Official shall transmit the decision documentation to the Appeal Reviewing Officer including a list of those individuals or organizations who submitted substantive comments.

(2) *Appeal disposition.* Within 45 days following the end of the appeal-filing period, the Appeal Deciding Officer should render a written decision to the appellant(s) concerning their appeal. When an appeal decision is not rendered by day 45, the Appeal

Deciding Officer shall notify the appellant(s) in writing that an appeal decision will not be issued (§ 215.18(b).

(3) When an appeal decision is not issued within 45 days, the Responsible Official's decision is deemed the final agency action.

§ 215.16 Dismissal of appeal without review.

(a) The Appeal Deciding Officer shall dismiss an appeal without review when one or more of the following applies:

(1) The postmark on an appeal mailed or otherwise filed (for example, express mail service) or the evidence of the date sent on an e-mailed or faxed appeal is not within the 45-day appeal-filing period (§ 215.15).

(2) The time and date imprint at the correct Appeal Deciding Officer's office on a hand-delivered appeal is not within the 45-day appeal-filing period (§ 215.15).

(3) The requested relief or change cannot be granted under law or regulation.

(4) The appellant has appealed the same decision under part 251 (§ 215.11(d)).

(5) The decision is not subject to appeal (§ 215.12).

(6) The individual or organization did not submit substantive comments during the comment period (§ 215.6).

(7) The Responsible Official withdraws the decision.

(8) The appeal does not provide sufficient information in response to § 215.14(b)(6) through (b)(9) for the Appeal Deciding Officer to render a decision.

(9) The appellant withdraws the appeal.

(b) Any additional information or attachment to an appeal that is not filed within the 45-day appeal-filing period shall not be considered with the appeal.

(c) The Appeal Deciding Officer shall give written notice to the appellant and the Responsible Official when an appeal is dismissed and shall give the reasons for dismissal.

§ 215.17 Informal disposition.

(a) *Offer to meet.* When an appeal is received, the Responsible Official, or designee, must contact the appellant and offer to meet and discuss resolution of the issues raised in the appeal. This contact shall be made as soon as practicable after the Appeal Deciding Officer receives the appeal and the Responsible Official is notified. In the case of multiple names or organizations, it is the responsibility of the lead appellant (§ 215.2) to contact any other persons named in their appeal who may desire to participate in the informal disposition meeting. If the appellant(s) decline to meet, the Responsible Official shall so advise the Appeal Deciding Officer.

(b) *Time and location of meeting.* When an appellant agrees to meet, the initial meeting shall take place within 15 days after the closing date for filing an appeal (§ 215.15). The location of the meeting shall be in the vicinity of the lands affected by the decision. When the District Ranger is the Responsible Official, meetings will generally be located on or near that Ranger District. When the Forest Supervisor, Regional Forester, or the Chief is the Responsible Official, meetings will generally take place at a location within or near the National Forest.

(c) *Meeting structure.* Generally, the appellant(s) should be physically present at informal disposition meetings. If the appellant cannot attend a meeting in person because of schedule conflicts or travel distances, alternative types of meetings (such as telephone conferences or video conferences) may be arranged. All meetings are open to the public.

(d) *Outcome.* After the informal disposition meeting, the Responsible Official shall notify the Appeal Deciding Officer in writing of the meeting participants and which of the following three outcomes occurred.

(1) An appellant and the Responsible Official reach agreement on disposition of all or a portion of an appeal. The appellant shall withdraw all or the agreed upon portion of the appeal by letter to the Appeal Deciding Officer within 15 days of the agreement. When the appellant does not withdraw the appeal in writing, formal review and disposition of the appeal shall continue.

(2) As a result of the agreement reached at the informal disposition meeting, new information is received or changes to the original decision or environmental analysis are proposed. The Responsible Official must follow the correction, supplementation, or revision of environmental documentation and reconsideration of decisions to take action guidance in FSH 1909.15, Chapter 10, section 18, and §§ 215.3 and 215.4.

(3) An appeal is not entirely resolved through informal disposition. Formal review and disposition of the unresolved portion of the appeal shall continue (§ 215.18).

§ 215.18 Formal review and disposition procedures.

(a) *Scope of review.* The Appeal Deciding Officer shall complete a review based on the appeal record (§ 215.2) and the Appeal Reviewing Officer's recommendation (§ 215.19(b)).

(b) *Disposition.* The Appeal Deciding Officer shall either:

(1) Issue a written appeal decision within 45 days following the end of the appeal-filing period, which affirms or reverses the Responsible Official's decision, either in whole or in part, and which may include instructions for further action. When an appeal decision involves instructions concerning new information or changed circumstances, the Responsible Official must follow the correction, supplementation, or revision of environmental documentation and reconsideration of decisions to take action guidance in FSH 1909.15, Chapter 10, section 18 and §§ 215.3, 215.4, 215.11, and 215.12. The Appeal Deciding Officer shall send a copy of the appeal decision to the appellant(s), the Appeal Reviewing Officer, and the Responsible Official within 5 days; or

(2) Not issue an appeal decision and so notify the appellant(s) in writing that an appeal decision will not be issued and that the Responsible Official's decision constitutes the final agency action of the Department of Agriculture (§ 215.15(e)(2)). Notification shall be sent no sooner than 46 days nor later than 50 days following the end of the appeal-filing period.

(c) *Final administrative determination.* The Appeal Deciding Officer's appeal disposition constitutes the final administrative determination of the Department of Agriculture.

§ 215.19 Appeal Reviewing Officer.

(a) *Designation.* The Appeal Reviewing Officer shall be:

(1) Designated by the Chief or designee, and shall be a line officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal, who has not participated in the initial decision and will not be responsible for implementation of the initial decision after the appeal is decided; or

(2) Designated by the Secretary in the case of Chief's decisions.

(b) *Review and recommendation.* The Appeal Reviewing Officer shall review an appeal and the decision documentation and make a written recommendation to the Appeal Deciding Officer on the disposition of the appeal. That recommendation shall be released only upon issuance of an appeal decision.

(c) *Multiple appeals.* In cases involving more than one appeal of a decision, the Appeal Reviewing Officer may consolidate appeals and issue one or more recommendations.

§ 215.20 Secretary's authority.

(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.

(b) Decisions of the Secretary of Agriculture or Under Secretary, Natural Resources and Environment are not subject to the notice, comment, and appeal procedures set forth in this part. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the Department of Agriculture.

§ 215.21 Judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to appeal is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the appeal procedures in this part (7 U.S.C. 6912 (e)).

§ 215.22 Applicability and effective date.

(a) The notice, comment, and appeal procedures set out in this part, except as noted in paragraph (b) below, apply to all projects and activities for which legal notice is published pursuant to § 215.5 on or after June 4, 2003.

(b) The provisions concerning electronic comments (§§ 215.5(b)(vi–vii) and 215.6(a)(4)(iii)) and electronic appeals (§§ 215.7(b)(2)(i) and (iii) and 215.15(c)(1) and (3)) are effective July 7, 2003.

(c) The notice, comment, and appeal procedures of part 215 in effect prior to June 4, 2003 remain in effect for those projects and activities for which legal notice (§§ 215.5 or 215.7) is published prior to June 4, 2003 (*see* 36 CFR parts 200 to 299, Revised as of July 1, 2002).

Dated: May 13, 2003.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 03–13927 Filed 6–3–03; 8:45 am]

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Federal Register

Wednesday,
June 4, 2003

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement for the Internet Crimes Against Children Task Force Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) Docket No. 1376]

Program Announcement for the Internet Crimes Against Children Task Force Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications from state and local law enforcement agencies interested in participating in the Internet Crimes Against Children (ICAC) Task Force Program. In an effort to expand ICAC Regional Task Force coverage to areas that do not currently have an ICAC Regional Task Force presence, this solicitation is limited to State and local law enforcement agencies in the following states and localities: Arkansas; New Jersey; northern Florida;[1] the Los Angeles, California, metropolitan area;[2] and the northern Virginia/Washington, DC metropolitan area (excluding Maryland).[3] Only one grant will be awarded per State/locality listed above. This program encourages communities to develop regional multidisciplinary, multijurisdictional task forces to prevent, interdict, and investigate sexual exploitation offenses committed by offenders who use online technology to victimize children.

DATES: Applications must be received by July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Chris Holloway, 202–305–9838, ICAC Program Manager, Child Protection Division, Office of Juvenile Justice and Delinquency Prevention.

SUPPLEMENTARY INFORMATION:

Purpose

Due to an increase in funding, this solicitation is being extended to further expand the ICAC Task Force program to provide national coverage beyond that established through grants awarded under this program in 2002. Funding the specific states and regions identified in this solicitation will further this goal.

The purpose of this program is to help state and local law enforcement agencies enhance their investigative response to offenders who use the Internet, online communication systems, or other computer technologies to sexually exploit children. Throughout this program announcement, ''Internet crimes against children'' refers to the sexual exploitation of children that is facilitated by computers and includes crimes of child pornography and online solicitation for sexual purposes.

Background

Unlike some adults who view the benefits of the Information Age dubiously, children and teenagers have seized the Internet's educational and recreational opportunities with astonishing speed. Adapting information technology to meet everyday needs, young people are increasingly going online to meet friends, get information, purchase goods and services, and complete school assignments. Currently, 28 million children and teenagers have access to the Internet; industry experts predict that they will be joined by another 50 million globally by 2005. Although the Internet gives children and teenagers access to valuable resources, it also increases their risk of being sexually exploited or victimized.

When online, large numbers of young people encounter sexual solicitations they do not want and sexual material they do not seek. In the most serious cases, they are targeted by offenders seeking children for sex. Research conducted by the University of New Hampshire revealed that one in five children between ages 10 and 17 received a sexual solicitation over the Internet in 1999. One in 33 received an aggressive solicitation from someone who asked to meet them somewhere, called them on the telephone, or sent them mail, money, or gifts.

Cloaked in the anonymity of cyberspace, sex offenders can capitalize on the natural curiosity of children and seek victims with little risk of detection. Preferential sex offenders no longer need to lurk in parks and malls. Instead, they can roam from chat room to chat room, trolling for children susceptible to victimization. This alarming activity has grave implications for parents, teachers, and law enforcement officers because it circumvents conventional safeguards and provides sex offenders with virtually unlimited opportunities for unsupervised contact with children.

Today's Internet is also rapidly becoming the new marketplace for offenders seeking to acquire material for their child pornography collections. Child pornography depicts the sexual assault of children and is often used by child molesters to recruit, seduce, and control their victims. Child pornography is used to break down inhibitions, validate sex between children and adults as normal, and control victims throughout their molestation. When offenders lose interest in their victims, child pornography is often used as blackmail to ensure the child's silence; when posted on the Internet, pornography becomes an enduring and irretrievable record of victimization and a relentless violation of that child's privacy.

OJJDP recognizes that the increasing online presence of children, the lure of predators searching for unsupervised contact with underage victims, and the proliferation of child pornography present a significant threat to the health and safety of children and a formidable challenge to law enforcement today and into the foreseeable future. Three main factors complicate law enforcement's response to these challenges.

First, conventional definitions of jurisdiction are practically meaningless in the electronic universe of cyberspace; very few investigations begin and end within the same geographical area. Because they involve multiple jurisdictions, most investigations require close coordination and cooperation between Federal, State, and local law enforcement agencies.

Second, evidence collection in ICAC investigations typically requires specialized expertise and equipment. Because preferential sex offenders tend to be avid recordkeepers, their computers, magnetic media, and related equipment can be valuable sources of evidence. However, routine forensic examination procedures are insufficient for seizing, preserving, and analyzing this information. In addition, the seizure of computers and related technology may lead to specific legal issues regarding property and privacy rights.

Third, routine interviewing practices are inadequate for collecting testimonial evidence from child victims of Internet crimes. Some children deny they are victims because they fear embarrassment, ridicule from their peers, or discipline from their parents. Other victims bond with the offender, remain susceptible to further manipulation, or resent what they perceive as interference from law enforcement. Investigators who do not

[1] For the purpose of this solicitation, northern Florida is defined as counties and cities north of, and including, Hillsborough County, Indian River County, Osceola County, and Polk County.

[2] For the purpose of this solicitation, the Los Angeles metropolitan area is defined as cities and towns within, and including, Los Angeles County, Orange County, Riverside County, San Bernardino County, and Ventura County.

[3] For the purpose of this solicitation, the northern Virginia/Washington, DC, metropolitan area (excluding Maryland) is defined as the cities of Washington, DC; Alexandria, Virginia; and Falls Church, Virginia, and the cities and towns in Virginia within, and including, Arlington County, Fairfax County, Loudoun County, Prince William County, and Stafford County.

fully understand the dynamics of juvenile sexual exploitation risk losing critical information that could help convict perpetrators or identify additional victims. When appropriate, medical and psychological evaluations should be a part of law enforcement's response to cases involving child victims. In addition to ensuring that injuries or diseases related to the victimization are treated, forensic medical examinations provide crucial corroborative evidence.

The above factors almost routinely complicate the investigative process. Although no two cases raise identical issues of jurisdiction, evidence collection, and victim services, it is logical to presume that investigations characterized by a multijurisdictional, multidisciplinary approach will more likely result in successful prosecutions.

A variety of Federal activities are helping and can further help law enforcement respond to these offenses. For example, the Innocent Images National initiative, managed by the Federal Bureau of Investigation's (FBI's) Cyber Division, Innocent Images Unit, works specifically on cases involving computer-facilitated child sexual exploitation. The U.S. Customs Service (USCS) and the U.S. Postal Inspection Service (USPIS) have successfully investigated hundreds of child pornography cases.

The Child Exploitation and Obscenity Section (CEOS) of the U.S. Department of Justice prosecutes Federal violations and offers advice and litigation support to Federal, State, and local prosecutors working on child pornography and sexual exploitation cases.

With support from OJJDP and private-sector funding, the National Center for Missing and Exploited Children (NCMEC) serves as the nation's primary resource center and clearinghouse for issues involving missing and exploited children. NCMEC's Training Division coordinates a comprehensive training and technical assistance program that includes prevention and awareness activities. Gathering information from citizens and Internet service providers, the CyberTipline (*http://www.missingkids.com*) collects online reports regarding the computer-facilitated sexual exploitation of children and rapidly forwards this information to the law enforcement agencies with investigative jurisdiction. Brought online in March 1998, the CyberTipline has provided law enforcement officers with information that has enabled them to arrest individuals seeking sex with underage victims and to safely recover and return children enticed from home by sex offenders.

NCMEC's law enforcement training and technical assistance program was developed in partnership with OJJDP, the FBI, USCS, USPIS, and CEOS. NCMEC has also developed an education and awareness campaign that features the Kids and Company curriculum, the Know the Rules teen awareness program, and two pamphlets (*Child Safety on the Information Highway* and *Teen Safety on the Information Highway*) that provide information about safe Internet practices for children and youth. These programs and materials are offered free of charge, and OJJDP encourages communities working on child victimization issues to use them. Additional information about NCMEC's services for children, parents, educators, and law enforcement officers can be obtained by calling 800–THE–LOST or by accessing NCMEC's Web site at *http://www.missingkids.com.*

Since fiscal year 1998, OJJDP has awarded funds to 35 State and local law enforcement agencies to develop regional multijurisdictional and multiagency task forces to prevent, interdict, and investigate ICAC offenses. The following jurisdictions currently receive ICAC Regional Task Force Program funding: Alabama Department of Public Safety; Bedford County, Virginia, Sheriff's Department; Broward County, Florida, Sheriff's Department; Clark County, Nevada, Las Vegas Metropolitan Police Department; Colorado Springs, Colorado, Police Department; Connecticut State Police; Cuyahoga County, Ohio, District Attorney; Dallas, Texas, Police Department; Delaware County, Pennsylvania, District Attorney; Georgia Bureau of Investigation; Hawaii Office of the Attorney General; Illinois State Police; Indiana State Police; Kentucky State Police; Knoxville, Tennessee, Police Department; Louisiana Office of the Attorney General; Maryland State Police; Massachusetts Department of Public Safety; Michigan State Police; Nebraska State Patrol; New York State Division of Criminal Justice Services; North Carolina Division of Criminal Investigation; Oklahoma State Bureau of Investigation; Phoenix, Arizona, Police Department; Portsmouth, New Hampshire, Police Department; Sacramento County, California, Sheriff's Office; Saint Paul, Minnesota, Police Department; San Diego, California, Police Department; San Jose, California, Police Department; Seattle, Washington, Police Department; Sedgewick County, Kansas, Sheriff's Office; South Carolina Office of the Attorney General; Utah Office of the Attorney General; Wisconsin Department of Justice; and the Wyoming Division of Criminal Investigation. These agencies have become regional clusters of ICAC technical and investigative expertise, offering prevention and investigation services to children, parents, educators, law enforcement officers, and other individuals working on child sexual exploitation issues. Collectively, task force agencies have made more than 800 arrests, seized more than 900 computers, and provided forensic or investigative assistance in nearly 3,000 cases.

Despite these accomplishments, law enforcement agencies continue to be increasingly challenged by sex offenders who use computer technology to victimize children. To help meet this challenge, OJJDP is continuing the ICAC Regional Task Force Program, which will competitively award cooperative agreements to state and local law enforcement agencies seeking to improve their investigative responses to the computer-facilitated sexual exploitation of children.

Program Strategy

The ICAC Task Force Program seeks to enhance the nationwide response to child victimization by maintaining and expanding a State and local law enforcement network composed of regional task forces. The program encourages communities to develop multijurisdictional, multiagency responses and provides funding to State and local law enforcement agencies to help them acquire the knowledge, personnel, and specialized equipment needed to prevent, interdict, and investigate ICAC offenses. Although the ICAC Task Force Program emphasizes law enforcement investigations, OJJDP encourages jurisdictions to include intervention, prevention, and victim services activities as part of their comprehensive approach.

OJJDP Program Management

During the past four years of managing the ICAC Task Force Program, OJJDP has made the following observations:

1. The Internet challenges traditional thinking about law enforcement jurisdiction and renders city, county, and State boundaries virtually meaningless. Because of this jurisdictional ambiguity, offenders are often able to frustrate enforcement actions and conceal their criminal activities.

2. Nearly all ICAC investigations (95 percent) involve substantial communication and coordination efforts among Federal, State, and local law

enforcement agencies. Without meaningful case coordination, law enforcement agencies may inadvertently investigate identical suspects and organizations, target undercover operatives of other law enforcement agencies, or disrupt clandestine investigations of other agencies.

• The obvious need for interagency cooperation and coordination has sustained interest in maintaining standards for ICAC undercover investigations. Representatives from Federal, State, and local law enforcement agencies have repeatedly expressed concern about initiating investigations that are based on referrals from outside agencies—referrals that may be predicated on information acquired through inappropriate officer conduct or investigative techniques.

• The clandestine nature of undercover operations, the anonymity of Internet users, and the unclear jurisdictional boundaries of cyberspace significantly exacerbate these investigative concerns. Undercover operations, when executed and documented properly, collect virtually unassailable evidence regarding a suspect's predilection to sexually exploit children. These operations allow law enforcement agencies to go on the offensive and, most important, protect children from revictimization. Although carefully managed undercover operations by well-trained officers can be very effective, these operations also generate concerns regarding legal, coordination, communication, and resource management issues.

3. Although Internet awareness appears to be growing, many children, teenagers, and parents are not sufficiently informed about the potential dangers and repercussions of releasing personal information to, or meeting with, individuals encountered online.

4. Although Federal agencies are responsible for monitoring illegal interstate and telecommunications activities, protecting children is primarily the responsibility of State and local law enforcement agencies. The production of child pornography or the sexual assault of a child—whether originating online or not—usually creates both a jurisdictional interest and a responsibility for State and local authorities.

• Despite the belief that these cases are usually manufactured by undercover operations in which officers pose as minors in chat rooms, most ICAC investigations are initiated in response to a citizen complaint or a request from law enforcement. Unfortunately, these cases often involve multiple victims who require a response by both local law enforcement and victim services.

5. The Internet is placing a new demand on forensic resources. Computers are piling up in evidence rooms across the country because many agencies do not have the forensic capacity to meet the needs of investigative efforts.

6. A generation ago, officers beginning their law enforcement careers would be issued a uniform, a service weapon, and a notebook. Those items rarely changed during a 20-year career. Today, changes in equipment and software occur seemingly overnight. Officers are hard-pressed to stay current not only with the technological changes but also with a motivated offender community that is adapting these new technologies to exploit children.

To address these observations and concerns, the ICAC Task Force Program implements the following management strategies:

• Maintaining and expanding the nationwide network of State and local law enforcement agencies participating in the program.

• Ensuring that ICAC Task Force personnel are adequately trained and equipped.

• Establishing and/or maintaining ICAC Task Force investigative standards to facilitate interagency case referrals.

• Advocating coordination and collaboration among Federal, State, and local law enforcement agencies investigating ICAC offenses.

• Fostering meaningful information-sharing to avoid redundant investigations or activities that could disrupt the ongoing investigations of other agencies.

• Maintaining an ICAC Task Force Board composed of local law enforcement executives and prosecutors to advise OJJDP, formulate policy recommendations, and assess the law enforcement community's needs for training and technical assistance related to investigating Internet crimes.

• Convening an annual ICAC Task Force training conference to focus on child exploitation, emerging technology, and its relevance to criminal activity and enforcement efforts and to enhance the networking essential for sustaining an effective State and local law enforcement response to online crime.

OJJDP established the ICAC Task Force Program Standards through a collaborative process involving the ten original ICAC Task Force agencies, the FBI, NCMEC, USCS, USPIS, CEOS, and the Executive Office for United States Attorneys. The standards were designed by the task force agencies to foster information-sharing, coordinate investigations, ensure the probative quality of undercover operations, and facilitate interagency case referrals by standardizing investigative practices. In 2002, the ICAC standards were revised and updated to reflect twenty additional ICAC Regional Task Forces and an expanded program focus on the protection of children.

OJJDP has also established an ICAC Task Force Board (the Board) to help administer the ICAC Task Force Program. As a condition of the award, each grantee must designate a policy-level law enforcement official or prosecutor to be a Board member. Although its primary responsibility is to serve as an advisory group to OJJDP, the Board also encourages case coordination and facilitates information-sharing on trends, innovative investigative techniques, and prosecution strategies. Technical advice is provided to the Board by NCMEC, CEOS, the FBI, USCS, and USPIS.

The award also requires that each ICAC Regional Task Force member send at least one investigator and one policy-level official to an ICAC Task Force Program orientation seminar. The seminars, which were developed by OJJDP and NCMEC in consultation with Federal law enforcement agencies, provide information on legal issues, specific investigative techniques, undercover operation documentation requirements, behavioral characteristics of preferential sex offenders, and other topics relevant to child exploitation cases.

To learn about the next seminar scheduled at NCMEC's Jimmy Ryce Law Enforcement Training Center in Alexandria, VA, contact NCMEC at *http://www.missingkids.com.* Expenses associated with attendance at the orientation seminar will be reimbursed by OJJDP and NCMEC. Expenses associated with Board responsibilities will be covered by grant funds.

Goal

The program's goal is to enhance the ICAC investigative response of State and local law enforcement agencies.

Objectives

Projects must accomplish the following objectives:

• Develop or expand multiagency, multijurisdictional regional task forces that include, but are not limited to, representatives from law enforcement, prosecution, victim services, and child protective services agencies. Regional task forces should include large regional geographic areas, entire States, or, when applicable, multiple States. Relevant nongovernment organizations may also

be included. OJJDP encourages applicants to invite Federal law enforcement agencies to participate in the task force.

• Institute policies and procedures that comply with the ICAC Task Force Program Standards (*see* ''OJJDP Program Management'' above). Requests from eligible law enforcement agencies for copies of the ICAC Program Operational and Investigative Standards must be faxed on official letterhead to the Juvenile Justice Clearinghouse at 301–519–5600.

• Enhance investigative capacity by properly equipping and training ICAC Task Force investigators. Task force investigators should be computer-literate, knowledgeable about child exploitation issues, and familiar with Federal and State statutes and caselaw pertaining to ICAC investigations.

• Develop and maintain case management systems to record offenses and investigative results, make or receive outside agency referrals of ICAC cases, and comply with the reporting requirements of the ICAC Task Force Monthly Performance Measures Report.

• Develop response protocols or memorandums of understanding that foster collaboration, information-sharing, and service integration among public and private organizations that provide services to sexually exploited children.

Eligibility Requirements

Applicants must be State and/or local law enforcement agencies located in Arkansas; New Jersey; northern Florida;[4] the Los Angeles, California, metropolitan area,[5] or the northern Virginia/Washington, DC, metropolitan area (excluding Maryland).[6] Joint applications from two or more eligible applicants are welcome; however, one applicant must be clearly designated as the primary applicant (for correspondence, award, and management purposes) and the other(s) designated as coapplicant(s).

[4] For the purpose of this solicitation, northern Florida is defined as counties and cities north of, and including, Hillsborough County, Indian River County, Osceola County, and Polk County.

[5] For the purpose of this solicitation, the Los Angeles metropolitan area is defined as cities and towns within, and including, Los Angeles County, Orange County, Riverside County, San Bernardino County, and Ventura County.

[6] For the purpose of this solicitation, the northern Virginia/Washington, DC, metropolitan area (excluding Maryland) is defined as the cities of Washington, DC; Alexandria, Virginia; and Falls Church, Virginia, and the cities and towns in Virginia within, and including: Arlington County, Fairfax County, Loudoun County, Prince William County, and Stafford County.

Selection Criteria

OJJDP is committed to establishing a network of state and local law enforcement agencies to respond to offenses involving online enticement and child pornography. Within this network, ICAC Task Forces positioned throughout the country will serve as regional sources of technical, educational, and investigative expertise, providing assistance to parents, teachers, law enforcement officers, and other professionals working on child sexual exploitation issues. Successful applicants will be expected to serve as regional clusters of ICAC technical and investigative expertise, collaborate with existing ICAC Task Forces, and become part of a nationwide law enforcement network designed to protect children from computer-facilitated victimization. To accomplish this goal, regional task forces should include large regional geographic areas, entire States, or, when applicable, multiple States.

Applications should include evidence of multidisciplinary, multijurisdictional partnerships among public agencies, private organizations, community-based groups, and prosecutors' offices. Successful applicants will develop or enhance an investigative ICAC response that includes prevention, education, and victim services activities.

OJJDP will convene a peer review panel to evaluate and rank applications and to make funding recommendations to the OJJDP Administrator. Although peer review recommendations are given weight, they are advisory only. Final award decisions will be made by the OJJDP Administrator. OJJDP will negotiate the specific terms of the award with applicants who are being considered. Applicants will be evaluated and rated according to the criteria outlined below.

Application Procedures

The Office of Justice Programs (OJP) requires that applications be submitted through its online Grants Management System (GMS). This online application system is designed to streamline the processing of requests for funding. A toll-free telephone number (888–549–9901) is available to provide applicants with technical assistance as they work through the online application process.

Applicants should use the following application guidelines when preparing their application for this grant program. Applications must be submitted to OJP electronically through GMS no later than 8 p.m., e.t., on July 7, 2003. However, in order to allow adequate time to register with GMS, applicants must create a ''user profile'' before June 19, 2003. Applicants who have previously registered with GMS and have a GMS password should log on to GMS prior to June 19, 2003, to determine whether the password is still valid. If the password has expired, follow the on-screen instructions or call the GMS Hotline (888–549–9901). OJJDP will begin accepting applications immediately.

Application Requirements

Applicants to the Internet Crimes Against Children Task Force Program solicitation must submit the following information online through GMS:

• *Application for Federal Assistance (SF–424).* This form is generated by completing the Overview, Applicant Information, and Project Information screens in GMS.

• *Assurances and Certifications.* The Assurances and Certifications must be reviewed and accepted electronically by the authorizing official or the designated authorizing official.

• *Budget Detail Worksheet (Attachment #1).* The Budget Detail Worksheet—including budget worksheets and detailed budget narratives for each year in the project period—accounts for 15 of the possible 100 points allotted by the peer reviewers.

• *Program Narrative (Attachment #2).* The Program Narrative—including Problem(s) To Be Addressed, Goals and Objectives, Project Design, and Management and Organizational Capability—accounts for 85 out of the possible 100 points allotted by the peer reviewers. Point values for specific sections of the Program Narrative are as follows: Problem(s) To Be Addressed (10 points), Goals and Objectives (10 points), Project Design (35 points), and Management and Organizational Capability (30 points).

• *Other Program Attachments (Attachment #3).* The Other Program Attachments—including resumes of key personnel and a project timeline—will not be included in the peer reviewers' scoring of the application. However, these materials are required and must be attached *in one file* to your GMS application.

Detailed instructions and descriptions of each of the required elements are provided below. **Note:** Applications that do not include all the required elements will not be considered for funding.

Application for Federal Assistance (SF–424)

The Application for Federal Assistance is a standard form used by most Federal agencies. The Catalog of

Federal Domestic Assistance (CFDA) number for this program is 16.543.

Assurances and Certifications

Applicants are required to review and accept the Assurances and Certifications. Please verify that the name, address, phone number, fax number, and e-mail address of the authorizing official on these online forms are correct.

• *Assurances.* Applicants must comply with the Assurances to receive Federal funds under this program. It is the responsibility of the recipient of the Federal funds to fully understand and comply with these requirements. Failure to comply may result in the withholding of funds, termination of the award, or other sanctions.

• *Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and the Drug-Free Workplace Requirement.* Applicants are required to review and check off the box on the certification form included in the online application process. This form commits the applicant to compliance with the certification requirements under 28 CFR part 69, ''New Restrictions on Lobbying,'' and 28 CFR part 67, ''Government-Wide Debarment and Suspension (Nonprocurement) and Government-Wide Requirements for Drug-Free Workplace (Grants).''

The authorizing official must review the Assurances and Certifications forms in their entirety. To accept the Assurances and Certifications in GMS, click on the Assurances and Certifications link and click the ''Accept'' button at the bottom of the screen.

Budget Detail Worksheet (Attachment #1) (15 Points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost-effective in relation to the activities to be undertaken. Budgets must allow for required travel, including four trips for one individual to attend the quarterly ICAC Task Force Board meetings. Budgets must also allow for the participation of at least two agency representatives at the annual ICAC Training Conference.

Applicants must submit budget worksheets and budget narratives *in one file.* The worksheet provides the detailed computation for each budget item (often in spreadsheet format). The narrative justifies or explains each budget item and relates it to project activities.

• *Budget Worksheet.* The budget worksheet must list the cost of each budget item and show how the cost was calculated. For example, costs for personnel should show the annual salary rate and the percentage of time devoted to the project for each employee to be paid through grant funds. The budget worksheet should present a complete and detailed itemization of all proposed costs.

• *Budget Narrative.* The budget narrative should closely follow the content of the budget worksheet and provide justification for all proposed costs. For example, the narrative should explain how fringe benefits were calculated, how travel costs were estimated, why particular items of equipment or supplies must be purchased, and how overhead or indirect costs (if applicable) were calculated. The budget narrative should justify the specific items listed in the budget worksheet (particularly supplies, travel, and equipment) and demonstrate that all costs are reasonable.

A sample Budget Detail Worksheet form that can be used as a guide to help applicants prepare the budget worksheet and budget narrative is available at *http://www.ojp.usdoj.gov.* (Use the main search engine to search for ''Budget Detail Worksheet.'')

Program Narrative (Attachment #2) (85 Total Points)

Problem(s) To Be Addressed (10 Points)

Applicants must clearly identify the need for this project in their communities and demonstrate an understanding of the program concept. Applicants must include data that illustrate the size and scope of the problem in their State or region. If statistics or other research findings are used to support a statement or position, applicants must provide the relevant source of information.

Goals and Objectives (10 Points)

Applicants must establish clearly-defined, measurable, and attainable goals and objectives for this program.

Project Design (35 Points)

Applicants must explain in clear terms how the State or regional task force will be developed and implemented. Applicants must define the region, State, or, when applicable, the multistate area in which the task force intends to concentrate its efforts. Applicants must present a clear workplan that contains program elements directly linked to achieving the project objectives. The workplan must indicate project milestones, product due dates, and the nature of the products to be delivered.

Management and Organizational Capability (30 Points)

The management structure and staffing described in the application must be adequate and appropriate for the successful implementation of the project. Applicants must identify individuals responsible for the project and their time commitments. Applicants must provide a schedule of major tasks and milestones. Applicants must describe how activities that prevent Internet crimes against children will be continued after Federal funding is no longer available. In addition, applicants must provide signed letters of support from State and local prosecution offices and the local district United States Attorney.

Other Program Attachments (Attachment #3)

At a minimum, resumes of key personnel and a project timeline should be included.

Application Format

The narrative portion of this application (excluding forms, assurances, and appendixes) must not exceed 35 pages and must be submitted on 8½- by 11-inch paper and double spaced on one side in a standard 12-point font. The double-spacing requirement applies to all parts of the program narrative and project abstract, including any lists, tables, bulleted items, or quotations. These standards are necessary to maintain fair and uniform consideration among all applicants. If the narrative and abstract do not conform to these standards, OJJDP will deem the application ineligible for consideration.

Project and Award Period

These cooperative agreements will be funded for up to an 18-month budget and project period and will begin June 1, 2003, and end November 30, 2004. Funding beyond the initial project period will be contingent upon the grantee's performance and the availability of funds.

Award Amount

The total amount available for this program is $1.5 million. OJJDP intends to award five cooperative agreements of up to $300,000 each for the 18-month project period.

Performance Measurement

To ensure compliance with the Government Performance and Results Act, Pub. L. 103–62, this solicitation notifies applicants that they are required to collect and report on data that measure the results of the program

implemented by this grant. To ensure the accountability of this data (for which OJP is responsible) the following performance measures are provided:

- The number of investigations.
- The number of computer forensic examinations.

Under this solicitation, applicants will be required to supply OJJDP with the above performance information. In addition, OJJDP will measure the performance of the ICAC Task Force Program. Data collection will be covered within the existing ICAC Monthly Performance Report (MPR) forms. MPR is a required data-reporting document that was created by OJJDP to collect ICAC data related to arrests, subpoenas, search warrants, technical assistance (investigative and computer forensic), and prevention and intervention activities performed by ICAC Regional Task Forces and ICAC Investigative Satellites. Data gathered from MPRs will track the number of arrests made and the outcomes of those arrests (plea bargains, prosecutions, etc.), assist in the identification of victims who need resources such as counseling and therapy, and track tips and aid in target area identification.

Data collected from MPRs will provide crucial baseline data necessary for a future evaluation of the ICAC Task Force Program after it has been fully established throughout the country. Assistance in obtaining this information will facilitate future program planning and will allow OJP to provide Congress with measurable program results of Federally funded programs.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice requests that applicants provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from the U.S. Department of Justice; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

''Related efforts'' is defined for these purposes as one of the following:

- Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).
- Services of some kind (*e.g.*, technical assistance, research, or evaluation) rendered to the program or project described in the application.

Bibliography

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J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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