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Presidential Documents

Title 3—

The President

Proclamation 7684 of June 6, 2003

Flag Day and National Flag Week, 2003

By the President of the United States of America

A Proclamation

Each year, we set aside June 14 to commemorate the day in 1777 when the Continental Congress adopted the Stars and Stripes as the official flag of our Republic. With this act, the Congress declared that we were one Nation, under one flag, united for the cause of liberty and justice for all.

As a symbol of our patriotism, the American flag continues to invoke pride and resolve among our people, especially when we see it next to a headstone, on the masts of our military ships, worn by the generations of Americans who have proudly served our country, or emerging from the wreckage caused by a natural or manmade disaster. Flying over public buildings, monuments, schools, and homes, our flag is testament to the ideals of American democracy.

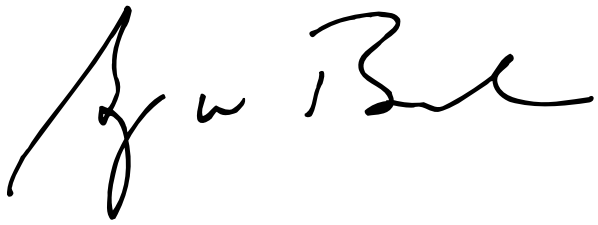
Through the years, millions of immigrants have come to our shores seeking to share in the promise of freedom represented by our flag. From war-torn Europe, to the mountains of Afghanistan, to the deserts of Iraq, the flag and those who carry it are universally recognized as harbingers of liberation, justice, and peace. Regardless of circumstance, our flag endures as a sign of hope.

On Flag Day, we look to the red, white, and blue as a symbol of our commitment to advancing the universal hope of liberty and justice for all. Old Glory abounds in the landscape of our daily lives, reminding us of the freedom we share. The 50 stars and 13 stripes are not just a random pattern, they symbolize the blessings of liberty we enjoy as Americans.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as ''Flag Day'' and requested that the President issue an annual proclamation calling for its observance and for the display of the Flag of the United States on all Federal Government buildings. The Congress also requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President issue annually a proclamation designating the week in which June 14 occurs as ''National Flag Week'' and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim June 14, 2003, as Flag Day and the week beginning June 8, 2003, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National Flag Week by flying the Stars and Stripes from their homes and other suitable places. I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of June, 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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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

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AG60

2002 Marketing Quota and Price Support for Flue-Cured Tobacco

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) for the 2002 crop of flue-cured tobacco. In accordance with the Agricultural Adjustment Act of 1938, as amended, (1938 Act), the Secretary determined the 2002 marketing quota for flue-cured tobacco to be 582.0 million pounds. In accordance with the Agricultural Act of 1949, as amended, (1949 Act), the Secretary determined the 2002 price support level to be 165.4 cents per pound. This rule will also codify the 2000 and 2001 marketing quotas and price support levels. The intended effect of this rule is to codify the announced quota levels as required.

EFFECTIVE DATE: December 15, 2001.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514, telephone 202–720–5346. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Tarczy.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and was reviewed by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule since neither the Commodity Credit Corporation (CCC) nor the Farm Service Agency (FSA) are 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.

Federal Assistance Programs

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

An environmental evaluation found that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

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

Unfunded Mandates

This rule contains no unfunded mandates and, thus, is not subject to the provisions of title II of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

These amendments do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Rulemaking

This rule is issued pursuant to the 1938 Act and the 1949 Act. Section 1108(c) of Pub. L. 99–972 provides that the determinations made in this rule are not subject to the provisions for public participation in rulemaking in 5 U.S.C. 553 or in any directive of the Secretary. Further, this rule affirms existing decisions which were time-sensitive. Hence, a delay in the implementation of the matters affirmed in this notice would have been impracticable, unnecessary, and counter to the public interest. Thus, the matters affirmed in this notice were made effective at the time that they were announced by press release.

On December 15, 2001, the Secretary announced the national marketing quota and the price support level for the 2002 crop of flue-cured tobacco. A number of related determinations were made at the same time, which this final rule affirms. In addition this rule affirms similar determinations made with respect to the 2000 and 2001 crops of flue-cured tobacco.

Marketing Quota

Section 317(a)(1)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) the amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on United States auction markets or from producers, (2) the average quantity exported annually from the U.S. during the 3 marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

The reserve stock level is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 2002 crop of flue-cured tobacco by December 1, 2002. Five such manufacturers were required to submit such a statement for the 2002 crop and the total of their intended purchases for the 2002 crop is 310.0 million pounds. The 3-year average of exports is 249.9 million pounds.

The national marketing quota for the 2001 crop year was 548.9 million

pounds. In accordance with section 301(b)(14)(C) of the 1938 Act the reserve stock level is the greater of 15 percent of the previous year's quota (548.9 million pounds x .15 = 82.3 million pounds) or 100.0 million pounds. Thus, the reserve stock level for use in determining the 2002 marketing quota for flue-cured tobacco is 100.0 million pounds.

Pre-1997 loan crops have been sold. Further, manufacturers agreed in December of 1998, 1999, and 2000 to purchase an additional 210.0 million pounds, thereby reducing loan inventory to 46.9 million pounds. In addition, the Agricultural Rural Development, Food and Drug Administration and Related Agencies Appropriations Act of 2001 (Public Law 106–387), as amended, allowed the forfeiture of 1999 loan inventories. Loans from the 2001 crop total 121 million pounds, making total loan stocks 77.9 million pounds. Accordingly, the adjustment to maintain loan stocks at the reserve supply level is an increase of 22.1 million pounds.

The total of the three marketing quota components for the 2001–2002 Marketing Year (MY) is 582 million pounds. Accordingly, the national marketing quota for the MY beginning July 1, 2002, for flue-cured tobacco is 582 million pounds.

Section 317(a)(2) of the 1938 Act provides that the national average yield goal be set at a level that the Secretary determines will improve or ensure the usability of the tobacco and increase the net return per pound to the producers. Since average yields have not changed significantly in recent years, the national average yield goal for the 2002 MY will be 2,088 pounds per acre, the same as last year's level.

In accordance with section 317(a)(3) of the 1938 Act, the national acreage allotment for the 2002 crop of flue-cured tobacco is determined to be 278,735.63 acres, derived from dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 2002 crop of flue-cured tobacco of 733 acres is adequate for these purposes.

In accordance with section 317(a)(4) of the 1938 Act, the national acreage factor for the 2002 crop of flue-cured tobacco for uniformly adjusting the acreage allotment of each farm is determined to be 1.06, which is the result of dividing the 2002 national allotment (278,735.63 acres) minus the national reserve (733 acres) by the total of allotments established for flue-cured tobacco farms in 2001 (262,265.98 acres).

In accordance with section 317(a)(7) of the 1938 Act, the national yield factor for the 2002 crop of flue-cured tobacco is determined to be 0.9251, which is the result of dividing the national average yield goal (2,088 pounds) by a weighted national average yield (2,257 pounds).

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 2002 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106(d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 2002 crop of flue-cured tobacco shall be:

(1) The level, in cents per pound, at which the 2001 crop of flue-cured tobacco was supported, plus or minus, respectively,

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the U.S. auction markets, as determined by the Secretary, during the 5 MY's immediately preceding the MY for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for flue-cured tobacco on the U.S. auction markets, as determined by the Secretary, during the 5 MY's immediately preceding the MY prior to the MY for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by the tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year for which the determination is made.

The difference between the two 5-year averages (*i.e.*, the difference between (A)(I) and (A)(II)) is 0.10 cent per pound. The difference in the cost index from January 1, 2001, to December 31, 2001, is −1.7 cents per pound. Applying these components to the price support formula (0.0 cent per pound, two-thirds weight; −1.7 cents per pound, one-third weight) results in a weighted total of −0.6 cent per pound. As indicated, section 106 of the 1949 Act provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. As there was no justifiable basis found for limiting the decrease (which reflected a change in production costs), and in order to aid in the marketing of the crop, that discretion was not utilized. Accordingly, the 2002 crop of flue-cured tobacco will be supported at 165.4 cents per pound, 0.6 cent lower than the 2001 crop.

The 2000 and 2001 quotas and price support were determined using the same methodology as described for the 2002 quota and price support. With respect to the marketing quota determinations, for the 2000 crop the purchase intentions, exports (three year average), reserve stock average, and final quota (103% of the total) were 286.0, 334.1, (−92.9), and 543.0 and for 2001 were 297.0, 297.7, (−61.8), and 548.9. The adjustment up to 103% was made, as allowed by statute, to lessen the impact on producers of the declining quotas. Following the time of the determinations for the 2002 crops, the Congress, in Pub. L. 107–71, adjusted the reserve stock level for flue-cured tobacco, doing so in section 1610 of that Act. That change will impact future crops. With respect to price support the price indices used in the price support level determination, the changes (in cents) in prices received and in prices paid per pound were for the 2000 crop determination, 0.4 and 1.5 and for the 2001-crop calculation (−0.2) and 6.5. In order to aid the marketing of the 2000 and 2001 crops, the Secretary used the discretion allowed by the authorizing statute to limit the price support increase to 65% of the increase that would have otherwise been produced by the formula. Copies and other supporting documents are available from Mr. Robert L. Tarczy, USDA, Farm Service Agency, Stop 0514,1400 Independence Avenue, SW., Washington, DC 20250–0514, telephone 202–720–5346.

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Loan programs-agriculture, Price support programs, Tobacco, Reporting and recordkeeping requirements, Warehouses.

■ Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

■ 1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C., 1301–1314, 1314–1, 1314b, 1314b-1, 1314b-2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

■ 2. Section 723.111 is amended by adding paragraphs (h) through (j) to read as follows:

§ 723.111 Flue-cured (types 11–14) tobacco.

* * * * *

(h) The 2000 crop national marketing quota is 543.0 million pounds.

(i) The 2001 crop national marketing quota is 548.9 million pounds.

(j) The 2002 crop national marketing quota is 582.0 millions pounds.

PART 1464—TOBACCO

■ 3. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, and 1445–1, 15 U.S.C. 714b and 714c; Pub. L. 106–78, Pub. L. 106–113, Stat.1135 and Pub. L. 106–224.

■ 4. Section 1464.12 is amended by adding paragraphs (h) though (j) to read as follows:

§ 1464.12 Flue-cured (types 11–14) tobacco.

* * * * *

(h) The 2000 crop national price support level is 164.0 cents per pound.

(i) The 2001 crop national price support level is 166.0 cents per pound.

(j) The 2002 crop national price support level is 165.4 cents per pound.

Signed in Washington, DC, on June 3, 2003.

James R. Little,

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

[FR Doc. 03–14624 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 02–117–8]

Exotic Newcastle Disease; Removal of Areas from Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the exotic Newcastle disease regulations by removing Dona Ana, Luna, and Otero Counties, NM, Hudspeth County, TX, and portions of El Paso County, TX, from the list of quarantined areas. This action removes restrictions on the movement of birds, poultry, and certain other articles from those areas.

DATES: This interim rule was effective June 5, 2003. We will consider all comments that we receive on or before August 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–117–8, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–117–8. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–117–8'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The regulations in ''Subpart A—Exotic Newcastle Disease (END)'' (9 CFR 82.1 through 82.16, referred to below as the regulations) were established to prevent the spread of END in the United States in the event of an outbreak. In § 82.3, paragraph (a) provides that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END. Portions of Arizona, California, Nevada, New Mexico, and Texas are designated as quarantined areas in § 82.3(c) of the regulations. As a result, the interstate movement from the quarantined areas of birds, poultry, products, and materials that could spread END is prohibited or restricted. Further, because the Secretary has declared an extraordinary emergency because of END in those States, the regulations in § 82.16 provide that the intrastate movement from those quarantined areas of birds, poultry, products, and materials that could spread END is prohibited or restricted.

In this interim rule, we are reducing the size of the quarantined area in Texas and eliminating the quarantined area in New Mexico based on the results of extensive surveillance and investigations conducted in those States. These activities are described below.

On April 9, 2003, END was confirmed in backyard poultry on a premises in the town of Socorro, El Paso County, TX. Therefore, in an interim rule effective April 10, 2003, and published in the **Federal Register** on April 16, 2003 (68 FR 18531–18532, Docket No. 02–117–5), we amended § 82.3(c) by quarantining El Paso and Hudspeth Counties, TX, and Dona Ana, Luna, and Otero Counties, NM. As provided for by the regulations in § 82.3(a), this quarantined area

encompassed the area where poultry infected with END were located and a surrounding geographical area deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Following the detection of END in Texas, intensive surveys were conducted in the five-county quarantined area. The original infected premises proved to be the only premises with END-infected birds. Three ''dangerous contact'' premises (*i.e.*, premises with an epidemiological link to the infected premises) were identified, along with 51 premises (42 containing poultry and 9 with only pet birds) located within a 1 kilometer radius of the infected premises. All birds and poultry on those 54 premises were tested for END with negative results. Across the five-county quarantined area, additional surveys were conducted in targeted high-risk areas. Populated areas, reports from animal control units, and leads derived from reports of sick birds or poultry or other epidemiological information were used to define the high-risk areas. No additional cases were identified in any of these areas. Passive surveillance, including education and outreach efforts, continues to be conducted throughout the States. A total of 1,591 investigations were conducted in New Mexico and Texas, with 839 flocks tested. No evidence of additional disease spread was identified through this surveillance. There is a single commercial premises in the quarantined area, located in Berino, Dona Ana County, NM. Swabs were submitted on a weekly basis from this facility, all with negative results. A review of biosecurity procedures and other records was also conducted on a weekly basis. All test results reported through May 12, 2003, have been negative.

Reduction of Quarantined Areas

As noted previously, the regulations in § 82.3(a) provide that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Animal and Plant Health Inspection Service epidemiologists have evaluated the results of the investigations conducted in New Mexico and Texas and have determined that we may now reduce the size of the quarantined area in Texas and that it is no longer necessary to maintain quarantined areas in New Mexico. This determination is based on, among other things, the demonstrated absence of birds or poultry infected with or exposed to END in specific areas. The regulations in § 82.14 provide requirements that must be met before an area may be removed from quarantine, but those requirements relate to measures taken with respect to END-infected or -exposed birds and poultry, their eggs and manure, and articles and premises with which such birds or their manure or litter have come in contact. As there were no END-infected or -exposed birds or poultry in the areas that we are removing from quarantine, there are no requirements under § 82.14 that need to be met before those areas can be removed from quarantine.

Therefore, in this interim rule, we are amending § 82.3(c) by removing Dona Ana, Luna, and Otero Counties, NM, Hudspeth County, TX, and portions of El Paso County, TX, from the list of quarantined areas because the continued quarantine of these areas is no longer necessary to contain all birds and poultry infected with or exposed to END. That portion of El Paso County, TX, that will remain as a quarantined area, which is described in the amendments to § 82.3(c) at the end of this document, has been deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. We have determined that Dona Ana, Luna, and Otero Counties, NM, Hudspeth County, TX, and portions of El Paso County, TX, may now be removed from the list of areas quarantined because of END. Therefore, immediate action is warranted to relieve the prohibitions or restrictions that have applied to the movement of birds, poultry, products, and other materials from those areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations by removing Dona Ana, Luna, and Otero Counties, NM, Hudspeth County, TX, and portions of El Paso County, TX, from the list of quarantined areas. This action needs to be made effective immediately in order to remove restrictions on the movement of birds, poultry, and certain other articles from those areas that are no longer necessary.

This situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 9 CFR part 82 is amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 82.3, paragraph (c), the entry for New Mexico is removed and the entry for Texas is revised to read as follows:

§ 82.3 Quarantined areas.

* * * * *

(c) * * *

* * * * *

Texas

El Paso County. That portion of the county in the Town of Socorro that is bounded as follows: Beginning at the intersection of Muscat Street and Tokay Avenue; then northeast on Tokay Avenue to Fredonia Street; then southeast on Fredonia Street to Vineyard Road; then southwest on Vineyard Road to Muscat Street; then northwest on Muscat Street to the point of beginning.

Done in Washington, DC, this 5th day of June 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–14723 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–41–AD; Amendment 39–13178; AD 2003–11–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100 and 727–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727–100 and 727–200 series airplanes, that requires, under certain conditions, replacement of the installed autopilot pitch control computer with a modified computer, testing of the modified system, and revision of the Airplane Flight Manual (AFM). The actions specified by this AD are intended to prevent undesirable and potentially dangerous pitch oscillations during coupled instrument landing system (ILS) approaches. This AD is intended to address the identified unsafe condition.

DATES: Effective July 16, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 16, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thanh Truong, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6486; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727–100 and 727–200 series airplanes was published in the **Federal Register** on September 10, 2001 (66 FR 46968). That action proposed to require replacement of the installed autopilot pitch control computer with a modified computer, testing of the modified system, and revision of the Airplane Flight Manual (AFM).

Comments

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

Support for the Proposed AD

One operator reports that the actions specified in the proposed AD have been incorporated on all of its airplanes.

Request To Withdraw AD

One operator asserts that accomplishment of the actions specified in the proposed AD would not eliminate the identified unsafe condition, and suggests that pilot training and procedures would eliminate unstable category II approaches by autopilot disconnect. The FAA infers that the commenter is requesting withdrawal of the proposed AD.

The FAA does not agree. The unsafe condition is related to the accident described in the proposed AD involving a Model 727 series airplane during a coupled instrument landing system (ILS) category II approach. The circumstances surrounding that accident led in part to the issuance of this AD. The divergent pitch oscillations of the airplane resulted from an improper autopilot desensitization rate and contributed to the accident. This AD addresses the improper autopilot desensitization rate. The AFM revisions required by this AD provide data to the flightcrew regarding certain limitations, such as autopilot disconnect, inherent in the design of Sperry SP–50 and SP–150 autopilots. Observing these limitations will help the flightcrew take the appropriate action necessary for a successful landing or go-around.

Request To Delay AD Issuance Pending Further Study

One operator requests that issuance of the AD be delayed until further studies, as described in the proposed AD, can be completed. The proposed AD describes additional studies in process that are intended to develop appropriate limits for flap settings and airspeeds and to investigate other aspects such as winds and glideslope angles as possible contributors to the unsafe condition. The commenter requests that the studies be completed before the proposed AFM revisions and modifications are mandated.

The FAA does not agree. If the results of the studies ultimately suggest the need for additional intervention, or if additional data are presented that would justify revising any requirements of this AD, the FAA may consider further rulemaking on this issue. In consideration of the amount of time that has already elapsed since issuance of the original notice of proposed rulemaking, the FAA has determined that further delay of this final rule action is not appropriate.

Request To Remove Landing Flap Limitation

Two operators request removal of the landing flap limitation specified in paragraph (d) of the proposed AD. To justify the request, the commenters state that the difference in the approach speeds between the 30-degree and 40-degree landing flap configurations is only 5 knots, and the proposed limitation would provide only minimal improvement in glideslope beam tracking.

The FAA is aware of the small difference in approach speeds and agrees with the request to remove the landing flap limitation. In the preamble of the proposed AD, the FAA indicated that additional studies were being conducted to develop applicable operating limitations that would address approach flap settings. The FAA has since obtained additional analysis indicating that the new gain schedule applies to both 30-degree and 40-degree landing flap configurations. Therefore, paragraph (d) of the proposed AD has been removed from the final rule, and subsequent paragraphs have been reidentified.

Request To Revise Applicability: Exclude Certain Airplanes

Two operators request that the applicability of the proposed AD be revised to exclude airplanes equipped with single-pitch channels that use radio altimeter-based glideslope gain programming. One commenter reports that most of the affected airplanes in its fleet have been modified to incorporate a dual-pitch computer configuration in accordance with Sperry Service Bulletin 21–1132–121, dated November 23, 1982 (for SP–50 autopilots); or 21–1132–122, dated February 7, 1983 (for SP–150 autopilots). (Those service bulletins were cited in the proposed AD as the appropriate source of service information for the one-time test of the modified autopilot.) This commenter adds that compliance with paragraphs (b) and (c) of the proposed AD would be impossible for those airplanes because the proposed AD and Boeing service bulletin are targeted for airplanes with single-channel autopilot systems. In addition, this commenter states that paragraph (a) of the proposed AD imposes an undesirable restriction on modified airplanes by preventing them from flying category II and category III approaches into airports with inoperative middle markers. This commenter asserts that this restriction is unnecessary for the modified airplanes because their autopilot configurations use radio altimeter glideslope gain programming (radio altitude-based desensitization), and are therefore not susceptible to the airworthiness concern associated with inoperative middle markers addressed by the proposed AD. The commenter recommends that the applicability of the proposed AD be revised to exclude those airplanes.

The other commenter notes that affected airplanes with single-pitch channels on which the actions specified in Boeing Service Bulletin 727–22–0052 have been incorporated do not use the middle marker in gain programming. The commenter concludes that these airplanes should not be prohibited from category II approaches if no middle marker is available.

The FAA agrees. In this case, where the autopilot has already been modified with an FAA-approved design that does not normally use time-based gain programming, the FAA agrees that excluding airplanes equipped with radio altimeter-based autopilots from the applicability of the AD will not compromise the safety of the fleet. The applicability of this AD has been revised accordingly.

Request To Revise Applicability: Clarify Intent

Several commenters request that the applicability of the proposed AD be revised to clarify that the requirements apply only if operators desire to maintain the capability of the autopilot coupled ILS approach. One operator, conducting ''Cat I approach only,'' requests exclusion from the applicability of the AD.

The FAA partially agrees. The intent of the AD is to ''prevent dangerous pitch oscillations during coupled (ILS) approaches''; affected operators could comply with the AD simply by never conducting coupled approaches. Although the cited wording does not directly address category I coupled approaches, analysis has shown that, if the unmodified autopilot is used, potentially unsafe pitch oscillation can begin at 400 feet above ground level (AGL), which is well above the typical decision height for category I approaches of 200 feet AGL. As a result, category I and category II coupled approaches would be prohibited for airplanes that have unmodified autopilot gains. However, manually flown approaches using autopilot guidance (glideslope and localizer needle deviations) or flight director guidance would be permitted. Because the middle marker signal is typically received at 200 feet AGL and because during typical category I coupled approaches the pilot disconnects the autopilot at 200 feet AGL (compared to 100 feet AGL, which is typical for category II approaches), no AFM restriction for category I approaches is discussed in the AD even though modification of the autopilot is required if it is used for any coupled approach. The AFM language has been further revised in paragraph (a) of this final rule to clarify that the autopilot must be modified if any coupled ILS approach is conducted. To more clearly identify those airplanes affected by this requirement, new paragraph (e) has been added to the final rule to require modification of the autopilot unit only if autopilot coupled ILS approaches are to be used with that airplane. Subsequent paragraphs that appeared in the proposed AD have been reidentified in the final rule.

Request To Revise Applicability: Add Certain Airplanes

The applicability of the proposed AD includes only those Model 727–100 and –200 series airplanes that are listed in Boeing Alert Service Bulletin 727–22A0093, dated December 20, 2000. One operator reports that some of its airplanes are not listed in the service bulletin but are equipped with SP–50 and/or SP–150 autopilots. The FAA infers that the commenter is requesting that the applicability of the proposed AD be expanded to include any Model 727–100 and –200 series airplane equipped with a subject autopilot.

The FAA does not agree. Not all Model 727–100 or –200 series airplanes with the subject autopilots are susceptible to the unsafe condition identified by this AD. For example, airplanes delivered after November 1977 are not susceptible because they use radio altimeter gain scheduling for the SP–150 autopilots instead of the time-based gain scheduling discussed in the proposed AD. No change to the applicability of the final rule is necessary in this regard.

Request for Clarification of Test

Two commenters request clarification of the one-time test specified by paragraph (c) of the proposed AD. The commenters state that this requirement, as written, is either redundant or subject to misinterpretation. The Sperry service bulletins, described previously, were cited in the proposed AD: in paragraph (c) for the one-time test procedures and in paragraph (d) for the autopilot modification procedures. (Paragraph (d) has since been removed from the final rule, as discussed previously.) The proposed AD specified that the test be done concurrently with the modification, before reinstallation of the modified autopilot, and before further flight. The commenters suggest that the wording of the proposed AD could cause operators to perform unnecessary rework. The commenters suggest that the proposed test requirement be a one-time test of the autopilot unit, because ''the timing in relation to the modification is immaterial.''

One operator requests that the proposed test requirement be revised to distinguish the requirements associated with the autopilot from those associated with the airplane. This commenter suggests that paragraph (c) of the

proposed AD be revised to read as follows: ''Following any * * * modification, perform a one-time test procedure of the modified autopilot.'' The wording in the proposed AD suggests that two tests are to be done at the same time. The commenter requests this change to clarify the requirements and to avoid unnecessary rework.

The FAA partially agrees. The requirements regarding the autopilot test may be redundant because the Sperry service bulletins already specify testing the unit using test information provided in those service bulletins. However, those same service bulletins note that, ''Test information given in this bulletin shall be disregarded when revised Component Maintenance Manuals become available.'' This note may be misinterpreted to mean the test is not required, so the FAA finds it necessary to clarify the test requirement. The FAA has learned that many operators have already accomplished the modifications and post-modification testing specified in the proposed AD. Therefore, paragraph (c) of the final rule has been revised to clarify this requirement.

Request To Allow Alternative Testing Methods

One operator asserts that a variety of effective methods have been used to verify the new time constants described in the Sperry service bulletins for the test. The commenter suggests that the methods of compliance for paragraph (c) of the proposed AD be broadened to allow the option of ''other valid methods.'' The commenter reports that some of its autopilot units were modified and tested in-house in accordance with established test procedures described in the component maintenance manual. The commenter adds that other autopilot units were purchased already modified in accordance with the procedures described in the Sperry service bulletins. The commenter suggests this change to avoid unnecessary retesting of autopilot units for which the use of the new time constants has already been confirmed.

The FAA agrees with the request for the reasons stated by the commenter. Paragraph (c) of the final rule has been further revised to provide operators this testing option.

Request To Revise Requirements for Spare Parts

One operator requests that paragraph (e) of the proposed AD be either removed from the AD or revised to extend the time allowed for spares modifications and AFM revisions. This commenter asserts that a minimum of 6 months will be necessary to modify spare parts and revise the AFM.

The FAA partially agrees. The FAA finds that the AFM limitations imposed by this AD will sufficiently ensure safety of an affected airplane until spare parts can be acquired and modified; therefore, allowing additional time to modify spare parts will not compromise safety. However, the FAA does not agree that it is necessary to extend the time by which the AFM revisions must be completed. The basic intent of an AFM revision may be accomplished by inserting a copy of the AD into the AFM; operators should be able to complete this action in a short time. Paragraph (f) of the final rule (paragraph (e) in the proposed AD) has been revised to extend the time by which the installation of unmodified spare parts will be prohibited.

Request To Revise Cost Estimate

Two operators request a revision of the proposed cost estimates. One operator notes that the proposed AD does not address the costs associated with obtaining a master change from Boeing to eliminate the need for a middle marker to begin second-stage gain programming. One operator notes that the proposed AD does not address the costs associated with airplane diversions that would result if category II approaches are prohibited at airports without middle markers.

The FAA partially agrees. Since category II approaches are prohibited at airports that do not have middle markers, an operator may elect to fly category I or manual approaches, divert to another airport, or modify the autopilot to operate with radio-altimeter-based gain schedule with control law that does not depend on the middle marker signal. However, the middle marker signal has always been and remains a necessary part of the autopilot that is programmed with a time-based gain schedule. This AD in part is intended to ensure the safe operation of an airplane—within the original autopilot design constraints associated with use of middle markers—by way of operational requirements. No change to the final rule is necessary in this regard.

Request To Revise Parts Cost Estimate

One operator asserts that the parts cost to modify each SP–150 autopilot is $641—not $168 as stated in the proposed AD.

According to updated information provided by Boeing to the FAA, the parts cost is $522 for the SP–50 autopilot and $620 for the SP–150 autopilot. The Cost Impact section of the final rule has been revised accordingly.

Request To Reactivate Middle Markers

The proposed AFM revision requirement would prohibit a category II autopilot coupled ILS approach when the middle marker is inoperative. One operator suggests that the FAA reactivate middle markers as an alternative to the AFM revision requirement. The commenter claims that the FAA has deactivated ground-based middle marker beacons, and some operators have maintained their airborne marker beacon systems.

The FAA does not agree with the request. The use of the middle marker is an original design feature of the subject autopilots. If the middle marker is inoperative or nonexistent, these autopilots—which are time-based—will not work properly. The FAA has approved autopilots that do not rely on marker beacons. Furthermore, the FAA currently is not considering reactivating the marker beacon system due to the International Civil Aviation Organization's September 1984 revision to Annex 10, which expanded the use of ILS/distance measuring equipment (DME) as a substitute for all or part of the marker beacon system. No change to the final rule is necessary in this regard.

Request To Revise Cause of Unsafe Condition

Boeing requests a change to the second sentence of the Discussion section of the proposed AD. Specifically, this commenter requests that the revised sentence read as follows: ''The approach was normal until the airplane passed through 200 feet above ground level, where the airplane, responding to a [glideslope] beam anomaly, started a pitch oscillation that continued to increase.'' The FAA infers that the commenter is suggesting that the glideslope beam anomaly contributes to the pitch oscillation problem.

The FAA does not agree with the request, but agrees that the glideslope beam anomaly can contribute to the pitch oscillation problem, and may have been a contributing factor to the accident described in the proposed AD. However, there were no indications that a glideslope anomaly contributed directly to the accident. Numerous runway 14R records dating from a time prior to the accident indicate no glideslope deviations or other ILS-related problems. The results of normal and special flight checks of the ILS were also within normal limits. Furthermore, results of simulator testing using typical glideslope profiles have indicated that

the autopilot with the 150-second desensitization period responded to the disturbances (induced turbulence and vertical wind gusts) by commanding oscillatory pitch changes or changes in pitch that are oscillatory in nature, which increased over time and resulted in significant deviations from the desired flight path. No change to the final rule is necessary in this regard.

Request To Expand AFM Requirements

Boeing suggests that the proposed AFM revisions include additional indicators for approach performance, such as flightcrew monitoring for allowable ILS deviations and horizontal stabilizer activity that indicate an out-of-trim nonstabilized approach. The commenter provides no justification for this request.

In consideration of the amount of time that has already elapsed since the issuance of the original notice, the FAA has determined that further delay of this final rule is not appropriate. However, if additional data are presented that would justify revising the requirements of this AD, the FAA may consider further rulemaking to require AFM revisions that would include the specific requested performance indicators. No change to the final rule is necessary in this regard.

Request To Revise Special Flight Permit Specifications

Boeing requests that, instead of issuing a special flight permit to allow operation of the airplane to a location where the requirements of the AD can be accomplished, the FAA impose operational restrictions on autopilot coupled ILS approaches for that flight.

The FAA partially concurs. The FAA finds that such operational restrictions are acceptable but not necessary in this case because another method is available to operate the airplane; *i.e.*, the airplane can be manually operated during approaches. No change to the final rule regarding this issue is necessary.

Request To Clarify Airplanes Affected by Certain Requirements

One operator requests that paragraph (e) (''Spare Parts'') of the proposed AD be revised to more clearly identify those airplanes that would be affected by that proposed requirement. The commenter suggests that the term ''any airplane,'' as it is used in that paragraph, be clarified to explain that not all Model 727–100 and -200 series airplanes are subject to this requirement.

The FAA agrees that not all existing Model 727–100 and -200 series airplanes are subject to the identified unsafe condition; however, the FAA does not agree that revision of this paragraph is necessary. As stated earlier, the applicability of the final rule has been revised to exclude airplanes equipped with radio altimeter-based autopilots. Any qualifier (including ''any'' and ''all'') used to identify airplanes subject to a particular requirement of an AD is relative to the overall applicability of the AD.

Request To Revise Description of the Unsafe Condition

Boeing requests a revision of one sentence in the third paragraph of the Discussion section of the proposed AD. That sentence reads as follows:

> Because glideslope deviations close to the runway require smaller pitch corrections than those required far from the runway, the autopilot sensitivity has to be reduced as the airplane nears the runway.

The commenter requests that the sentence be replaced with the following:

> The autopilot sensitivity has to be reduced as the airplane nears the runway because the glideslope beam converges as the distance to the glideslope transmitter is decreased (and the same vertical displacement from the beam centerline results in a larger glideslope deviation signal).

This commenter provides no justification for this requested change.

The FAA does not agree with this request. Although the requested language is technically correct, the FAA finds that the simpler explanation in the Discussion section of the proposed AD is adequate to explain the conditions that require autopilot sensitivity changes. No change to the final rule is necessary in this regard.

Request To Revise Description of Accident Cause

Boeing requests a change to one sentence of the final paragraph of the Discussion section of the proposed AD. That sentence reads as follows:

> Based on the NTSB's studies and FAA findings, the improper desensitization schedule is considered a contributing factor in the destabilized approach of the accident flight and in the reported pitch event that occurred in 1997.

This commenter requests that the word ''improper'' be changed to ''150-second.''

The FAA partially concurs. The requested wording is specific; however, the Discussion section is not repeated in a final rule, so no change is necessary in this regard.

Explanation of Additional Changes to AFM

Some minor additional changes have been made to paragraph (a) of this final rule. First, the prohibition of coupled ILS approaches, specified in the proposed AD only for ''inoperative'' middle markers, has been changed in this final rule to ''inoperative or nonexistent'' middle markers. Second, the second sentence of the revised AFM language has been changed from ''* * * during Cat II autopilot coupled ILS approaches'' to ''* * * during coupled ILS CAT II approaches.''

Conclusion

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

Cost Impact

There are approximately 750 airplanes of the affected design in the worldwide fleet. The FAA estimates that 162 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to revise the AFM, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the required AFM revisions on U.S. operators is estimated to be $9,720, or $60 per airplane.

It will take approximately 1 work hour per airplane to modify and test the SP–50 autopilot and 2 work hours per airplane to modify and test the SP–150 autopilot. Required parts will cost approximately $522 for the SP–50 autopilot and $620 for the SP–150 autopilot. Based on these figures, the cost impact of the modification and test is estimated to be $582 (SP–50) or $740 (SP–150) per airplane.

The overall cost to the affected fleet could range from $104,004 to $301,320.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–11–19 Boeing: Amendment 39–13178. Docket 2001–NM–41–AD.

Applicability: Model 727–100 and 727–200 series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 727–22A0093, dated December 20, 2000; excluding airplanes equipped with radio altimeter-based autopilots.

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 (g) 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 undesirable and potentially dangerous pitch oscillations during coupled instrument landing system (ILS) approaches, accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) For any airplane on which autopilot coupled ILS approaches with time-based glideslope gain programming are used: Within 6 months after the effective date of this AD, revise the Limitations Section, under AUTOPILOT/FLIGHT DIRECTOR SYSTEM, of the FAA-approved AFM by adding the following (this may be accomplished by inserting a copy of this AD into the AFM):

''Coupled ILS approaches are prohibited unless the autopilot has been modified in accordance with AD 2003–11–19, amendment 39–13178.

CAT II autopilot coupled ILS approach shall not be performed if the Middle Marker (ground or airborne system) is inoperative or nonexistent.

Disconnect the autopilot at, or prior to, 80 ft. (above the runway's touchdown-zone elevation) during coupled ILS CAT II approaches.''

Modification and Testing of Autopilot

(b) Except as provided by paragraph (d) of this AD: Within 18 months after the effective date of this AD, modify the existing SP–50 or SP–150 single-channel autopilot in accordance with Boeing Alert Service Bulletin 727–22A0093, dated December 20, 2000.

(c) Except as provided by paragraphs (d) and (e) of this AD: After modification of the autopilot unit required by paragraph (b) of this AD, and before reinstallation of the modified autopilot and further flight, perform a one-time test procedure of the modified autopilot, in accordance with Sperry Service Bulletin 21–1132–121, dated November 23, 1982 (for SP–50 autopilots); or 21–1132–122, dated February 7, 1983 (for SP–150 autopilots); as applicable. Testing done before the effective date of this AD in accordance with Component Maintenance Manual (CMM) test procedures is also acceptable, provided that the procedures implement all the CMM changes and test steps described in the applicable Sperry service bulletin. For autopilot units manufactured with the actions of the applicable Sperry service bulletin already incorporated, testing is not required.

Exempt Conditions

(d) For airplanes with autopilots already modified prior to the effective date of this AD in accordance with Sperry Service Bulletin 21–1132–121 or 21–1132–122: Only the AFM limitation specified in paragraph (a) of this AD is required.

(e) For any airplane on which coupled approaches are not used: Only the AFM limitation specified in paragraph (a) of this AD is required, provided a flight deck placard is installed that states, ''Autopilot coupled ILS approach prohibited'' or equivalent, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. However, for any airplane placed into service that uses autopilot coupled ILS approaches, the requirements of this AD must be accomplished before the first flight when a coupled approach is used.

Part Installation

(f) As of 6 months after the effective date of this AD, no person may install on any airplane an autopilot pitch control computer unless it has been modified in accordance with this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

(h) 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

(i) Unless otherwise specified in this AD, the actions must be done in accordance with Boeing Alert Service Bulletin 727–22A0093, dated December 20, 2000; Sperry Service Bulletin 21–1132–121, dated November 23, 1982; and Sperry Service Bulletin 21–1132–122, dated February 7, 1983; as applicable. Only the first page of Sperry Service Bulletins 21–1132–121 and 21–1132–122 contain the document number; no other page of the documents contain this information. 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 Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on July 16, 2003.

Issued in Renton, Washington, on May 28, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13976 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–13–AD; Amendment 39–13180; AD 2003–11–21]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332 C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS332 C, L, and L1 helicopters. This action requires revising the Rotorcraft Flight Manual (RFM) Limitations section if certain fuel control units are installed. This AD is prompted by the discovery of an anomaly in certain fuel control units that may lead to inadequate fuel flow in single-engine flight. This condition, if not corrected, could result in failure of the engine to develop the maximum 2½ minute one engine inoperative (OEI) power, reduced helicopter performance, and subsequent loss of control of the helicopter during OEI operation.

DATES: Effective June 26, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 26, 2003.

Comments for inclusion in the Rules Docket must be received on or before August 11, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–13–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS332 C, L, and L1 helicopters, with Turbomeca Makila 1A and Makila 1A1 engines installed with fuel control unit (FCU), part number (P/N) 0 164 16 820 0 or P/N 0 164 16 835 0, having serial numbers (S/N) 100M through 525M, except for fuel control units with S/N 168M, 323M, 369M, 371M, 378M, 382M, 396M, 407M, 422M, 445M, 449M, 460M, 469M, 472M, 479M, 488M, 499M, 513M, 518M, 523M, or FCUs that have incorporated Turbomeca Service Bulletin No. 298 73 0802, dated September 17, 2002. The DGAC advises that their AD was issued following the discovery of an anomaly affecting the maximum fuel flow limit adjustment on some Makila 1A and 1A1 engines. This anomaly leads to a fuel flow reduction outside the tolerance limits and can have an effect on single-engine flight performance.

Eurocopter has issued Alert Telex No. 73.00.01, dated October 2, 2002, which specifies a weight limitation for takeoff from helipads; a weight limitation in hover flight; and a rate of climb limit in certain portions of the approved flight envelope. The DGAC classified this alert telex as mandatory and issued AD 2002–551(A), dated November 13, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, this AD is being issued to prevent failure of the engine to develop the maximum 2½ minute OEI power, reduced helicopter performance, and subsequent loss of control of the helicopter during OEI operation. This AD requires revising the RFM Limitations section in certain conditions if certain FCUs are installed. The actions must be done in accordance with the alert telex described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the power available for single engine operations of the helicopter. Therefore, revising the RFM for certain helicopters is required before further flight, and this AD must be issued immediately.

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

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 AD system. The regulation now includes material that relates to altered products, 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.

The FAA estimates that this AD will affect 4 helicopters and determining the applicability of this AD will take approximately 1 work hour at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators will be $240, assuming no affected FCUs will be discovered.

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 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 mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–13–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–11–21 Eurocopter France: Amendment 39–13180. Docket No. 2003–SW–13–AD.

Applicability: AS332 C, L, and L1 helicopters, certificated in any category, with Turbomecca Makila 1A or Makila 1A1 engines installed with fuel control unit (FCU), part number (P/N) 0 164 16 820 0 or P/N 0 164 16 835 0, having serial numbers (S/N) 100 through 525, with a suffix of ''M'', except:

(1) FCUs with S/N 168M, 323M, 369M, 371M, 378M, 382M, 396M, 407M, 422M, 445M, 449M, 460M, 469M, 472M, 479M, 488M, 499M, 513M, 518M, 523M; or

(2) FCUs that have been tested and found to provide the correct fuel flow rate in accordance with Turbomeca Service Bulletin No. 298 73 0802, dated September 17, 2002.

Compliance: Before further flight, unless accomplished previously.

To account for the inability of the engine to develop the maximum 2½ minute one engine inoperative (OEI) power, reduced helicopter performance, and subsequent loss of control of the helicopter during OEI operation, accomplish the following:

(a) Revise the Limitations section of the Rotorcraft Flight Manual in accordance with the Accomplishment Instructions, paragraph 2.A. of Eurocopter France Alert Telex No. 73.00.01, dated October 2, 2002.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Regulations Group, Rotorcraft Directorate, FAA for information about previously approved alternative methods of compliance.

(c) Special flight permits will not be issued.

(d) The Rotorcraft Flight Manual revision shall be done in accordance with Eurocopter France Alert Telex No. 73.00.01, dated October 2, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 26, 2003.

Note: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–551(A), dated November 13, 2002.

Issued in Fort Worth, Texas, on May 27, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–14135 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–394–AD; Amendment 39–13185; AD 2003–11–25]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing transport category airplanes listed above. This AD requires an initial inspection to identify all H–11 steel bolts on the outer chord of the body station (BS) 2360 aft pressure bulkhead between stringers 12L and 12R, follow-on repetitive inspections to identify all remaining H–11 steel bolts on the entire outer chord of the BS 2360 aft pressure bulkhead, and follow-on and corrective actions if necessary. This AD also requires eventual replacement of all H–11 steel bolts with Inconel bolts. This action is necessary to prevent broken bolts, which could result in progressive failure of the remaining bolts and consequent structural damage, rapid depressurization, and loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 16, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 16, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of

the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on September 25, 2002 (67 FR 60189). That action proposed to require an initial inspection to identify all H–11 steel bolts on the outer chord of the body station (BS) 2360 aft pressure bulkhead between stringers 12L and 12R, follow-on repetitive inspections to identify all remaining H–11 steel bolts on the entire outer chord of the BS 2360 aft pressure bulkhead, and follow-on and corrective actions if necessary. That action also proposed to require eventual replacement of all H–11 steel bolts with Inconel bolts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA has given due consideration to the comments received.

Request to Revise Statement of Unsafe Condition

One commenter requests that the FAA revise the unsafe condition in the proposed AD, which states that the consequences of not finding broken H–11 steel bolts is progressive failure of the remaining bolts and consequent structural damage and rapid depressurization of the airplane. The commenter notes that, while these are effects of progressive bolt failure, it is more significant that such failure could result in loss of control of the airplane. We concur and have revised the statement of unsafe condition throughout this final rule.

Request to Clarify Subject of Repetitive Inspections

One commenter requests that we revise paragraph (c) of the proposed AD to clarify that the repeat inspections in that paragraph apply only to the remaining H–11 steel bolts (that is, the H–11 steel bolts that have not been replaced with Inconel bolts). We concur that the repetitive ultrasonic inspections and torque checks for cracked or broken bolts are necessary only for the remaining H–11 steel bolts. We have clarified paragraph (c) of this final rule accordingly.

Request to Revise Instructions in Paragraph (d) of Proposed AD

One commenter requests that we revise the instructions in paragraph (d) of the proposed AD to remove the instruction to coat the Inconel bolt with corrosion-inhibiting compound after installation. The commenter states that the instructions for applying corrosion protection on the replacement Inconel bolt that are stated in paragraph (d) of the proposed AD are incomplete and suggests alternative instructions. The commenter recommends that paragraph (d) refer to Figure 4 of the service bulletin.

We do not agree that any change is necessary. Paragraph (d) of this AD requires replacing all subject H–11 steel bolts per Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001. When we refer to a service bulletin in this way in an AD, operators are required to follow all procedures in the service bulletin, including the instructions for corrosion prevention that are specified in Figure 4 of the service bulletin. (We note that the Accomplishment Instructions of the service bulletin refer to Figure 4 of the service bulletin for replacement procedures.) No change to the final rule is needed in this regard.

Request to Require Inspection or Replacement of Adjacent H–11 Steel Bolts

One commenter requests that we consider requiring operators to inspect or replace an H–11 steel bolt (including reworking the bolt hole) found on either side of a cracked H–11 steel bolt during the initial inspection. The commenter states that such a requirement should not add significant downtime and will better ensure safety.

We do not agree that any change is necessary. This AD requires inspecting all H–11 steel bolts in the subject area, which would include H–11 bolts adjacent to cracked or broken bolts. While an operator has the option of immediately replacing any H–11 steel bolt that is adjacent to a cracked or broken bolt, we find that performing repetitive inspections of remaining H–11 steel bolts will provide an acceptable level of safety until all H–11 steel bolts are replaced as required by paragraph (d) of this AD. (Such replacement is required within 6 years after the effective date of the AD.) No change to the final rule is needed in this regard.

Clarification of Applicability

We have revised the applicability statement of this AD to clarify that Boeing Model 747–400, –400D, and –400F series airplanes are not affected by this AD. The airplanes with line numbers 1 through 644 inclusive are Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP series airplanes.

Conclusion

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

Cost Impact

There are approximately 487 airplanes of the affected design in the worldwide fleet. The FAA estimates that 165 airplanes of U.S. registry will be affected by this AD.

It will take approximately 9 work hours per airplane to accomplish the required initial inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the initial inspection on U.S. operators is estimated to be $89,100, or $540 per airplane.

It will take approximately 35 work hours per airplane to accomplish the required follow-on inspection to identify all remaining H–11 steel bolts on the entire outer chord, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the follow-on inspection on U.S. operators is estimated to be $346,500, or $2,100 per airplane, per inspection cycle.

Should an operator be required to replace the H–11 steel bolts, it will take approximately 108 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $3,233 per airplane. Based on these figures, the cost impact is estimated to be $9,713 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These

figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–11–25 Boeing: Amendment 39–13185. Docket 2001–NM–394–AD.

Applicability: Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP series airplanes; line numbers 1 through 644 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) 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 broken H–11 steel bolts, which could result in progressive failure of the remaining bolts and consequent structural damage, rapid depressurization, and loss of control of the airplane, accomplish the following:

Initial Inspection

(a) Within 18 months after the effective date of this AD: Do a detailed inspection to identify all H–11 steel bolts on the outer chord of the body station (BS) 2360 aft pressure bulkhead between stringers 12L and 12R. Do the inspection by checking the bolt part number stamped on the bolt head, or verifying the bolt is steel by using a magnet, per Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001. If no H–11 steel bolt is found, no further action is required by this paragraph. If any H–11 steel bolt is found, do the requirements specified in paragraph (c) of this AD.

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

Follow-On Inspections/Corrective Actions

(b) Within 18 months after doing the inspection required by paragraph (a) of this AD, or within 18 months after the effective date of this AD, whichever is later: Do a detailed inspection to identify all remaining H–11 steel bolts on the entire outer chord of the BS 2360 aft pressure bulkhead, per Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001. If no H–11 steel bolt is found, no further action is required by this paragraph. If any H–11 steel bolt is found, do the requirements specified in paragraph (c) of this AD.

(c) For any H–11 steel bolt found during any inspection required by paragraph (a) or (b) of this AD: Before further flight, do either an ultrasonic inspection or a torque check for cracked or broken bolts, or replace the H–11 steel bolt with an Inconel bolt per Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001. Replace any cracked or broken bolt with an Inconel bolt before further flight per the service bulletin. Then repeat the inspection of the remaining H–11 steel bolts at intervals not to exceed 18 months until the terminating action required by paragraph (d) of this AD is done.

Terminating Action

(d) Within 6 years after the effective date of this AD: Replace all H–11 steel bolts on the entire outer chord of the BS 2360 aft pressure bulkhead with Inconel bolts (including visually inspecting the bolt hole for corrosion, oversizing the hole up to 1/32 inch to remove any corrosion, and, after installing an Inconel bolt, coating the bolt with corrosion inhibitor compound), per Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001. When this paragraph is done, the requirements of this AD are terminated.

Exceptions to Service Information

(e) Where Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001, specifies to contact Boeing for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Spares

(f) As of the effective date of this AD: No person shall install an H–11 steel bolt on the outer chord of the BS 2360 aft pressure bulkhead on any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

(h) 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

(i) Unless otherwise provided by this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2474, dated October 25, 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 Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,

Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on July 16, 2003.

Issued in Renton, Washington, on May 30, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14274 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB93

Account Identification for Eligible Bunched Orders

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending Commission Rule 1.35(a–1)(5) (''Rule 1.35(a–1)''), which allows certain account managers to bunch customer orders for execution and to allocate them to individual accounts at the end of the day. The amended rule will expand the availability of bunching to all customers, simplify the process and clarify the respective responsibilities of account managers and futures commission merchants (''FCMs'').

EFFECTIVE DATE: July 11, 2003.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, or R. Trabue Bland, Attorney-Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430. Email: *lpatent@cftc.gov.* or *tbland@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Commission Rule 1.35(a–1), in effect since August 27, 1998 has allowed bunched orders for eligible customers to be placed on a contract market without specific customer account identification either at the time of order placement or at the time of report of execution. Rule 1.35(a–1) has limited post-execution allocation of bunched orders to sophisticated customers and required eligible account managers [1] to make certain disclosures regarding the allocation methodology, the standard of fairness of allocations, composite or summary data of the trades, and whether the account manager has any interest in the bunched order.

In December 2000, the Commodity Futures Modernization Act (''CFMA'') was enacted. One of the mandates of the CFMA was for the Commission to review its rules relating to intermediaries with an eye to identifying areas where greater flexibility might be warranted. Since the enactment of the CFMA, numerous industry participants have stated to Commission staff that the regulations related to bunched orders needed to be revisited for a number of reasons and the Commission so reported to Congress in its Intermediaries Study in June 2002.

For example, enhancements in technology have made it easier for account managers to enter orders directly, thereby making certain aspects of the current requirements less workable. In addition, many account managers use ''give-up'' agreements and multiple FCMs for clearing and execution. Thus, while the current rule requires that an account manager identify eligible customer accounts to which fills will be allocated before placing an order eligible for post-execution allocation, FCMs may not know that an order has been executed for a particular client until that order has been executed and cleared.[2] Account managers and FCMs have also commented that their responsibilities under the current rule are unclear, especially their respective recordkeeping responsibilities. Therefore, as markets become more global in scope, account managers, both domestic and foreign, and FCMs have claimed that the current bunched order requirements serve as a disincentive to using U.S. futures markets.

On February 2, 2001, the National Futures Association (''NFA'') and the Futures Industry Institute issued an industry-wide study of issues associated with order transmission and order entry process by commodity professionals (''Best Practices Study'').[3] The study reported that, although the current rule increased flexibility over previously applicable requirements, many commenters in the study felt that the current rule caused ''unnecessary processing delays without adding customer protections that otherwise could be realized through equally effective, less costly procedures.''[4]

Based upon the foregoing, on March 14, 2003, the Commission published the proposed amendments to Rule 1.35(a–1).[5] The Commission received twenty-five comments on the proposed rule. The commenters included ten FCMs [6], four exchanges [7], two industry associations [8], one commodity trading advisor (''CTA'') [9], seven individuals [10] and NFA. The FCMs, exchanges, industry associations, NFA and the CTA supported the amendments to the rule, generally stating that the essential customer protections would be retained while clarifying the responsibilities of FCMs and account managers. Six individuals submitted comments expressing concern over the possible unfair allocation by account managers. One commenter submitted comments expressing concern over the Commission's ability to monitor for unfair allocation under the amended rule. These comments are discussed fully below.

II. Final Rules

A. Eligible Customers

The current rule limits the post-execution allocation of bunched orders to ''eligible customers,'' who, in essence, are sophisticated customers. In its comment, NFA noted that ''[a]ll customers deserve to have their orders filled efficiently and at the most favorable terms under the circumstances.'' The NFA and other commenters expressed the view that bunched orders can meet these objectives because bunched orders can provide better pricing and execution of orders. The Commission agrees; accordingly, as proposed, the amendments to Rule 1.35(a–1)(5) will expand eligibility to all customers who

[1] The term account manager as used herein includes commodity trading advisors, investment advisers and other persons identified in the revised regulation, who would place orders and direct the allocation in accordance with the procedures set forth in the revised rule.

[2] 17 CFR Part 1, Appendix C (2002), 62 FR 25470 (May 8, 1997).

[3] National Futures Association & Futures Industry Institute, Recommendations for Best Practices in Order Entry and Transmission of Exchange Traded Futures and Options Transactions (2001).

[4] *Id.* at 25.

[5] 68 FR 12319 (March 14, 2003).

[6] ABN AMRO, Inc., Bear Stearns & Co., Carr Futures, Inc., Credit Suisse First Boston, Fimat USA, Inc., Goldman Sachs & Co., J.P. Morgan Futures Inc., Lehman Brothers, Morgan Stanley & Co., and Prudential Securities Inc.

[7] The New York Board of Trade, Chicago Board of Trade, Chicago Mercantile Exchange, and the New York Mercantile Exchange.

[8] Futures Industry Association (''FIA'') and the Managed Funds Association (''MFA'').

[9] John Henry & Company, Inc.

[10] One commenter, Paul H. Bjarnason, Jr., is a former Commission employee. Six other individual commenters submitted identical letters.

provide written investment discretion to account managers.[11]

In the proposal, the Commission requested comment on whether it should retain an interpretive notice currently found at Appendix C to Part 1.[12] Appendix C allows CTAs to bunch orders if they prefile their allocation procedures with a clearing member, NFA, or an exchange. As the Commission noted in the proposal, Appendix C may prove unnecessary given the amended rule. One commenter, FIA, stated that the Commission should make clear that the amended rule supercedes any NFA interpretive notices or Commission rules to the extent they are inconsistent. The Commission notes that Appendix C governs the allocation of bunched orders pursuant to a pre-filed or contemporaneously-filed allocation scheme as opposed to the amended Rule, which governs the post-execution allocation of bunched orders. However, if any conflict between the two rules arises, the standards set forth in this rule supercede any interpretive guidance on bunched orders issued by the Commission. The Commission will retain Appendix C as guidance to account managers who may wish to allocate orders under the circumstances described therein and as an example of permissible allocation methods, but may reconsider this issue in the future.

B. Eligible Account Managers

Current rule 1.35(a–1) includes as eligible account managers registered CTAs and Investment Advisers (''IAs''), banks, insurance companies, trust companies, and savings and loan associations. Rule 1.35(a–1), as amended, expands the class of account managers permitted to bunch orders.[13] Generally, the Commission and the Securities and Exchange Commission exempt certain CTAs and IAs from registration or other regulatory requirements if they exclusively service certain sophisticated customers.[14] The Commission believes that post-execution allocation should be expanded to these entities. The amended rule expands the list of eligible account managers to include CTAs and IAs who are exempt from registration, or are excluded from the definition of CTA or IA by operation of law or rule. In addition, the amended rule allows foreign advisors, who exercise discretionary trading authority over the accounts of non-United States persons, to be eligible account managers regardless of whether the foreign advisor has been granted an exemption pursuant to Rule 30.10.[15]

As noted in the proposal, the amended rule does not apply to associated persons or introducing brokers exempt from Commission registration as CTAs pursuant to Rule 4.14(a)(3) and (6).[16] As also noted in the proposed rule, the Commission will retain antifraud and antimanipulation authority over account managers who are exempt from registration. The Commission notes that foreign advisers would be foreign brokers or foreign traders subject to Commission Rule 15.05, which makes the FCMs through which foreign advisers make or cause to be made trades the agents of the foreign advisers for purposes of communications from the Commission.[17]

C. Information

The Commission has converted the disclosure requirement of Rule 1.35(a–1) to an information availability requirement. Under the amended rule, account managers are required to make the following information available to customers upon request: (1) The general nature of the allocation methodology the account manager uses; and (2) summary or composite data sufficient for that customer to compare its results with those of other relevant customers and, if applicable, any account in which the account manager has an interest. In addition, the Commission has added a requirement that account managers make available information on whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation.[18]

One commenter, John Henry & Company, suggested that the amended rule clarify the definition of ''results'' to include only the result of executions and allocations as opposed to a broader measure such as account performance results. The Commission agrees. Therefore, under the amended Rule 1.35(a–1), account managers must only make available the results of executions and allocations to comply with Rule 1.35(a–1)(5)(ii)(C).

D. Allocation

The amended rule clarifies the allocation procedures for post-execution allocation of bunched orders. In particular, the rule makes clear that the Commission will examine allocation fairness over time, rather than trade-by-trade.

The amended rule requires that account managers observe three requirements when allocating post-execution. First, pursuant to Rule 1.35(a–1)(5)(iii)(A), allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment. Second, to determine whether the account manager is allocating fills fairly, the amended rule mandates that account managers use an allocation methodology sufficiently objective and specific to permit independent verification of the fairness of the allocation.[19] The final rule permits the account manager to exercise discretion over the allocation methodology, recognizing that allocation strategies may need to vary in order to treat all customers fairly. However, the Commission must be able to reconstruct the allocation methodology sufficiently to verify that the account manager is acting without bias.

One commenter, Paul H. Bjarnason, Jr., expressed concern that the amended rule may allow biased allocations by unscrupulous account managers. To combat biased allocations, Mr. Bjarnason recommended that the amended rule define allocation bias and require measurement of it with an

[11] Rule 1.35(a–1)(5) and NFA Compliance Rule 2–8(a), require that grants of discretionary authority to account controllers be in writing.

[12] 17 CFR Part 1, Appendix C (2002), 62 FR 25470 (May 8, 1997).

[13] In the proposal, the Commission requested comment on whether it was appropriate to expand the list of eligible account managers. All comments received on this issue supported the expansion of eligible account managers.

[14] Another Commission rule proposal would expand the number of entities that are exempt from CTA registration. See, 68 FR 12622 (March 17, 2003).

[15] 17 CFR 30.10 (2002). Rule 30.10 permits any person to petition for an exemption from certain of the Commission's Part 30 rules, which govern foreign futures and option trading by persons located in the United States. Commission orders issued pursuant to Rule 30.10 permit firms, among other things, to solicit and accept orders for foreign futures and option contracts from United States customers without registering under the Commodity Exchange Act, based upon substituted compliance with the rules and regulations of the jurisdiction in which the firm is located.

[16] 17 CFR 4.14(a)(3) (2002), 17 CFR 4.14(a)(6) (2002).

[17] See 17 CFR 15.00(e) and 17 CFR 15.05 (2002).

[18] In the proposal, the Commission requested comment on whether the information availability requirement was sufficient to inform customers. All comments received on this issue supported the information availability requirement.

[19] Appendix C of Part 1 contains examples of allocation methods. See, 17 CFR Part 1, Appendix C (2002), 62 FR 25470 (May 8, 1997). As noted in Appendix C, ''the appropriateness of any particular method for allocating split and partial fills depends on the CTA's overall trading approach. For example, a daily rotation of accounts may satisfy the general standards for CTAs who trade on a daily basis but inappropriate for CTAs who trade less frequently.''

appropriate accounting system. In addition, Mr. Bjarnason suggested that the amended rule require account managers to track for bias in their trade allocations.

As noted above, the Commission mandates that allocations be fair and equitable. The Commission agrees that account managers should diligently monitor for bias in their trade allocations and notes that NFA, in its interpretive notices, provides guidance on the type of allocation methodologies designed to provide non-preferential treatment.[20] In its comment letter, NFA notes that it will amend its interpretive notices regarding bunched orders, but will retain the requirement that CTAs use an allocation methodology designed to provide non-preferential treatment for all accounts.[21] Thus, given that NFA will be retaining this requirement, the Commission believes that it is unnecessary to modify the rule to define allocation bias further.

The third requirement that account managers must observe under the amended rule is to provide information to FCMs no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade. FIA, in its comment, noted a discrepancy in the proposing release. FIA noted that the preamble to the proposed rule stated that account managers must provide allocation information to FCMs in a time sufficiently before the end of the ''trading session,'' although the proposed rule text stated that account managers must provide allocation information sufficiently before the end of the ''trading day.'' In response, the Commission wishes to make clear that account managers must provide allocation information to FCMs before the end of the trading day during which the order is executed.

As noted above, the amended rule clarifies the respective responsibilities of account managers and FCMs.[22] Account managers are responsible for the allocation of bunched orders, not FCMs. Comments submitted by FCMs stated that the proposed amendments accurately reflect today's increasing use of electronic order entry systems. As Goldman Sachs noted in its comment, ''[t]he wide use of give-up arrangements means that an account manager's transactions on behalf of its clients frequently are executed through one FCM and later cleared through several different FCMs * * *. An FCM, therefore may have no reason to know that an order has been executed for a client's account until the transaction has been executed and cleared.''

All FCMs will continue to have responsibility to monitor for unusual account activity. As noted in the proposed release, an interpretive notice accompanying NFA Compliance Rule 2–10, states that ''[t]he FCM has certain basic duties to its customers, including the duty to supervise its own activities in a way designed to ensure that it treats its customers fairly. Specifically, an FCM would violate this duty if it has actual or constructive notice that allocations for its customers may be fraudulent and fails to take appropriate action. An FCM with such notice must make a reasonable inquiry into the matter and, if appropriate, refer the matter to the proper regulatory authorities.'' [23]

Under the amended rule, account managers have a responsibility to allocate trades fairly and equitably and FCMs must monitor account managers for unusual account activity. Paul H. Bjarnason, Jr., in his comment, expressed concern that, although account managers and FCMs have a duty to ensure that customers receive fair treatment, the amended rule may not prescribe sufficient oversight of allocations. Mr. Bjarnason suggests that account managers submit allocation reports to NFA and that NFA provide adequate audits of trade allocations. In response, as explained below, the Commission will require that account managers keep records sufficient to demonstrate that all allocations are fair and equitable and that the allocation methodology used by the account manager is objective. These records will be available to the Commission and other appropriate regulatory agencies. Customers will also have access to this information as well. In addition, the Commission notes that NFA schedules CTA audits using a risk-based auditing system that incorporates a regular auditing cycle. In its comment, NFA stated that any complaint involving fraudulent allocations would result in an immediate examination of any account manager registered with the Commission as a CTA. Therefore, given the recordkeeping requirements of the amended rule and NFA oversight, the Commission has determined to adopt the provision as proposed.

E. Records

Amended Rule 1.35(a–1)(5)(vi) requires that account managers keep two types of records. First, account managers must keep records of information maintained pursuant to amended Rule 1.35(a–1)(5)(ii). Second, account managers must make records available that allow independent verification of the fairness of the account manager's allocation methodology as required in Rule 1.35(a–1)(5)(iii). The records kept pursuant to amended Rule 1.35(a–1)(5)(iv) must be made available to any representative of the Commission, the United States Department of Justice, or other appropriate regulatory body.

The amended rule contains a provision to address cases in which account managers fail to provide the Commission with the information requested pursuant to amended Rule 1.35(a–1)(5)(iv)(A) or (B). Specifically, the Commission may prohibit the account manager from submitting orders for execution on designated contract markets and prohibit FCMs from accepting orders from such account managers. Commission action under this provision would not require prior notice and hearing. The failure of an account manager to respond to a request for information under this rule would be sufficient to trigger the prohibition. Any account manager that believes he or she is adversely affected by this process may use the procedures outlined in Rule 21.03(g).[24] Any prohibitions imposed pursuant to this Rule 1.35(a–1)(5)(iv)(D) would be without prejudice to any other remedies the Commission or any other regulatory body may have against the account manager in question for violation of the rule or any other legal requirements.[25]

Two commenters, MFA and John Henry & Company, expressed concern that the proposed information request provision would be too severe. MFA

[20] Interpretive Notice, NFA Compliance Rule 2–10: The Allocation of Block Orders for Multiple Accounts (June 9, 1998). Not all eligible account managers, *e.g.*, foreign account managers, will be subject to NFA requirements or inspections. However, FCMs will remain subject to the duty to supervise accounts, whether or not managed by third party account managers. *See,* 17 CFR 166.3 (2002). In addition, FCMs are subject to NFA's requirements.

[21] In addition, NFA anticipates it will continue to (1) provide guidance on the type of allocation methodologies designed to provide non-preferential treatment; (2) require CTAs to regularly analyze each trading program to ensure that the allocation method has been fair and equitable and to document this analysis and (3) remind FCMs that they have certain basic duties to their customers in connection with bunched orders.

[22] In the proposal, the Commission requested comment on whether the proposed rule struck the appropriate balance with regard to judging allocation and assigning responsibilities to account managers and FCMs. All comments received on this issue supported the changes.

[23] *Id.*

[24] 17 CFR 21.03(g) (2002).

[25] Cf. 17 CFR 21.03(h) (2002) (providing for other Commission remedies).

suggested that the standard of failure to provide requested information should be revised to ''willful failure to provide'' requested information. In the alternative, MFA suggested that the prohibition should be limited to the prohibition of the use of bunched orders, rather than a blanket prohibition of trading on all contract markets. John Henry & Company echoed MFA's concern, suggesting that the standard of failure to provide requested information should be revised to ''willful failure to provide.''

The Commission recognizes that prohibiting account managers from trading on contract markets would have a serious impact on the account manager and possibly the account manager's customers. The Commission notes that this approach is the same as that in similar provisions in the Act and rules and that the prohibition can only be invoked by the Commission, itself, when it has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (a–1)(5)(iv)(A) or (a–1)(5)(iv)(B).[26] In addition, account managers will have the opportunity to have a hearing to contest the prohibition.[27] Thus, weighing the impact of this provision on account managers with the interest of protecting customers, the Commission has determined to adopt the provision as proposed, that a failure to answer a Commission request for information will result in a prohibition of trading on all contract markets.

The amended rule also provides that FCMs must retain certain records. Pursuant to amended Rule 1.35(a–1)(5)(iv)(C), FCMs that execute trades for orders eligible for bunching, or that carry accounts to which contracts executed for such orders are allocated, must maintain records that identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.[28]

In order for FCMs to keep records required pursuant to the rule, account managers employing post-execution allocation procedures generally would be expected to forward written allocation instructions to the clearing firm by facsimile, e-mail, or other electronic means. In those instances in which allocation instructions are furnished orally, the FCM must create a written record of the account manager's instructions. In each case, these records will be available to the Commission and other regulatory agencies or self-regulatory organizations.

F. Account Certification and Self Regulatory Organization Rule Enforcement and Audit Procedures

As noted above, the Commission is clarifying the relative responsibilities of FCMs and account managers. Therefore, the amended rule, as proposed, deletes the requirement that account managers send certifications of their compliance with Rule 1.35(a–1) to FCMs. In addition, as the Commission is converting the recordkeeping requirement into an information availability requirement; the amended rule, as proposed, deletes the requirement that self regulatory organizations must adopt procedures to determine compliance with the previous rule's recordkeeping requirements.

III. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets [29], futures commission merchants [30], registered commodity pool operators [31] and large traders [32] are not ''small entities'' for purposes of the Regulatory Flexibility Act. Although the Commission did not receive any comments on the impact of the amended rule on ''small entities,'' some account managers may be considered ''small entities'' for the purposes of the Regulatory Flexibility Act. In such cases, the amendments to the rule will have the net effect of decreasing the regulatory burden for such small entities. In addition, the Commission has previously determined to evaluate within the context of a particular rule proposal whether all or some commodity trading advisors should be considered ''small entities'' for purposes of the Regulatory Flexibility Act and, if so, to analyze the economic impact on commodity trading advisors of any such rule at that time.[33] Commodity trading advisors who would place eligible orders pursuant to these procedures would likely do so for multiple clients and would likely be participating as investment managers in more than one financial market. Accordingly, the Commission does not believe that commodity trading advisors should be considered ''small entities'' for purposes of this rule.

B. Paperwork Reduction Act of 1995

This rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* the Commission has submitted a copy of the rule amendments to the Office of Management and Budget (OMB) for its review. No comments were received in response to the Commission's invitation in the proposed rules to comment on any potential paperwork burden associated with this regulation.

C. Cost-Benefit Analysis

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

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

The amended rule is intended to facilitate increased flexibility and consistency, and to rationalize application of Commission regulations to entities subject to other regulatory frameworks. The Commission is considering the costs and benefits of these rules in light of the specific provisions of section 15(a) of the Act:

1. Protection of market participants and the public.

While amended Rule 1.35(a–1)(5) is expected to lessen the burden imposed

[26] See, 17 CFR part 21 (2002).

[27] Similar statutory provisions and Commission rules have the same standard for failure to provide information. See, *e.g.*, 7 U.S.C. § 2(h)(5)(C)(ii) (2001), 17 CFR 21.03 (2002).

[28] The recordkeeping provisions of Rule 1.31 would still apply. 17 CFR 1.31 (2002). It is important to note that at the time of order placement with the FCM, current rules require that a customer identification code must be placed on an order ticket, unless the order is bunched. *See,* 17 CFR 1.35(a–1) (2002).

[29] 47 FR 18618, 18619 (April 30, 1982).

[30] *Id.*

[31] *Id.* at 18620.

[32] *Id.*

[33] *Id.*

upon FCMs and account managers, market participants and the public will be protected by requirements in the allocation procedure. Accordingly, the amended rule should have no effect on the Commission's ability to protect market participants and the public.

2. Efficiency and competition.

The amended rule is expected to benefit efficiency in the commodity futures and options markets, resulting in greater liquidity and market efficiency.

3. Financial integrity of futures markets and price discovery.

The amended rule should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the commodity futures and options markets.

4. Sound risk management practices.

The amended rule should have no effect on sound risk management practices.

5. Other public interest considerations.

The amended rule will also take into account certain effects of legislative changes and the passage of time.

After considering these factors, the Commission has determined to issue the amended rule.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Commodity options, Consumer protection, Contract markets, Customers, Members of contract markets, Noncompetitive trading, Reporting and recordkeeping requirements, Rule enforcement programs.

■ In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 5, 5a, 5b, 6(a), 6b, 8a(7), and 8c, 7 U.S.C. 7, 7a, 7b, 8(a), 8b, 12a(7), 12a(9), and 12c, the Commission hereby amends Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 24.

■ 2. Section 1.35 is amended by revising paragraph (a–1)(5) to read as follows:

§ 1.35 Records of cash commodity, futures and option transactions.

* * * * *

(a–1) * * *

(5) *Post-execution allocation of bunched orders.* Specific customer account identifiers for accounts included in bunched orders need not be recorded at time of order placement or upon report of execution if the requirements of paragraphs (a–1)(5)(i)–(iv) of this section are met.

(i) *Eligible account managers.* The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers:

(A) A commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under § 4.14(a)(3) or § 4.14(a)(6) of this chapter;

(B) An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940 or with a state pursuant to applicable state law or excluded or exempt from registration under such Act or applicable state law or rule;

(C) A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation; or

(D) A foreign adviser that exercises discretionary trading authority solely over the accounts of non-U.S. persons, as defined in § 4.7(a)(1)(iv) of this chapter.

(ii) *Information.* Eligible account managers shall make the following information available to customers upon request:

(A) The general nature of the allocation methodology the account manager will use;

(B) Whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that customer to compare its results with those of other comparable customers and, if applicable, any account in which the account manager has an interest.

(iii) *Allocation.* Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with the following:

(A) Allocations must be made as soon as practicable after the entire transaction is executed, but in any event account managers must provide allocation information to futures commission merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade.

(B) Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.

(C) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.

(iv) *Records.*

(A) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, the information specified in paragraph (a–1)(5)(ii) of this section.

(B) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, records sufficient to demonstrate that all allocations meet the standards of paragraph (a–1)(5)(iii) of this section and to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts.

(C) Futures commission merchants that execute orders or that carry accounts eligible for post-execution allocation, and members of contract markets that execute such orders, must maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.

(D) In addition to any other remedies that may be available under the Act or otherwise, if the Commission has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (a–1)(5)(iv)(A) or (a–1)(5)(iv)(B) of this section, the Commission may inform in writing any designated contract market or derivatives transaction execution facility and that designated contract market or derivatives transaction execution facility shall prohibit the account manager from submitting orders for execution except for liquidation of open positions and no futures commission merchants shall accept orders for execution on any designated contract market or derivatives transaction execution facility from the account manager except for liquidation of open positions.

(E) Any account manager that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (a–1)(5)(iv)(D) of this section shall have the opportunity for a prompt hearing in accordance with the provisions of § 21.03(g) of this chapter.

* * * * *

Issued in Washington, DC, on June 5, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–14776 Filed 6–10–03; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 201

[Docket No. RM02–7–000; Order No. 631]

Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations; Notice of Correction

June 3, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission published in the **Federal Register** of April 21, 2003, a final rule amending its accounting and reporting requirements for asset retirement obligations. Inadvertently, account 364.9, asset retirement costs for base load liquefied natural gas terminaling and processing plant, and related instruction was not included in the Gas Plant Accounts in the natural gas companies' Uniform System of Accounts. This correction includes the account in the Uniform System of Accounts.

DATES: Effective on June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Klose (Project Manager), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8283.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission published in the **Federal Register** of April 21, 2003, (68 FR 19610) a final rule amending its accounting and financial reporting requirements for asset retirement obligations. Inadvertently, Gas Plant Account 364.9 (Asset retirement costs for base load liquefied natural gas terminaling and processing plant) and the instruction related to this account were not incorporated into the Uniform System of Accounts for natural gas companies in part 201 of the Commission's regulations. To address this omission, the Commission will publish in the **Federal Register** the following correction to the final rule document that was published in the **Federal Register** at 68 FR 19610, on April 21, 2003.

■ In rule FR Doc. 03–9260 published on April 21, 2003 (68 FR 19610) make the following correction.

■ On page 19624, in the second column, account 364.9 is added to part 201 in Gas Plant Accounts following account 363.6 to read as follows:

Gas Plant Accounts

* * * * *

364.9 Asset retirement costs for base load liquefied natural gas terminaling and processing plant.

This account shall include asset retirement costs on plant included in the base load liquefied natural gas terminaling and processing plant function.

* * * * *

Magalie R. Salas,

Secretary.

[FR Doc. 03–14561 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Tepoxalin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for the veterinary prescription use of tepoxalin tablets for the control of pain and inflammation associated with osteoarthritis in dogs.

DATES: This rule is effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, filed NADA 141–193 that provides for veterinary prescription use of ZUBRIN (tepoxalin) Tablets for the control of pain and inflammation associated with osteoarthritis in dogs. The NADA is approved as of March 31, 2003, and the regulations in part 520 (21 CFR part 520) are amended by adding new § 520.2340 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning March 31, 2003.

The agency has determined under 21 CFR 25.33(d)(1) 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.

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 in 21 CFR Part 520

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 part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 2. Section 520.2340 is added to read as follows:

§ 520.2340 Tepoxalin.

(a) *Specifications.* Each tablet contains 30, 50, 100, or 200 milligrams (mg) tepoxalin.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* 10 mg per kilogram (/kg) daily; or 20 mg/kg on the initial day of treatment, followed by 10 mg/kg daily.

(2) *Indications for use.* For the control of pain and inflammation associated with osteoarthritis.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: May 27, 2003.

Steven F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–14678 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Injectable or Implantable Dosage Form New Animal Drugs; Carprofen

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for a once daily, 2-milligram-per-pound dosage of carprofen solution, by subcutaneous injection, for the relief of pain and inflammation associated with osteoarthritis in dogs.

DATES: This rule is effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed a supplement to NADA 141–199 for RIMADYL (carprofen) Injectable used for the relief of pain and inflammation associated with osteoarthritis in dogs. The supplemental NADA provides for veterinary prescription use of a once daily, 2-milligram-per-pound dosage of carprofen solution by subcutaneous injection. The supplemental application is approved as of March 25, 2003, and the regulations are amended in 21 CFR 522.312 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning March 25, 2003.

The agency has determined under § 25.33(d)(1) 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.

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 in 21 CFR Part 522

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 part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority:

21 U.S.C. 360b.

■ 2. Section 522.312 is amended by revising (d)(1) to read as follows:

§ 522.312 Carprofen.

* * * * *

(d) * * *

(1) *Amount.* 2 mg/lb (4.4 mg/kg) body weight once daily or 1 mg/lb (2.2 mg/kg) twice daily, by subcutaneous injection.

* * * * *

Dated: May 29, 2003.

Steven D. Vaughn,

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

[FR Doc. 03–14544 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 601

[Docket No. 91N–0278]

New Drug, Antibiotic, and Biological Drug Product Regulations; Accelerated Approval; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to correct certain errors that were incorporated into the regulations. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA has discovered certain errors that were inadvertently included in the agency's codified regulations for part 601 (21 CFR part 601). In the **Federal Register** of December 11, 1992 (57 FR 58942), we published a final rule that, among other things, established subpart E of part 601, which encompasses §§ 601.40 through 601.46. Currently, § 601.43(a) refers to § 601.40, instead of the correct § 601.41; § 601.43(b) refers to § 601.40, instead of the correct § 601.42. Accordingly, we are amending § 601.43(a) by replacing the incorrect reference to § 601.40 with a reference to § 601.41, and we are amending § 601.43(b) by replacing the incorrect reference to § 601.40 with a reference to § 601.42. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

List of Subjects in 21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 601 is amended as follows:

PART 601—LICENSING

■ 1. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356B, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

§ 601.43 [Amended]

■ 2. Section 601.43 *Withdrawal procedures* is amended in the introductory text of paragraph (a) by removing ''§§ 601.40 and 640.42'' and adding in its place ''§ 601.41 or § 601.42'', and in paragraph (b) by removing ''§ 601.40 or § 601.41'' and adding in its place ''§ 601.41 or § 601.42''.

Dated: June 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14621 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 602

[TD 9061]

RIN 1545–BB55

Automatic Extension of Time To File Certain Information Returns and Exempt Organization Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations providing an automatic extension of time to file certain information returns and exempt organization returns. The temporary regulations remove the requirement for a signature and an explanation to obtain an automatic extension of time to file these returns. The temporary regulations affect taxpayers who are required to file certain information returns and/or exempt organization returns and need an extension of time to file. The text of the temporary regulations also serves as a portion of the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on June 11, 2003.

Applicability Date: For dates of applicability for these regulations, see §§ 1.6081–8T, 1.6081–9T, and 31.6081(a)–1T(d).

FOR FURTHER INFORMATION CONTACT: Charles A. Hall, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under OMB control number 1545–1840. Responses to this collection of information are required by the IRS for taxpayers to obtain a benefit (an automatic extension of time to file certain information or exempt organization returns).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR parts 1, 31, and 602 under section 6081 of the Internal Revenue Code. Section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by Title 26 or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months. The regulations under section 6081 provide specific rules taxpayers must follow to request an extension of time to file Federal tax returns.

Under the generally applicable rule, a taxpayer must submit an application for the extension on or before the due date of the return. The application must be in writing, must be properly signed by the taxpayer or his duly authorized agent, and must clearly set forth the particular tax return for which the extension of the time for filing is desired and a full recital of the reasons for requesting the extension. These rules apply to all returns other than those for which the regulations provide special rules. In addition, the Employment Tax Regulations provide rules for employers to obtain an extension of time to file the Social Security Administration copy of Forms W–2 and W–3. Under those rules, the request must contain a concise statement of the reasons for requesting the extension.

Explanation of Provisions

Information Returns

Filers and transmitters of information returns on Form 1099 (series), 1098 (series), 5498 (series), W–2 (series), W–2G, 1042–S, and 8027 can obtain an extension of time to file these information returns by submitting a signed paper Form 8809, ''Request for Extension of Time to File Information Returns.'' The extensions are most often for a period of 30 days. Filers and transmitters may thereafter request an additional 30-day extension. The extensions apply only to the filing with the government. The filer or transmitter is still required to provide statements to the recipients by the date specified in the Code or the regulations.

Currently, in compliance with the regulations, Form 8809 requires a signature and asks for an explanation of the reasons for the request for an extension. In current practice, however, the explanation is not a determining factor for the initial extension. If the filer supplies the name, address, Employer Identification Number, tax year, and type of form(s), the initial extension is routinely granted. An extension beyond the initial 30-day period will not be granted, however, unless the filer provides a detailed explanation.

These temporary regulations allow filers and transmitters to request an automatic 30-day extension of time to file without having to sign Form 8809 and provide an explanation. An explanation and a signature are required if filers and transmitters need additional time to file after receiving the automatic 30-day extension. These regulations also permit employers to obtain an extension of time to file the Social Security Administration copy of Forms W–2 and W–3 without providing a statement of the reasons for requesting the extension.

The new rules will allow the IRS to develop an effective online version of the extension request. Filers and transmitters will benefit from the simplified extension procedure that will provide immediate approval. The IRS will benefit from the efficiencies inherent in such a system and will move closer to achieving electronic filing goals.

Filers and transmitters are eligible for only one automatic extension of time to file. Filers and transmitters filing Forms W–2 on an expedited basis under section 31.6071(a)–1(a)(3)(ii) may receive an automatic extension of time to file Forms W–2 under Rev. Proc. 96–57, 1996–2 C.B. 389. These filers and transmitters are not eligible to obtain the 30-day automatic extension under § 1.6081–8T(b). If these filers and transmitters need additional time, they may request an extension under the generally applicable procedures for obtaining additional extensions of time to file Form W–2.

Exempt Organization Returns

These temporary regulations also allow an exempt organization required to file a return on Form 990 (series), 1041–A, 4720, 5227, 6069, or 8870 an automatic three-month extension of time to file if (a) an application is submitted on Form 8868, ''Application for Extension of Time To File an Exempt Organization Return,'' (b) the application is filed on or before the date the return is due, (c) the application shows the full amount properly estimated as tax, and (d) the application is accompanied by full remittance of the amount properly estimated as tax that is unpaid as of the date prescribed for the filing of the return.

A signature and an explanation of the reasons for requesting the extension are not required for an exempt organization to receive the automatic three-month extension of time to file. If an exempt organization needs additional time to file a return after receiving the automatic three-month extension, the exempt organization may file a signed Form 8868 that explains in detail why the additional time is needed. The IRS may grant an additional three months for the exempt organization to file.

Deadwood Provisions

These regulations also remove § 1.6081–1T and §§ 31.6011(a)–5(b)(1) and 31.6081(a)–1(a)(2). Section 1.6081–1T is removed because it relates only to returns for tax years ending before February 1, 1985. Sections 31.6011(a)–5(b)(1) and 31.6081(a)–1(a)(2) are removed because they relate to information returns that are no longer required.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of the regulations is Charles A. Hall of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 31, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1**. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.6081–8T also issued under 26 U.S.C. 6081.

Section 1.6081–9T also issued under 26 U.S.C. 6081. * * *

§ 1.6081–1T [Removed]

■ **Par. 2.** Section 1.6081–1T is removed.

■ **Par. 3.** Section 1.6081–8T is added to read as follows:

§ 1.6081–8T Automatic extension of time to file certain information returns (temporary).

(a) *In general.* A person required to file an information return (the filer) on Form W–2 series, W–2G, 1042–S, 1098 series, 1099 series, 5498 series, or 8027 will be allowed an automatic 30-day extension of time to file the return after the date prescribed for filing the return if the filer or the person transmitting the return for the filer (the transmitter) files an application in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), an application must—

(1) Be submitted on Form 8809, ''Request for Extension of Time To File Information Returns,'' or in any other manner as may be prescribed by the Commissioner; and

(2) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the date prescribed for filing the information return.

(c) *Penalties.* See sections 6652, 6693, 6721, 6722, and 6723 for failure to file an information return.

(d) *Additional 30-day extension of time to file*—(1) *In general.* This paragraph (d) provides procedures for obtaining an additional extension of time for filing an information return on a form listed in paragraph (a) of this section. No extension of time will be granted under this paragraph (d) unless the filer or transmitter has first obtained an automatic extension.

(2) *Procedures.* In the case of an information return on a form listed in paragraph (a) of this section, one additional 30-day extension of time to file the return may be allowed if the filer or transmitter submits a request for the additional extension before the expiration of the automatic 30-day extension. The request must—

(i) Be submitted on Form 8809 or in any other manner as may be prescribed by the Commissioner;

(ii) Explain in detail why the additional time is needed;

(iii) Be signed by the filer or transmitter; and

(iv) Otherwise satisfy the requirements of § 1.6081–1.

(e) *No effect on time to provide statement to recipients.* An extension under this section of time to file an information return does not extend the due date for providing a statement to the person with respect to whom the information is required to be reported.

(f) *Effective date.* This section applies to requests for extension of time to file

information returns due after June 11, 2003. The applicability of this section expires on June 12, 2006.

■ **Par. 4.** Section 1.6081–9T is added to read as follows:

§ 1.6081–9T Automatic extension of time to file exempt organization returns (temporary).

(a) *In general.* An exempt organization required to file a return on Form 990 (series), 1041–A, 4720, 5227, 6069, or 8870 will be allowed an automatic three-month extension of time to file the return after the date prescribed for filing if the exempt organization files an application in accordance with paragraph (b) of this section. For guidance on extensions of time for an exempt organization to file Form 1120–POL, U.S. Income Tax Return for Certain Political Organizations, see § 1.6081–3.

(b) *Requirements.* To satisfy this paragraph (b), an application for an automatic extension under this section must—

(1) Be submitted on Form 8868, ''Application for Extension of Time To File an Exempt Organization Return,'' or in any other manner as may be prescribed by the Commissioner;

(2) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the date prescribed for filing the information return;

(3) Show the full amount properly estimated as tentative tax for the exempt organization for the taxable year; and

(4) Be accompanied by the full remittance of the amount properly estimated as tentative tax which is unpaid as of the date prescribed for the filing of the return.

(c) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the exempt organization a notice of termination. The notice must be mailed at least 10 days prior to the termination date designated in such notice. The notice of termination must be mailed to the address shown on the application for extension or to the exempt organization's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(d) *Penalties.* See sections 6651 and 6652(c) for failure to file an exempt organization return or failure to pay the amount shown as tax on the return.

(e) *Coordination with § 1.6081–1.* No extension of time will be granted under § 1.6081–1 for filing an exempt organization return listed in paragraph (a) of this section until an automatic extension has been allowed pursuant to this section.

(f) *Effective date.* This section applies to requests for extensions of time to file an exempt organization return due after June 11, 2003. The applicability of this section expires on June 12, 2006.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Par. 5.** The authority citation for part 31 continues to read as follows:

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

Section 31.6081(a)–1T also issued under 26 U.S.C. 6081. * * *

■ **Par. 6.** Section 31.6011(a)–5 is amended by revising paragraph (b) to read as follows:

§ 31.6011(a)–5 Monthly returns.

* * * * *

(b) *Information returns on Form W–3 and Social Security Administration copies of Form W–2.* See § 31.6051–2 for requirements with respect to information returns on Form W–3 and Social Security Administration copies of Form W–2.

* * * * *

§ 31.6051–1 [Amended]

■ **Par. 7.** Section 31.6051–1(d)(2)(i)(*c*) is amended by removing the language ''§ 31.6081(a)–1(a)(3)'' and adding ''§ 31.6081(a)–1(a)(2)'' in its place.

§ 31.6051–2 [Amended]

■ **Par. 8.** Section 31.6051–2(c) is amended by removing the language ''31.6081(a)–1(a)(3)'' and adding ''31.6081(a)–1(a)(2)'' in its place.

■ **Par. 9.** Section 31.6081(a)–1 is amended by:

■ 1. Removing paragraph (a)(2).

■ 2. Redesignating paragraph (a)(3) as paragraph (a)(2).

■ 3. Revising newly designated paragraph (a)(2)(i).

The revision reads as follows:

§ 31.6081(a)–1 Extensions of time for filing returns and other documents.

(a) * * *

(2) * * * (i) [Reserved]. For guidance on extensions of time to file the Social Security Administration copy of Forms W–2 and W–3 due after June 11, 2003, see § 31.6081(a)–1T.

* * * * *

■ **Par. 10.** Section 31.6081(a)–1T is added to read as follows:

§ 31.6081(a)–1T Extensions of time for filing returns and other documents (temporary).

(a)(1) [Reserved]. For further guidance, see § 31.6081(a)–1(a)(1).

(2) *Information returns of employers on Forms W–2 and W–3—* (i) *In general.* The Commissioner may grant an extension of time in which to file the Social Security Administration copy of Forms W–2 and the accompanying transmittal form which constitutes an information return under paragraph § 31.6051–2(a). For further guidance regarding extensions of time to file the Social Security Administration copy of Forms W–2 and W–3, see § 1.6081–8T of this chapter.

(a)(2)(ii) through (c) [Reserved]. For further guidance, see § 31.6081(a)–1(a)(2)(ii) through (c).

(d) *Effective date.* This section applies to requests for extensions of time to file the Social Security Administration copy of Forms W–2 and W–3 due after June 11, 2003. The applicability of this section expires on June 12, 2006.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 11.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 12.** In § 602.101, paragraph (b) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section identified and described	Current OMB control No.
* * * * *	
1.6081–8T	1545–1040
1.6081–9T	1545–1040
* * * * *	

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: May 21, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–14603 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–025]

Drawbridge Operation Regulations; Illinois Waterway, Beardstown, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Beardstown Railroad Drawbridge, across the Illinois Waterway, mile 88.8 at Beardstown, Illinois. This deviation allows the drawbridge to remain closed to navigation for three separate 10½-hour increments from June 9, 2003 until June 11, 2003. The deviation is necessary to facilitate maintenance work on the bridge that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 7 a.m. on June 9, 2003, until 5:30 p.m. June 11, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FUTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Burlington Northern Santa Fe Railway requested a temporary deviation on May 9, 2003 to allow time to conduct preventative maintenance to the Beardstown Railroad Drawbridge, across the Illinois Waterway, mile 88.8 at Beardstown, Illinois. The Beardstown Railroad Drawbridge currently operates in accordance with 33 CFR 117.393(a) which requires that the drawbridge be maintained in the open-to-navigation position and closed only for the passage of rail traffic. In order to replace the up and down haul cables, the bridge must be kept in the closed to navigation position. This deviation allows the bridge to remain closed to navigation for three separate 10½-hour intervals from 7 a.m. until 5:30 p.m., June 9, 2003, from 7 a.m. until 5:30 p.m., June 10, 2003, and from 7 a.m. until 5:30 p.m., June 11, 2003. Vessels not exceeding the vertical clearance of the drawbridge may pass under the drawbridge during repairs. There are no alternate routes for vessels transiting through mile 88.8 on the Illinois Waterway. The drawbridge will be incapable of opening for emergencies during the 10½-hour repair periods.

The Beardstown Railroad drawbridge provides a vertical clearance of 19.6 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 3, 2003.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 03–14800 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–019]

Drawbridge Operation Regulations; Illinois Waterway, Hardin, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Hardin Drawbridge, across the Illinois Waterway, mile 21.6 at Hardin, Illinois. This deviation allows the drawbridge to remain closed to navigation for 14 days from August 18, 2003 until August 31, 2003. The deviation is necessary to facilitate maintenance work on the bridge that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 6 a.m., August 18, 2003 through 6 p.m., August 31, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FUTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Illinois Department of Transportation requested a temporary deviation on April 7, 2003 to allow time to conduct preventative maintenance to the Hardin Drawbridge, across the Illinois Waterway, mile 21.6 at Hardin, Illinois. The Harding Drawbridge currently operates in accordance with 33 CFR 117.5 which requires the drawbridge to open on signal for passage of vessel traffic. In order to replace wire rope and trunnions, re-boring of sheaves for new trunnions and replacing secondary enclosed gear reducers, the bridge must be kept in the closed to navigation position. This deviation allows the bridge to remain closed to navigation for 14 days from 6 a.m., August 18, 2003 until 6 p.m., August 31, 2003. Vessels not exceeding the vertical clearance of the drawbridge may pass under the drawbridge during repairs. There are no alternate routes for vessels transiting through mile 21.6 on the Illinois Waterway. The drawbridge will be incapable of opening for emergencies during the 14-day repair period.

The Hardin drawbridge provides a vertical clearance of 25.9 feet above pool stage in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 4, 2003.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 03–14801 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–02–054]

RIN 1625–AA09

Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations for the Route 70 Bridge across Manasquan River, mile 3.4, at Riviera Beach, New Jersey. The final rule will require the draw of the bridge to open on signal on the hour, except that from 11 p.m. to 7 a.m. and on Monday through Friday from 4 p.m. to 7 p.m., the draw need not be opened. This change would reduce traffic delays while still providing for the reasonable needs of navigation.

DATES: This rule is effective July 11, 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 CCGD05–02–054 and are available for inspection or copying at Commander (oan), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 12, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Manasquan River, New Jersey'' in the **Federal Register** (67 FR 57773). We received 14 letters commenting on the proposed rule. No public meeting was requested, and none was held.

On March 20, 2003, we published a supplemental notice of proposed rulemaking (SNPRM) entitled ''Drawbridge Operation Regulations; Manasquan River, New Jersey'' in the **Federal Register** (68 FR 13641). We received 10 letters commenting on the supplemental proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Route 70 Bridge is a movable bridge (single-leaf bascule) owned and operated by the New Jersey Department of Transportation (NJDOT) connecting the Borough of Point Pleasant and Brick Township in Ocean County with Brielle Borough and Wall Township in Monmouth County. Currently, Title 33 Code of Federal Regulations (CFR) Part 117.727 requires that the draw of the S70 Bridge, mile 3.4 at Riviera Beach, shall open on signal from 7 a.m. to 11 p.m. The draw need not be opened from 11 p.m. to 7 a.m. In the closed position to vessels, the bridge has a vertical navigation clearance of approximately 15 feet at mean high water.

On behalf of residents and business owners in the area, NJDOT requested changes to the existing regulations for the Route 70 Bridge in an effort to balance the needs of mariners and vehicle drivers transiting in and around this seaside resort area. Route 70 is a principal arterial highway that serves as a major evacuation route in the event of tidal emergencies. Bridge openings at peak traffic hours during the tourist season often cause considerable vehicular traffic congestion while accommodating relatively few vessels. To ease traffic congestion, NJDOT requested that the movement of marine traffic be regulated. We reviewed NJDOT's yearly drawbridge logs for 1999, 2000, and 2001, which revealed that the bridge opened for vessels 1028, 1026, and 1020 times, respectively. During the peak boating season from May through September, the logs revealed from 1999 to 2001, the bridge opened 750, 792, and 794 times, respectively. With an average of only five openings per day during the prime boating period, NJDOT contends that vessel traffic through the bridge is minimal. Also, NJDOT officials, residents and business owners pointed out that from 4 p.m. to 7 p.m. on Fridays, vehicular traffic congestion is at its peak. During the peak boating season from May through September, the logs revealed from 1999 to 2001, the bridge opened from 4 p.m. to 7 p.m. on Fridays, 36, 35, and 26 times, respectively. Limiting the openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour and no openings required from 4 p.m. to 7 p.m. on Fridays would enhance vehicular traffic without significantly affecting vessel traffic. The Coast Guard received 14 comments on the NPRM; most suggesting additional changes to the proposed regulations.

Based on these comments and our further review of the bridge logs, the Coast Guard considered the minimal number of openings year-round during the closure period from 4 p.m. to 7 p.m. that included Monday through Thursday, an alternative proposal, as set forth in the SNPRM, was appropriate.

Discussion of Comments and Changes

The Coast Guard received 14 comments on the NPRM. Eleven letters supported the proposed changes to the regulations, two responses opposed the proposed changes and another comment suggested a height restriction placed on vessels that travel under the bridge.

Of the 11 letters supporting the proposed changes to the regulations, five letters went further in asking to extend the suggested ''no openings'' on Fridays from 4 p.m. to 7 p.m. to include Monday through Thursday; two letters supported the proposal without changes; one comment requested commuter hours from 6:30 a.m. to 8:30 a.m. and 5 p.m. to 7 p.m.; one comment requested no openings of the bridge on any days between 5 p.m. and 7 p.m.; and another letter considered operating the bridge to open hourly from 8 a.m. to 4 p.m. during the months of March, April, October and November and only open with a 24-hour advance notice during December, January and February. Two comments, one from the U.S. Fish and Wildlife Service and the other from the New Jersey Historic Preservation Office, had no objection to the issuance of the proposed regulations.

Two of the remaining three comments opposed the proposed changes to the regulations and one had no opinion to the proposed regulation. One comment from a yacht club stated that their membership objects to any changes to the proposed regulations for the following reasons: safety, the environment and liability losses. Another comment had suggested a reduction of the bridge closure to 5 p.m. to 7 p.m. especially if done five days a week, and emergency openings for boater safety. The Coast Guard responded to these comments and indicated that in the event of marine emergency Title 33 CFR part 117.31, ''Operation of draw for emergency situations,'' adequately provides for vessels for unscheduled openings of the bridge. The last comment requested a height restriction placed on vessels with lowerable appurtenances (*i.e.* antennas etc.) that transit under the bridge. Further review of the bridge logs reveal from 1999 through 2001, the bridge opened year-round from 4 p.m. to 7 p.m., Mondays through Thursdays, 72, 73, and 60 times respectively. The Coast Guard responded to the comments by limiting the required openings of the

draw year-round from 7 a.m. to 11 p.m. to once an hour with closure periods from 4 p.m. to 7 p.m. Mondays through Fridays.

The Coast Guard received ten comments on the SNPRM. Eight supported, one opposed and another had no opinion to the supplemental proposal. Of the eight supporting the supplemental proposed changes, four also indicated that passage under the bridge can also be accomplished by vessel owners lowering their lowerable appurtenances (*i.e.* antennas, outriggers etc.), two supported the regulations without changes, one was a resolution from the Borough of Brielle in support of the regulations, and one from the U.S. Fish and Wildlife Service which had no objections to the issuance of the supplemental proposed regulations.

One of the remaining two comments opposed and the other had no opinion to the supplemental proposed changes. The opposing comment considered the weekday closure period from 4 p.m. to 7 p.m. a major inconvenience to commercial fishing boats entering Manasquan Inlet. The remaining comment only indicated that the bridge should never have been ''on demand.'' All comments and the Coast Guard's written response to those comments are contained in the docket.

Based on these comments to the new proposal, the lowering of non-structural vessel appurtenances that are not essential to navigation and the minimal number of openings identified by the bridge logs, the Coast Guard is amending 33 CFR 117.727 with a new provision to limit the openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour with closure periods from 4 p.m. to 7 p.m. Mondays through Fridays.

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 reached this conclusion based on the fact that the final rule has only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings and lower their non-structural appurtenances that are not essential to navigation to further minimize delay.

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 final rule will not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by 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 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 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 would 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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 considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact to the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of P.L. 102–587, 106 Stat. 5039.

■ 2. § 117.727 is revised to read as follows:

§ 117.727 Manasquan River.

The draw of the Route 70 Bridge, mile 3.4, at Riviera Beach, shall open on signal on the hour, except that from 4 p.m. to 7 p.m. Monday through Friday and from 11 p.m. to 7 a.m., every day the draw need not be opened.

Dated: June 3, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–14802 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–215]

RIN 1625–AA00

Safety Zone; Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety encompassing a portion of Lake Michigan, Chicago, IL. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over a portion of Lake Michigan. The safety zone is intended to restrict vessel traffic from a portion of Lake Michigan, Chicago, Illinois.

DATES: This temporary final rule is effective from 10 p.m. (local), until 11 p.m. on June 14, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CDG09–03–215 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Chicago, Illinois 60527 between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U. S. Coast Guard Marine Safety Office Chicago, at (630) 986–2125.

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. Similarly, 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**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Chicago has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

The safety zone will encompass all waters of Lake Michigan bounded by the arc of a circle with a 1000 foot radius with its center in approximate position 41° 52′15″ N; 087° 36′44″ W. These coordinates are based upon North American Datum 1983 (NAD 83). All vessels except those officially participating in this event are prohibited from entering the safety zone without the permission of the Captain of the Port Chicago or his on-scene representative. The on-scene representative will be the Patrol Commander, and may be contacted via VHF Channel 16.

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 this rule 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 the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is in an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this rule would have a significant 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.

This rule would affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the zone is only in effect for two hours on the day of the event.

The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

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 and participate in the rulemaking process. 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 Marine Safety Office Chicago (*see* **ADDRESSES.**)

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 would call 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 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would 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

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

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.

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.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting 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, 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T09–215 is added to read as follows:

§ 165.T09–215 Safety Zone; Lake Michigan, Chicago, Illinois.

(a) *Location.* The following is a safety zone: All waters of Lake Michigan bounded by the arc of a circle with a 1000-foot radius with its center in approximate position 41°52′15″ N; 087°36′44″ W (NAD 83).

(b) *Regulations.* This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in § 165.23 of this part, entry into the zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated Patrol Commander.

(c) *Effective date.* This section is effective from 10 p.m. until 11 p.m. on June 14, 2003.

Dated: May 21, 2003.

Glenn A. Cekus,

Commander, U.S. Coast Guard, Acting Captain of the Port Chicago.

[FR Doc. 03–14588 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Delivery Confirmation and Signature Confirmation Services With First-Class Mail Parcels and Package Services Parcels

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In this final rule, the Postal Service adopts revisions to the *Domestic Mail Manual* (DMM) that clarify when it is permissible to use Delivery Confirmation service or Signature Confirmation service with mailpieces claimed at First-Class Mail or Package Services rates. In particular, this final rule specifies that, for First-Class Mail and Package Services mailpieces, Delivery Confirmation service or Signature Confirmation service may be used only with parcels and not with letter-size mail or flat-size mail as defined by the Postal Service.

EFFECTIVE DATE: July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Berger at (703) 292–3645, Mailing Standards, United States Postal Service.

SUPPLEMENTARY INFORMATION: In a proposed rule published on April 15, 2003, in the **Federal Register** (68 FR 18174–18176), the Postal Service put forward for public comment revised language to the DMM that would clarify the mailing standards governing the use of Delivery Confirmation service or Signature Confirmation service with First-Class Mail parcel-shaped mailpieces and Package Services parcel-shaped mailpieces. For this clarification, the general term ''box,'' as used in part of the original language of those mailing standards to identify ''parcel-shaped'' mail, is to be replaced with the specific dimensional definitions of a parcel currently used in DMM C050 for machinable parcels, irregular parcels, and outside parcels.

The term ''box'' was initially adopted when classification changes extended the use of Delivery Confirmation service and Signature Confirmation service to First-Class Mail parcels only and confined the use of those two special services to Package Services parcels only. Those classification changes took effect on June 30, 2002, as announced on April 16, 2002, in the **Federal Register** (67 FR 18684–18771).

The term ''box'' had been carefully selected for the classification changes for two important reasons. First, the term offered a functional and convenient description of a parcel that could be easily understood by the general mailing public, parcel and merchandise shippers, and Postal Service employees at retail units and business mail entry units. Second, the term permitted a wide range of First-Class Mail and Package Services mailpieces—including pieces measuring ¾ inch thick or less—to qualify as ''parcel-shaped'' mail if prepared in boxes. This second reason was also important because most mailpieces measuring ¼ inch thick or less are generally categorized as letter-size mail (''letters''), and most mailpieces measuring between ¼ and ¾ inch thick are generally categorized as flat-size mail (''flats'') under DMM C050.

The original mailing standards underlying the term ''box,'' which this final rule now effectively revises, were first presented in sections C100.5.0 and C700.1.0h of Issue 57 of the DMM, dated June 30, 2002. Those original mailing standards permitted the use of either special service with a First-Class Mail mailpiece or a Package Services mailpiece only if the piece met the following conditions:

a. Has an address side with enough surface area to fit the delivery address, return address, postage, markings and endorsements, and special service label; and

b. Is in a box or, if not in a box, is more than ¾ inch thick at its thickest point.

In the case of First-Class Mail parcels and Package Services parcels, these standards reflected both a customer need and an operational requirement to maintain high rates of successful scanning of Delivery Confirmation barcodes and Signature Confirmation barcodes by segregating the pieces With these barcodes from letter-size and flat-size mailpieces.

Nevertheless, the use of the term ''box'' to define a parcel has continued to create uncertainty among customers and Postal Service employees in determining whether specific mailing containers qualify as ''boxes'' and whether specific mailpieces qualify as ''parcel-shaped'' mail. This uncertainty comes into play especially for mailpieces prepared in lightly constructed or flimsy containers. These pieces can easily flatten or compress during transportation and mail processing into flat-size pieces or, on occasion for smaller containers, even into letter-size pieces. Flattened or compressed pieces, even if originally prepared as parcels, no longer meet the intent or the function of parcels. As a consequence, they are not handled in the parcel mailstream. Instead, these pieces are generally processed as flats and, as a result, invariably fail to receive a Delivery Confirmation or Signature Confirmation scan.

One way to remove the uncertainty about the term ''box'' would be to define a parcel as any mailpiece that is neither letter-size nor flat-size. This approach at first seems relatively straightforward in resolving the uncertainty surrounding the term ''box,'' by providing a practical definition that can be reasonably and uniformly applied as a mailing requirement. Even with a specification such as ''any mailpiece thicker than ¾ inch is not letter-size or flat-size,'' customers and employees would encounter two new and unforeseen issues:

- Merchandise items sent as First-Class Mail or Package Services pieces that are thinner than ¾ inch thick—such as compact discs, coins in flat plastic display cases, and some children's picture books—would not be eligible for the use of Delivery Confirmation service or Signature Confirmation service because their dimensions of length, height, and, most notably, thickness would generally fall within the dimensional definition of letter-size or flat-size mail.
- Any qualifying mailpiece that passed the thickness requirement (that is, the piece measured more than ¾ inch thick) but was not uniformly thick might also be ineligible for the use of either special service if part of the mailpiece could, in some cases, fall within the dimensional requirements for either flat-size mail or letter-size mail.

To overcome these two issues and to ensure that customers and parcel shippers can benefit from the use of Delivery Confirmation service or Signature Confirmation service in such cases, the Postal Service is adopting the current three parcel definitions in DMM C050 for a machinable parcel, an irregular parcel, and an outside parcel for the purposes of defining First-Class Mail parcels and Package Services parcels eligible for the use of Delivery Confirmation service or Signature Confirmation service.

The Postal Service has also added a clarification to the descriptions of Delivery Confirmation service and Signature Confirmation service with information that states that some statutes and regulations governing the mailing of documents with legal significance may require the use of

Certified Mail or Registered Mail rather than Delivery Confirmation service or Signature Confirmation service.

Comments

The Postal Service received three comments to its proposed rule. One commenter was a third-party provider of printing, mailing, and related services to the merchandising, magazine, book, directory and financial markets. The second commenter was a software developer for certain mailing applications and electronic book publishing. The third commenter was a box and carton manufacturer.

Signature Confirmation Service With Standard Mail Pieces

The first commenter, who was the third-party provider, stated that his firm mails more than 150 million parcels each year for a large client base. This commenter requested the extension of the use of Signature Confirmation service to Standard Mail parcels. This commenter correctly noted that the use of Signature Confirmation service was extended on June 30, 2002, to First-Class Mail parcels but not to Standard Mail parcels. This commenter then pointed out that the physical characteristics of both First-Class Mail parcels and Standard Mail parcels are similar in regard to size, shape, and weight (First-Class Mail parcels are permitted to weigh up to 13 ounces and Standard Mail parcels are permitted to weigh up to but not including 16 ounces.)

Although using Signature Confirmation service with Standard Mail parcels would provide many shippers with a more enhanced level of service than Delivery Confirmation service, limited market research has not shown a large potential demand for this special service for these reasons:

- The comparatively high fee for the special service. Except for Priority Mail, which has no additional charge for the Delivery Confirmation electronic option, the difference between electronic option fees for the two services for other eligible classes of mail is considerable: $1.30 for Signature Confirmation service compared with $0.13 for Delivery Confirmation service. The Signature Confirmation fee is also high in relation to typical Standard Mail postage. If the use of Signature Confirmation service were extended to Standard Mail pieces, the electronic option would probably be the option required.
- The generally low extrinsic value of most items shipped by Standard Mail. Shippers sending valuable items tend to use classes of mail such as Priority Mail or First-Class Mail that can provide additional benefits and permit a larger range of special service options.

From a procedural and legal perspective, the Postal Service cannot introduce the use of Signature Confirmation service with Standard Mail parcels without proceeding through a rate and classification filing with the Postal Rate Commission. Such a filing would require the collection of costing data and extensive market research that would be unreasonable to undertake outside an omnibus rate case. Even though this comment is beyond the scope of this final rule, the Postal Service appreciates the recommendation and interest in this special service and plans to have the organizations responsible for managing the Delivery Confirmation and Signature Confirmation programs consider this recommendation as future plans are developed.

Maintenance of Shape Specification

The software developer and the box manufacturer both commented that the proposed rule for DMM S918.1.2c and DMM S919.1.2c would provide mailers and the box manufacturing industry with the latitude of choosing materials and configurations that could produce mailing containers and mailpieces that would meet the intent of that standard.

Both commenters, however, added that a parcel, on average, must maintain a certain thickness to distinguish it from a letter-size or flat-size piece. These commenters believed that inserting such a clause or qualifier into the proposed standards would ensure that customers and shippers would adhere to the original intent of the mailing standards to limit Delivery Confirmation service and Signature Confirmation service to parcel-shaped First-Class Mail and parcel-shaped Package Services mailpieces. That intent, as correctly cited by the commenters, rests on the need to restrict the two special services to parcels in order to prevent entry of Delivery Confirmation pieces and Signature Confirmation pieces into the letter-size or flat-size mail processing streams, and thus ensure scanning of the Delivery Confirmation barcodes and the Signature Confirmation barcodes.

The Postal Service recognizes that, by adopting the current definitions of parcels as presented in DMM C050, some machinable parcels could range within the measurements defining either letter-size or flat-size mail. By creating a new minimum thickness above the current ¼-inch minimum required for machinable parcels, the Postal Service would, however, impose a hardship on mailers already mailing small merchandise items as machinable parcels and using Delivery Confirmation service or Signature Confirmation service for those parcels.

The Postal Service, therefore, does not plan to revise the current dimensional requirements for the parcel mail processing categories, which are understood and accepted by the mailing industry and the Postal Service. Moreover, any change to those requirements would complicate issues in mail acceptance by introducing two different thickness minimums for machinable parcels. As a consequence, the Postal Service is adding a rigidity requirement to the standards for machinable parcels that measure ¾ inch thick or less only for the purposes of using the two special services in question as a means to prevent such pieces from collapsing into letter-size or flat-size mail.

Container Certification

Both the software developer and the box manufacturer strongly urged the Postal Service to develop a national process of certifying eligible mailing containers that meet the definition of a parcel for the purposes of using Delivery Confirmation service or Signature Confirmation service as described in DMM S918 and S919, respectively. Both commenters affirmed that a manufacturer can invest considerable resources in developing mailing containers that might be later rejected by Postal Service employees in some parts of the country. This rejection would also affect customers who purchase such containers and plan to use one of the two special services with either First-Class Mail or Package Services parcels.

The box and carton manufacturer conducted an informal test to determine the durability of certain prototype containers and the resultant Delivery Confirmation scan rate for those containers. The manufacturer stated that he mailed 100 empty prototype 5/8-inch-thick containers, which had been produced with two different paperboard thicknesses of clay-coated newsback paperboard. The manufacturer reported that half the containers were mailed from a business mail entry unit (BMEU) and the other half from a retail window to eight cities throughout the United States.

According to the same commenter, of the 100 mailpieces mailed, 99 received a delivery scan. In addition, the commenter claimed that 86% of the mailpieces maintained their parcel shape throughout mail processing and delivery. In addition to submitting a spreadsheet detailing the information for each mailing container, the

commenter also provided three photographs showing the condition of delivered parcel-shaped pieces that he ranked as ''best,'' ''average,'' and ''worst.''

Although the establishment of a national certification process for mailing containers has merit for box manufacturers in particular and for some customers in general, such a certification process would also increase the complexity and administrative burden on box manufacturers, on customers, and on the Postal Service. Furthermore, limiting the available types and sizes of mailing containers to those that have successfully passed a certification process could create unnecessary problems for certain mailers. Finally, certification of a container cannot always be done in the abstract, without regard to the contents within the container.

Establishing a national process for certifying the eligibility of specific mailing containers for Delivery Confirmation service and Signature Confirmation service would be similar to establishing a process for certifying the eligibility of envelopes and other containers for all other types of mailing or services. The Postal Service does not believe that such a process at this time would yield the greatest benefit to the largest number of customers and parcel shippers.

As far as the informal test conducted by the box and carton manufacturer, the Postal Service cannot validate such results as a form of certification. There are various testing institutions recognized throughout the shipping industry such as the International Safe Transit Association (ISTA), which supports the industry-wide development of effective packaging, methods, and logistic systems that prevent or reduce transportation and handling damage of packages.

The commenter did not explain how he mailed 50 pieces at the business mail entry unit, which normally accepts and verifies presorted rate mail or permit imprint mail. Permit imprint rate mail requires a minimum of 200 pieces or 50 pounds, even for single-piece rate First-Class Mail prepared with a permit imprint. Moreover, because First-Class Mail mailpieces may not weigh more than 13 ounces each, a mailer would need at this maximum weight per piece at least 62 13-ounce pieces in a mailing to qualify for the use of a permit imprint.

For the reasons presented in the proposed rule and those noted above in this final rule, and in consideration of the public comments received, the Postal Service adopts the following changes to the *Domestic Mail Manual,* which is incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

C Characteristics and Content

* * * * *

C100 First-Class Mail

* * * * *

[*Delete current 5.0. Redesignate current 6.0 as new 5.0.*]

* * * * *

C700 Package Services

[Revise heading to read as follows:]

1.0 DIMENSIONS

* * * * *

[Delete 1.0h.]

* * * * *

S Special Services

* * * * *

S900 Special Postal Services

S910 Security and Accountability

* * * * *

S918 Delivery Confirmation

1.0 BASIC INFORMATION

1.1 Description

[Add the following sentence at the end of 1.1 to read as follows:]

* * * Some statutes and regulations governing the mailing of documents with legal significance may require the use of Certified Mail or Registered Mail rather than Delivery Confirmation.

1.2 Eligible Matter

[Revise 1.2 to read as follows:]

Delivery Confirmation is available for First-Class Mail parcels defined in C050 as machinable (with no minimum weight), irregular, or outside parcels; for all Priority Mail pieces; for Standard Mail pieces subject to the residual shape surcharge (electronic option only); and for Package Services parcels defined in C050 as machinable, irregular, or outside parcels. For the purposes of using Delivery Confirmation with a First-Class Mail parcel or a Package Services parcel, the parcel must meet these additional requirements:

a. The surface area of the address side of the parcel must be large enough to contain completely and legibly the delivery address, return address, postage, and any applicable markings, endorsements, and special service labels.

b. Except as provided in 1.2c for machinable parcels, the parcel must be greater than ¾ inch thick at its thickest point.

c. If the mailpiece is a machinable parcel under C050 and no greater than ¾ inch thick, the contents must be prepared in a strong and rigid fiberboard or similar container or in a container that becomes rigid after the contents are enclosed and the container is secured. The parcel must be able to maintain its shape, integrity, and rigidity throughout processing and handling without collapsing into a letter-size or flat-size piece.

1.3 Ineligible Matter

[Revise 1.3 to read as follows:]

Delivery Confirmation is not available for the following:

a. Express Mail and Periodicals pieces.

b. First-Class Mail letter-size and flat-size pieces.

c. Standard Mail pieces not subject to the residual shape surcharge and all Enhanced Carrier Route Standard Mail pieces.

d. Package Services flat-size pieces.

e. Mail paid with precanceled stamps.

f. Mail addressed to APO/FPO destinations.

g. Mail addressed to any U.S. territory, possession, or Freely Associated State listed in G011, with the exception of Puerto Rico and the U.S. Virgin Islands.

* * * * *

S919 Signature Confirmation

1.0 BASIC INFORMATION

1.1 Description

[Add the following sentence at end of 1.1 to read as follows:]

* * * Some statutes and regulations governing the mailing of documents with legal significance may require the use of Certified Mail or Registered Mail rather than Signature Confirmation.

1.2 Eligible Matter

[Revise 1.2 to read as follows:]

Signature Confirmation is available for First-Class Mail parcels defined in

C050 as machinable (with no minimum weight), irregular, or outside parcels; for all Priority Mail pieces; and for Package Services parcels defined in C050 as machinable, irregular, or outside parcels. For the purposes of using Signature Confirmation with a First-Class Mail parcel or a Package Services parcel, the parcel must meet these additional requirements:

a. The surface area of the address side of the parcel must be large enough to contain completely and legibly the delivery address, return address, postage, and any applicable markings, endorsements, and special service labels.

b. Except as provided in 1.2c for machinable parcels, the parcel must be greater than ¾ inch thick at its thickest point.

c. If the mailpiece is a machinable parcel under C050 and no greater than ¾ inch thick, the contents must be prepared in a strong and rigid fiberboard or similar container or in a container that becomes rigid after the contents are enclosed and the container is secured. The parcel must be able to maintain its shape, integrity, and rigidity throughout processing and handling without collapsing into a letter-size or flat-size piece.

1.3 Ineligible Matter

[Revise 1.3 to read as follows:]

Signature Confirmation is not available for the following:

a. Express Mail, Periodicals, and Standard Mail pieces.

b. First-Class Mail letter-size and flat-size pieces.

c. Package Services flat-size pieces.

d. Mail paid with precanceled stamps.

e. Mail addressed to APO/FPO destinations.

f. Mail addressed to any U.S. territory, possession, or Freely Associated State listed in G011, with the exception of Puerto Rico and the U.S. Virgin Islands.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect the changes will be published.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 03–14631 Filed 6–10–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VT–19–1222b; FRL–7493–5]

Approval and Promulgation of Air Quality Implementation Plans; Vermont Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Vermont that are incorporated by reference (IBR) into the Vermont State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective June 11, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, New England Regional Office (Region 1), One Congress Street, Suite 1100, Boston, MA 02114–2023; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T), NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Cooke, Environmental Scientist, at the above EPA New England Region address or at (617) 918–1668.

SUPPLEMENTARY INFORMATION: The State Implementation Plan (SIP) is a living document which the State can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference (IBR) Federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document. On September 8, 2000, EPA published a document in the **Federal Register** (65 FR 54413) beginning the new IBR procedure for Vermont. In this document EPA is doing the update to the material being IBRed.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes,

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 24, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart UU—Vermont

■ 2. In § 52.2370 paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) and (d) of this section with an EPA approval date prior to April 23, 2003, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after April 23, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 1 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the State Implementation Plan as of April 23, 2003.

(3) Copies of the materials incorporated by reference may be inspected at the New England Regional Office of EPA at One Congress Street, Suite 1100, Boston, MA 02114–2023; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) *EPA approved regulations.*

EPA APPROVED VERMONT REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Chapter 5 Air Pollution Control				
Subchapter I. Definitions				
Section 5–101	Definitions	07/29/93	04/22/98, 63 FR 19828	Definitions IBR'd 101 into the Vermont SIP are numbered consecutively by EPA, and do not necessarily correspond to the State's assigned definition number in the Vermont State Regulation, which are re-numbered whenever definitions are added or deleted from the State Regulation.

EPA APPROVED VERMONT REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Subchapter II. Prohibitions				
Section 5–201	Open burning prohibited.	07/22/98	04/22/98, 63 FR 19828.	
Section 5–202	Permissible open burning.	01/25/78	12/21/78, 43 FR 59496.	
Section 5–203	Procedures for local authorities to burn natural wood.	01/25/78	12/21/78, 43 FR 59496.	
Section 5–211	Prohibition of visible air contaminants.	08/12/78	04/16/82, 47 FR 16331	Except Section 5–211(3)
Section 5–221	Prohibition of potentially polluting materials in fuel.	01/25/78	12/21/78, 43 FR 59496	Except Section 5–221 (1)(c)(i) and Section 5–221(1)(c)(ii).
Section 5–231	Prohibition of particular matter.	11/13/81	02/26/85, 50 FR 7767.	
Section 5–241	Prohibition of nuisance and odor.	01/25/78	12/21/78, 43 FR 59496.	
Section 5–251	Control of nitrogen oxides emissions.	01/04/95	04/09/97, 62 FR 17084	Requires RACT for major stationary sources of NO_X.
Section 5–252	Control of Sulfur dioxide emissions.	11/04/79	02/19/80, 45 FR 10775.	
Section 5–253.1	Petroleum liquid storage in fixed roof Tanks.	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.2	Bulk gasoline terminals.	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.3	Bulk gasoline plants	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.4	Gasoline tank trucks	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.5	Stage I vapor recovery controls at gasoline dispensing facilities.	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.10	Paper coating	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.12	Coating of flat wood paneling.	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.13	Coating of miscellaneous metal parts.	07/29/93	04/22/98, 63 FR 19829.	
Section 5–253.14	Solvent metal cleaning.	07/29/93	04/22/98, 63 FR 19829.	
Section 5–253.15	Cutback and emulsified asphalt.	08/02/94	04/22/98, 63 FR 19829.	
Section 5–253.20	Other sources that emit volatile organic compounds.	08/03/93	04/09/97, 62 FR 17084.	
Section 5–261	Control of hazardous air contaminants.	11/03/81	02/10/82, 47 FR 6014.	
Subchapter III. Ambient Air Quality Standards.				
Section 5–301	Scope	12/15/90	03/05/91, 56 FR 9177.	
Section 5–302	Sulfur dioxide primary	03/24/79	02/19/80, 45 FR 10775.	
Section 5–303	Sulfur dioxide secondary.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–306	PM_{10} primary and secondary standards.	11/01/90	08/01/97, 62 FR 41282	Removal of the TSP standard (Section 5–304 and 5–305) and establishment of PM_{10} standard (Section 5–306).
Section 5–307	Carbon monoxide primary and secondary.	03/24/79	02/19/80, 45 FR 10775	Formerly Section 5–306, renumbered to 5–307 when new Section 5–306 for PM_{10} was created.
Section 5–308	Ozone primary and secondary.	03/24/79	02/19/80, 45 FR 10775	Formerly Section 5–307, renumbered to 5–308 when new Section 5–306 for PM_{10} was created.
Section 5–309	Lead primary and secondary.	11/03/81	02/10/82, 47 FR 6014	Formerly Section 5–308, renumbered to 5–309 when new Section 5–306 for PM_{10} was created.
Section 5–310	Nitrogen dioxide primary and secondary.	12/15/90	03/05/91, 56 FR 9177	Formerly Section 5–309, renumbered to 5–310 when new Section 5–306 for PM_{10} was created.

EPA APPROVED VERMONT REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Subchapter IV. Operations and Procedures				
Section 5–401	Classification of air contaminant sources.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–402	Written reports when requested.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–403	Circumvention	12/10/72	05/31/72, 37 FR 10899.	
Section 5–404	Methods for sampling and testing of sources.	03/24/78	02/19/80, 45 FR 10775.	
Section 5–405	Required air monitoring.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–406	Required air modeling	03/24/79	02/19/80, 45 FR 10775.	
Subchapter V. Review of New Air Contaminant Sources				
Section 5–501	Review of construction or modification of air contaminant sources..	09/17/86	07/17/87, 52 FR 26982.	
Section 5–502	Major stationary sources and major modifications.	07/14/95	08/04/98, 62 FR 41870.	
Subchapter VII. Motor Vehicle Emissions				
Section 5–701	Removal of control devices.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–702	Excessive smoke emissions from motor vehicles.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–801	Effective date	03/24/79	01/30/80, 45 FR 6781.	
Tables				
Table 1	Table 1 Process weight standards.	01/25/78	12/21/78, 43 FR 59496.	
Table 2	Table 2 PSD increments.	12/15/90	03/05/91, 56 FR 9177.	
Table 3	Table 3 Levels of significant impact for non-attainment areas..	11/03/81	02/10/82, 47 FR 6014.	
Subchapter VIII. Registration of Air Contaminant Sources				
Section 5–801	Definitions	04/20/88	01/10/95, 60 FR 2527.	
Section 5–802	Requirement for registration.	04/20/88	01/10/95, 60 FR 2527.	
Section 5–803	Registration procedure.	04/20/88	01/10/95, 60 FR 2527.	
Section 5–804	False or misleading information.	04/20/88	01/10/95, 60 FR 2527.	
Section 5–805	Commencement or recommencement of operation.	04/20/88	01/10/95, 60 FR 2527.	
Section 5–806	Transfer of Operation	04/20/88	01/10/95, 60 FR 2527.	

(d) *EPA-approved State Source specific requirements.*

EPA-APPROVED VERMONT SOURCE SPECIFIC REQUIREMENTS

Name of Source	Permit No.	State effective date	EPA approval date	Explanations
Simpson Paper Company, Centennial Mill in Gilman, Vermont.	Environmental Protection Regulations, Chapter 5, Air Pollution Control, Subchapter II. Section 5–251(2).	01/04/95	04/09/97, 45 FR 17087	Administrative orders for Simpson Paper Company, in Gilman, Vermont, adopted and effective on January 4, 1995.
U.S. Samaica Corporation, in Rutland, VT.	Environmental Protection Regulations, Chapter 5, Air Pollution Control, Subchapter II. Section 5–253.20.	01/04/95	04/09/97, 45 FR 17087	Administrative orders for U.S. Samaica Corporation, in Rutland, Vermont, adopted and effective on January 4, 1995.

(e) *Nonregulatory.*

VERMONT NON REGULATORY

Name of Non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
Notice of public hearing	Statewide	Submitted 02/03/72	06/15/72, 37 FR 11911	(c)(1) Vermont Agency of Environmental Conservation.
Miscellaneous non-regulatory revisions to the plan.	.....	Submitted 02/25/72	5/31/72, 37 FR 10899	(c)(2) Vermont Agency of Environmental Conservation.
Miscellaneous non-regulatory revisions to the plan.	.....	Submitted 03/03/75	01/21/76, 41 FR 3085	(c)(4) Vermont Agency of Environmental Conservation. Deletion of Winooski sampling site for particulates and sulfur dioxide.
Plans to meet various requirements of the Clean Air Act, including Part C.	.....	Submitted 03/21/79, and 11/21/79.	01/30/80, 45 FR 6781	(c)(9) See Plans to attain below.
Attainment Plans to meet the requirements of Part D and the Clean Air Act, as amended in 1977.	.....	Submitted 03/21/79, 11/21/79, 11/27,79, and 12/19/79.	02/19/80 45 FR 10775	(c)(10) Plans to attain. State of Vermont air quality implementation plan (March 1979). The secondary TSP standard for Barre City and a portion of the Champlain Valley Air Management Area, the carbon monoxide standard in the Champlain Valley Air Management Area and the ozone standard in Chittenden, Addison, and Windsor Counties. A program was also submitted for the review of construction and operation of new and modified major stationary sources of pollution in non-attainment areas. Certain miscellaneous provisions were also included.
A plan to provide for public, local and state involvement in federally funded air pollution control activities.	.....	Submitted 03/28/80	09/09/80, 45 FR 59314	(c)(11) A plan to provide for public, local and state involvement in federally funded air pollution control activities.

VERMONT NON REGULATORY—Continued

Name of Non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
A plan to attain and maintain the National Ambient Air Quality Standard for lead.	.....	Submitted 06/24/80, and 11/07/80.	03/18/81, 46 FR 17192	(c)(12) A plan to attain and maintain the National Ambient Air Quality Standard for lead. A letter further explaining the state procedures for review of new major sources of lead emissions.
A revision to the air quality monitoring network.	.....	Submitted 03/21/79	10/08/80, 45 FR 66789, corrected by 03/16/81 46 FR 15897.	(c)(13) meets the requirements of 40 CFR part 58.
Narrative submittal ''Implementation Plan for the Protection of Visibility in the State of Vermont'' and ''Appendices''.	.....	Submitted 04/15/86	07/17/87, 52 FR 26973	(c)(19) Describing procedures, notifications, and technical evaluations to fulfill the visibility protection requirements of 40 CFR part 51, subpart P.
State Implementation Plan narrative.	.....	Submitted 12/07/90, and 01/10/91.	03/05/91, 56 FR 9175	(c)(20) State of Vermont Air Quality Implementation Plan dated November, 1990.
State Implementation Plan narrative.	.....	Submitted 08/09/93	01/10/95, 60 FR 2524	(c)(21) State of Vermont Air Quality Implementation Plan dated February, 1993. To meet the emission statement requirement of the CAAA of 1990.
Revisions to the State Implementation Plan.	.....	Submitted 02/03/93, 08/09/93, and 08/10/94.	04/22/98, 63 FR 19828	(c)(25) State of Vermont: Air Quality Implementation Plan dated August 1993.
Revisions to the State Implementation Plan.	.....	Submitted 08/03/98	07/10/00, 65 FR 42290	(c)(26) letter from VT Air Pollution Control Division dated July 28, 1998 stating a negative declaration for the aerospace coating operations CTG category.

[FR Doc. 03–14571 Filed 6–10–03; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–38–6985b; FRL–7493–4]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Rhode Island that are incorporated by reference (IBR) into the Rhode Island State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective June 11, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, New England Regional Office (Region 1), One Congress Street, Suite 1100, Boston, MA 02114–2023; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Cooke, Environmental Scientist, at the above EPA New England Region address or at (617) 918–1668.

SUPPLEMENTARY INFORMATION: The State Implementation Plan (SIP) is a living document which the State can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference (IBR) Federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document. On August 9, 1999, EPA published a document in the **Federal Register** (64 FR 43083) beginning the new IBR procedure for Rhode Island. In this

document EPA is doing the update to the material being IBRed.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 24, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart OO—Rhode Island

■ 2. In § 52.2070 paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) and (d) of this section with an EPA approval date prior to April 23, 2003, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after April 23, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 1 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the State Implementation Plan as of April 23, 2003.

(3) Copies of the materials incorporated by reference may be inspected at the New England Regional Office of EPA at One Congress Street, Suite 1100, Boston, MA 02114–2023; the Office of the Federal Register, 800

North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) *EPA approved regulations.*

EPA-APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control Regulation 1.	Visible emissions	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 2.	Handling of soft coal	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 3.	Particulate emissions from industrial processes.	02/22/77	05/07/81, 46 FR 25446.	
Air Pollution Control Regulation 4.	Open fires	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 5.	Fugitive dust	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 6.	Continuous emission monitors	11/22/89	09/30/91, 56 FR 49416	RI Air Pollution Control Regulation Number 6 is also referred to by the title ''Opacity Monitors''.
Air Pollution Control Regulation 7.	Emission of air contaminants detrimental to persons or property.	07/19/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 8.	Sulfur content of fuels	05/02/85	01/08/86, 51 FR 756	
Air Pollution Control Regulation 9.	Air pollution control permits	04/08/96	12/02/99, 64 FR 67500	Definition of VOC revised. All of No. 9 is approved with the exception of Sections 9.13, 9.14, 9.15, and Appendix A which Rhode Island did not submit as part of SIP revision.
Air Pollution Control Regulation 10.	Air pollution episodes	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 11.	Petroleum liquids marketing and storage.	01/31/93	12/17/93, 58 FR 65933	
Air Pollution Control Regulation 12.	Incinerators	04/22/81	04/26/82, 47 FR 17817	
Air Pollution Control Regulation 13.	Particulate emissions from fossil fuel fired steam or hot water generating units.	10/05/82	03/29/83, 48 FR 13027	
Air Pollution Control Regulation 14.	Record keeping and reporting	04/08/96	12/02/99, 64 FR 67500	Definition of VOC revised.
Air Pollution Control Regulation 15.	Control of organic solvent emissions.	04/08/96	12/02/99, 64 FR 67500	Limited approval. Applicability threshold decreased to 50 tpy. Definition of VOC revised. All of No. 15 is approved with the except of 15.2.2 which Rhode Island did not submit as part of the SIP revision.
Air Pollution Control Regulation 16.	Operation of air pollution control systems.	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 17.	Odors	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 18.	Control of Emissions from Organic Solvent Cleaning.	Withdrawn	12/02/99, 64 FR 67500	No. 18 is superseded by No. 36.
Air Pollution Control Regulation 19.	Control of Volatile Organic Compounds from Surface Coating Operations.	03/07/96	12/02/99, 64 FR 67500	Definition of VOC revised. Wood products requirements deleted because state adopted new Regulation No. 36 which addresses wood products. Except 19.2.2.
Air Pollution Control Regulation 21.	Control of Volatile Organic Compounds from Printing Operations.	04/08/96	12/02/99, 64 FR 67500	Applicability threshold decreased to 50 tpy. Definition of VOC revised. All on No. 21 is approved with the exception of Section 21.2.3 which the State did not submit as part of the SIP revision.

EPA-APPROVED RHODE ISLAND REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control Regulation 25.	Control of VOC Emissions from Cutback and Emulsified Asphalt.	04/08/96	12/02/99, 64 FR 67500	Definition of VOC revised. All of No. 25 is approved with the exception of Section 25.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 26.	Control of Organic Solvent Emissions from Manufacture of Synthesized Pharmaceutical Products.	04/08/96	12/02/99, 64 FR 67500	Definition of VOC revised. All of No. 26 is approved with the exception of 26.2.3 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 27.	Control of nitrogen oxide emissions.	01/16/96	09/02/97, 62 FR 46202	
Air Pollution Control Regulation 29.3.	Emissions Caps	04/28/95	03/22/96, 61 FR 11735	This rule limits a source's potential to emit, therefore avoiding RACT, Title V Operating Permit.
Air Pollution Control Regulation 30.	Control of VOCs from Automotive Refinishing Operations.	04/08/96	12/02/99, 64 FR 67500	Definition of VOC revised. All of No. 30 is approved with the exception of Section 30.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 31.	Control of VOCs from Commercial and Consumer Products.	04/08/96	12/09/99, 64 FR 67500	Definition of VOC revised. All of No. 31 is approved with the exception of Section 31.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 32.	Control of VOCs from Marine Vessel Loading Operations.	04/08/96	12/02/99, 64 FR 67501	Definition of VOC revised. All of No. 32 is approved with the exception of Section 32.2.2 which the State did not submit as part of the SIP revision.
Air Pollution Control Regulation 33.	Control of VOCs from Architectural Coatings and Industrial Maintenance Coatings.	04/08/96	12/02/99, 64 FR 67501	Definition of VOC revised. All of No. 33 is approved with the exception of Section 33.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 34.	Rhode Island Motor Vehicle Inspection/Maintenance Program.	03/30/00	02/09/01, 66 FR 9663	Department of Environmental Management regulation containing I/M standards.
Air Pollution Control Regulation 35.	Control of VOCs and Volatile Hazardous Air Pollutants from Wood Products Manufacturing Operations.	07/07/96	12/02/99, 64 FR 67501	All of No. 35 is approved with the exception of Section 35.2.3 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 36.	Control of Emissions from Organic Solvent Cleaning.	04/18/96	12/02/99, 64 FR 67501	All of No. 36 is approved with the exception of Section 36.2.2 which the state did not submit as part of the SIP revision.
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Air Pollution Control Regulation 37.	Rhode Island's Low Emission Vehicle Program.	12/07/99	03/09/00, 65 FR 12480	Includes National LEV as a compliance alternative.
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Air Pollution Control Regulation 38.	Nitrogen Oxides Allowance Program.	06/10/98	06/02/99, 64 FR 29567	
Air Pollution Control Regulation 41.	NO_X Budget Trading Program	10/01/99	12/27/00, 65 FR 81748	
Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1.	Rhode Island Motor Vehicle Inspection/Maintenance Program.	01/31/01	02/09/01, 66 FR 9663	Department of Administration regulations for the I/M program.

(d) *EPA-approved State Source specific requirements.*

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Narragansett Electric Company South Street Station in Providence.	A.H. File No. 83–12–AP	08/29/03	07/27/84, 49 FR 30177	Revisions to Air Pollution Control Regulation 8, ''Sulfur Content of Fuels,'' specifying maximum sulfur-in-coal limits (1.21 lbs/MMBtu on a 30-day rolling average and 2.31 lbs/MMBtu on a 24-hour average). These revisions approve Section 8.3.4, ''Large Fuel Burning Devices Using Coal,'' for South Street Station only.
Stanley Bostitch, Bostitch Division of Textron.	A.H. File No. 85–8–AP	06/06/85	12/11/86, 51 FR 44604	RI DEM and Bostitch administrative consent agreement effective 6/6/85. Requires Bostitch to reformulate certain solvent-based coatings to low/no solvent formulation by 12/31/86. Also addendum dated 9/20/85 defining emission limitations reformulated coatings must meet. (A) An administrative consent agreement between the RI DEM and Bostitch Division of Textron. (B) A letter to Bostitch Division of Textron from the RI DEM dated September 20, 1985 which serves as an addendum to the consent agreement. The addendum defines the emission limitations which Bostitch's Division of Textron reformulated coatings.
Keene Corporation, East Providence, RI.	A.H. File No. 85–10–AP	09/12/85	08/31/87, 52 FR 2793	RI DEM and Keene Corporation administrative consent agreement effective 9/12/85 Granting final compliance date extension for the control of organic solvent emissions from sixpaper coating lines. (A) Letter from the RI DEM dated November 5, 1985 submitting revisions to the RI SIP. (B) An administrative consent agreement between the RI DEM and Keene Corporation.

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Tech Industries	File No. 86–12–AP	11/24/87	03/10/89, 54 FR 10147	RI DEM and Tech Industries original administrative consent agreement (86–12–AP) [except for provisions 7 and 8) effective 6/12/86, an addendum effective 11/24/87, defining and imposing reasonably available control technology to control volatile organic compounds. (A) An administrative consent agreement (86–12–AP), except for Provisions 7 and 8, between the RI DEM and Tech Industries effective June 12, 1986. (B) An addendum to the administrative consent agreement (86–12–AP) between the RI DEM and Tech Industries. The addendum was effective November 24, 1987. (C) Letters dated May 6, 1987; October 15, 1987; and January 4, 1988 submitted to the EPA by the RI DEM.
University of Rhode Island	A.P. File No. 87–5–AP	03/17/87	09/19/89, 54 FR 38517	Revisions to the SIP submitted by the RI DEM on April 28, 1989, approving a renewal of a sulfur dioxide bubble for the University of Rhode Island
University of Rhode Island.	File No. 95–50–AP	03/12/96	09/02/97, 62 FR 46202	An administrative consent agreement between RIDEM and University of Rhode Island, Alternative NOx RACT (RI Regulation 27.4.8)
Providence Metalizing in Pawtucket, Rhode Island.	File No. 87–2–AP	04/24/90	09/06/90, 55 FR 36635	Define and impose RACT to control volatile organic compound emissions. (A) Letter from the RIDEM dated April 26, 1990, submitting a revision to the RI SIP. (B) An administrative consent agreement (87–2–AP) between the RI DEM and Providence Metallizing effective July 24, 1987. (C) An amendment to the administrative consent agreement (87–2–AP) between the RI DEM and Providence Metallizing effective May 4, 1989. (D) An addendum to the administrative consent agreement (87–2–AP) between the RI DEM and Providence Metallizing effective April 24, 1990.

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Tillotson-Pearson in Warren, Rhode Island.	File No. 90–1–AP	06/05/90	08/31/90, 55 FR 35623	Revisions to the SIP submitted by the RI DEM on May 24, 1990, to define and impose RACT to control volatile organic compound emissions. (A) Letter from the RI DEM dated May 24, 1990 submitting a revision to the RI SIP. (B) An Administrative consent agreement (90–1–AP) between the RI DEM and Tillotson-Pearson.
Rhode Island Hospital	File No. 95–14–AP	11/27/95	09/02/97, 62 FR 46202	Alternative NOx RACT. An administrative consent agreement between the RI DEM and RI Hospital.
Osram Sylvania Incorporated	File No. 96–06–AP; Air Pollution Permit Approval, No. 1350..	09/04/96	09/02/97, 62 FR 46202	Alternate NOx RACT. (A) An Administrative consent agreement between the RI DEM and Osram Sylvania Incorporated, file no. 96–06–AP, effective September 4, 1996. (B) An air pollution Permit approval, no. 1350 Osram Sylvania Incorporated Issued by RIDEM effective May 14, 1996.
Algonquin Gas Transmission Company.	File No. 95–52–AP	12/05/95	09/02/97, 62 FR 46202	Alterate NOx RACT. (A) Letter from the RI DEM dated September 17, 1996 submitting a revision to the RI SIP. (B) An administering consent agreement between RIDEM and Algonquin Gas Transmission Company, effective on December 5, 1995.
Bradford Dyeing Association, Inc.	File No. 95–28–AP	11/17/95	09/02/97, 62 FR 46202	Alternative NOx RACT. An administrative consent agreement between RIDEM and Bradford Dyeing Association, Inc.
Hoechst Celanese Corporation	File No. 95–62–AP	11/20/95	09/02/97, 62 FR 46202	Alternative NOx RACT. An administrative consent agreement between RIDEM and Hoechst Celanese Corporation.
Naval Education and Training Center in Newport.	File No. 96–07–AP	03/04/96	09/02/97, 62 FR 46202	Alternative NOx RACT. An administrative consent agreement between RIDEM and Naval Education and Training Center in Newport.
Rhode Island Economic Development.	File No. 96–04–AP	09/02/97	06/02/99, 64 FR 29567	Alternative NOx RACT. A consent agreement between RIDEM and Rhode Island Economic Development Corporation's Central Heating Plant in North Kingstown.
Cranston Print Works	A.H. File No. 95–30–AP	12/19/95	12/02/99, 64 FR 67501	Non-CTG VOC RACT Determination.
CCL Custom Manufacturing	A.H. File No. 97–02–AP	04/10/97 10/27/99	12/02/99, 64 FR 67501	Non-CTG VOC RACT Determination.
Victory Finishing Technologies	A.H. File No. 96–05–AP	05/24/96	12/02/99, 64 FR 67501	Non-CTG VOC RACT Determination.
Quality Spray and Stenciling	A.H. File No. 97–04–AP	10/21/97 07/13/99	12/02/99, 64 FR 67501	Non-CTG VOC RACT Determination.

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Guild Music	A.H. File No. 95–65–AP	11/09/95	12/02/99, 64 FR 67501	Non-CTG VOC RACT Determination.

(e) *Nonregulatory.*

RHODE ISLAND NON REGULATORY

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
Notice of public hearing.	Statewide	Submitted 02/09/72	06/15/72, 37 FR 11911	Proposed Implementation Plan Regulations, RI Department of Health.
Miscellaneous non-regulatory additions to the plan correcting minor deficiencies..	Statewide	Submitted 02/29/72	07/27/72, 37 FR 15080	Approval and promulgation of Implementation Plan Miscellaneous Amendments, RI Department of Health.
Compliance schedules.	Statewide	Submitted 04/24/73	06/20/73, 38 FR 16144	Submitted by RI Department of Health.
AQMA identifications for the State of Rhode Island.	Statewide	Submitted 04/11/74	04/29/75, 40 FR 18726	Submitted by RI Department of Health.
Letter identifying Metropolitan Providence as an AQMA.	Metropolitan Providence	Submitted 09/06/74	04/29/75, 40 FR 18726	Submitted by the Governor.
A comprehensive air quality monitoring plan, intended to meet requirements of 40 CFR part 58.	Statewide	Submitted 01/08/80	01/15/81, 46 FR 3516	Submitted by the RI Department of Environmental Management Director.
Attainment plans to meet the requirements of Part D of the Clean Air Act, as amended in 1977. Included are plans to attain the carbon monoxide and ozone standards and information allowing for the re-designation of Providence to non-attainment for the primary TSP standard based on new data. A program fo the review of construction and operation of new and modified major stationary sources of pollution in non-attainment areas. Certain miscellaneous provisions unrelated to Part D are also included.	Statewide	Submitted 05/14/79, 06/11/79, 08/13/79, 01/08/80, 01/24/80, 03/10/80, 03/31/80, 04/21/80, 06/06/80, 06/13/80, 08/20/80, 11/14/80, 03/04/81, 03/05/81 and 04/16/81	05/07/81, 46 FR 25446	Attainment plans to meet the requirements of Part D of the Clean Air Act, as amended in 1977.
Section VI, Part II, ''Stationary Source Permitting and Enforcement'' of the narrative.	Statewide	Submitted 05/14/82; and 07/01/82	06/28/83, 48 FR 29690	As submitted by RI DEM on May 14, 1982 and July 1, 1982 for review of new major sources and major modifications in nonattainment areas. Also included are revisions to add rules for banking emission reductions.
Revisions to the Rhode Island State Implementation Plan for attainment of the primary National Ambient Air Quality Standard for ozone.	Statewide	Submitted 05/14/82; 07/01/82; 07/07/82; 10/04/82; and 03/02/83	07/06/83, 48 FR 31026	Submitted by the Department of Environmental Management.
1982 Ozone Attainment Plan				
Revisions to attain and maintain the lead NAAQS.	Statewide	Submitted 07/07/83	09/15/83, 48 FR 41405	Submitted by the Department of Environmental Management.
Section VI, Part II of the associated narrative of the RI SIP.	Statewide	Submitted 02/06/84; 01/27/84; and 06/06/84	07/06/84, 49 FR 27749	To incorporate the requirements for the Prevention of Significant Deterioration of 40 CFR 51.24, permitting major stationary sources of lead and other miscellaneous changes.
Letter from RI DEM submitting an amendment to the RI State Implementation Plan. Section VII of the RI SIP Ambient Air Quality Monitoring.	Statewide	Submitted 01/14/94; and 06/14/94	10/30/96, 61 FR 55897	A revision to the RI SIP regarding ozone monitoring. RI will modify its SLAMS and its NAMS monitoring systems to include a PAMS network design and establish monitoring sites. The State's SIP revision satisfies 40 CFR 58.20(f) PAMS requirements.
Letter from RI DEM submitting revisions.	Statewide	Submitted 03/15/94	10/30/96, 61 FR 55903	Revision to the RI SIP regarding the States' Contingency Plan.

RHODE ISLAND NON REGULATORY—Continued

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
Letter from RI DEM submitting revision—Rhode Island's 15 Percent Plan and Contingency Plan.	Statewide	Submitted 03/15/94	04/17/97, 62 FR 18712	The revisions consist of the State's 15 Percent Plan and Contingency Plan. EPA approved only the following portions of these submittals: 15 Percent Plan—the EPA approved the calculation of the required emission reductions, and the emission reduction credit claimed from surface coating, printing operations, marine vessel loading, plant closures (0.79 tons per day approved out of 0.84 claimed), cutback asphalt, auto refinishing, stage II, reformulated gas in on-road and off-road engines, and tier I motor vehicle controls. Contingency Plan—the EPA approved the calculation of the required emission reduction, and a portion of the emission reduction credits claimed from Consumer and Commercial products (1.1 tons per day approved out of 1.9 tons claimed), and architectural and industrial maintenance (AIM) coatings (1.9 tons per day approved out of 2.4 tons claimed). EPA concurrently disapproved portions of these SIP submissions, as discussed within Section 52.2084(a)(2).
Letter from RI DEM submitting revision for Clean Fuel Fleet Substitution Plan.	Providence (all of Rhode Island) nonattainment area.	10/05/94	03/09/00, 65 FR 12476	
Letter outlining commitment to national LEV.	Statewide	02/22/99	03/09/00, 65 FR 12476	Includes details of the State's commitment to National LEV.
Negative Declaration for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation and Reactor Processes Control Techniques Guidelines Categories.	Statewide	Submitted 04/05/95	12/02/99, 65 FR 67495.	
October 1, 1999, letter from Rhode Island Department of Environmental Management.	Statewide	Submitted October 1, 1999	12/27/2000, 65 FR 81748	Submitted Air Pollution Control Regulation No. 14, ''NO_X Budget Trading Program,'' and the ''NO_X State implementation Plan (SIP) Call Narrative.''
''NO_X State implementation Plan (SIP) Call Narrative,'' September 22, 1999.	Statewide	Submitted October 1, 1999	12/27/2000, 65 FR 81748	
November 9, 1999, letter from Rhode Island Department of Environmental Management.	Statewide	Submitted November 9, 1999	12/27/2000, 65 FR 81748	Stating RI's intent to comply with applicable reporting requirements.
Negative Declaration for Aerospace Coating Operations Control Techniques Guideline Category.	Statewide	Submitted 03/28/00	07/10/00, 65 FR 42292	

[FR Doc. 03–14572 Filed 6–10–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket # WA–70–7148; FRL–7493–8]

Approval and Promulgation of Air Quality Implementation Plan; Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is approving most, but not all of the State Implementation Plan (SIP) revisions for visibility submitted by the State of Washington on November 5, 1999. The significant provisions of this SIP revision that we are approving include an improved smoke management plan and the Southwest Air Pollution Control Agency (SWAPCA) emission limitations on the Centralia Power Plant located in central western Washington.

DATES: This action is effective on July 11, 2003.

ADDRESSES: Copies of the State's SIP revision and other information supporting this action are available for inspection at EPA Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, or at (206) 553–0782.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

Background
I. Background on this Action
II. Background on Visibility

A. What is visibility protection and why do we have it?
B. What are the main visibility protections provided by Federal rules?
C. How has visibility been protected in Washington?
III. What are the required provisions of a visibility SIP?
A. Long-Term Strategy
B. Monitoring
C. Best Available Retrofit Technology
IV. What does this proposed Visibility SIP revision change and how do these changes compare to the Federal requirements?
A. Provisions to revise the protection of Integral Vistas
B. Provisions to revise the Smoke Management Plan
i. What is Washington's Smoke Management Plan?
ii. How does Washington's 1999 SIP Revision change the Plan?
iii. How does the Smoke Management Plan compare to Federal requirements?
C. Provisions to include the SWAPCA Reasonably Available Control Technology Emission Limitations for Centralia Power Plant
D. Provisions to revise the State's Best Available Retrofit Technology and New Source Review Rules
V. Response to Public Comments
VI. Statutory and Executive Order Reviews

Background

I. Background on This Action

On October 23, 2002, EPA proposed in the **Federal Register**, approving certain portions of the proposed Washington Visibility SIP revision and taking no action on other provisions of the proposed SIP revisions. *See* 67 FR 65077, October 23, 2002. In that notice, EPA provided a 30 day review and comment period and solicited comments on our proposal. EPA received no comments. EPA is now taking final action on the SIP revision consistent with the published proposal.

II. Background on Visibility

A. What Is Visibility Protection and Why Do We Have It?

Section 169A of the Federal Clean Air Act (CAA or Act) requires States to protect visibility in mandatory Class I Federal areas. Mandatory Class I Federal areas are specified large National Parks or Wilderness Areas. In Washington, there are 8 mandatory Class I Federal areas; the Mount Rainier National Park, North Cascades National Park, Olympic National Park, Alpine Lakes Wilderness Area, Glacier Peak Wilderness Area, Goat Rocks Wilderness Area, Mount Adams Wilderness Area, and Pasayten Wilderness Area. *See* 40 CFR 81.434. The Federal rules regulating visibility protection are set out in 40 CFR part 51, subpart P.

B. What Are the Main Visibility Protections Provided by the Federal Rules?

The Clean Air Act sets out a goal of preventing any future and remedying any existing impairment of visibility in mandatory Class I Federal areas. *See* 42 U.S.C. 7491. Employing a close coordination process among the state and the Federal Land Managers (FLMs), the Federal rules require monitoring of visibility in mandatory Class I Federal areas, as well as the development of a long-term strategy for making reasonable progress towards the national visibility goal. The visibility protection rules also provide for an assessment of visibility impacts from any new or major modification to a major stationary source that may affect mandatory Class I Federal areas. Additionally, in the event that a FLM certifies impairment of visibility in a mandatory Class I Federal area that could be caused, or contributed to, by an existing stationary facility, emission limitations representing Best Available Retrofit Technology (BART) may be imposed on the facility.

The Federal visibility rules were modified in 1999 to include provisions for addressing regional haze. *See* 64 FR 35714, July 1, 1999. Regional haze is visibility impairment which results from the cumulative impact of emissions from many point and non-point sources. All states are currently in the process of developing revisions to their SIPs to address the regional haze provisions. Therefore, the SIP submission under discussion in this action is not required to comply with the regional haze provisions of 40 CFR part 51, subpart P.

C. How Has Visibility Been Protected in Washington?

The initial proposed Visibility SIP for Washington was submitted by the State and approved in part by EPA on May 4, 1987, (52 FR 16243). EPA approved the Washington State Visibility Protection Program (with exceptions described below), certain provisions of 173–403 Washington Administrative Code (WAC) Implementation of Regulations for Air Contaminant Sources, and the 1983 Smoke Management Program. EPA disapproved section V.B., the new source review program, Appendix A, the Proposed Best Available Retrofit Technology (BART) rule, and the Proposed New Source Review Regulations.

III. What Are the Required Provisions of a Visibility SIP?

40 CFR 51.302 provides the requirements for Visibility SIPs. These requirements and how the Washington Visibility SIP meets these requirements are summarized below.

A. Long-Term Strategy

The SIP needs to include a long-term (10–15 year) strategy that includes emission limitations, schedules of compliance, and other measures as deemed necessary to make reasonable progress toward the national goal. *See* 40 CFR 51.302(c)(2)(i). In general, Section VI of the proposed 1999 SIP revision provides a discussion of the long-term strategy, including measures for stationary sources, mobile sources, area sources, and interstate coordination. The long-term strategy must include:

- A strategy for evaluating visibility in mandatory Class I Federal areas by visual observation or other appropriate monitoring techniques. *See* 40 CFR 51.305(a). Section V of the proposed 1999 SIP revision provides for monitoring through the IMPROVE monitoring network and an assessment strategy.
- A provision for the available visibility data and a mechanism for its use in decisions required by the regulations. *See* 40 CFR 51.305(b). Section IX of the proposed 1999 SIP revision provides for the development and use of available data for SIP review and development.
- A strategy to address any existing impairment the FLM certifies to the State and integral vista of which the FLM notifies the State at least 6 months prior to plan submission. *See* 40 CFR 51.306(a)(1). Section I of the proposed 1999 SIP revision discusses certification of impairment in mandatory Class I Federal areas. Section III of the proposed 1999 SIP revision discusses integral vistas.
- A discussion, with reasonable specificity, why the long-term strategy is adequate for making reasonable progress. *See* 40 CFR 51.306(a)(3). Section VI of the proposed 1999 SIP revision discusses all source categories, the control measures that apply to them, and a qualitative assessment of how these are adequate for making reasonable progress. Section IX of the proposed 1999 SIP revision discusses the evaluation of progress toward achieving the national visibility goal.
- Coordination of the long-term strategy with other existing plans and goals, including those provided by affected FLMs. *See* 40 CFR 51.306(a)(3).

Section IV of the proposed 1999 SIP revision provides for the consultation with FLMs for the review and revision of the visibility SIP and New Source Review rules.

• Provisions for periodic review and revision as appropriate of not less than every three years. *See* 40 CFR 51.306(c). This review must include:

(1) Progress achieved in remedying existing impairment;

(2) The ability of the long-term strategy to prevent future impairment;

(3) Any change in visibility since the last report;

(4) Additional measures, including the need for SIP revisions that may be needed to assure reasonable progress;

(5) The progress achieved in implementing BART and meeting other schedules set forth in the long-term strategy; and

(6) The impact of any exemption granted under 40 CFR 51.303.

(7) The need for BART to remedy existing visibility impairment of any integral vista.

Section IV of the proposed 1999 SIP revision provides for the review of the visibility SIP.

• Provisions for review of the impacts of any new or modified major stationary source. *See* 40 CFR 51.306(d). The Washington Department of Ecology has a fully delegated Prevention of Significant Deterioration (PSD) program. The Department of Ecology was notified of this delegation by letter dated February 7, 2002.

B. Monitoring

The plan must contain an assessment of visibility impairment and a discussion of how each element of the plan relates to preventing future or remedying existing impairment. *See* 40 CFR 51.302(c)(2)(ii). Section V of the proposed 1999 SIP revision provides for visibility monitoring of the mandatory Class I Federal areas. Section IV of the proposed 1999 SIP revision provides a general discussion of the effect of measures on preventing future and remedying existing impairment.

C. Best Available Retrofit Technology

The State must identify and analyze for BART each existing stationary facility which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I Federal area where the impairment is reasonably attributable to that existing stationary facility. *See* 40 CFR 51.302(c)(4). The plan must also contain emission limitations representing BART for any existing stationary facility identified according to 40 CFR 51.302(c)(4).

The State has not determined that existing impairment in any mandatory Class I Federal area for which impairment has been certified can be reasonably attributed to a specific major stationary source.

IV. What Does This Proposed Visibility SIP Revision Change and How Do These Changes Compare to the Federal Requirements?

A. Provisions To Revise the Protection of Integral Vistas

The 1987 SIP included a list of ''Preliminary Integral Vistas'' that were proposed by the National Park Service (NPS). The 1987 SIP provides that until the NPS finalizes the list of vistas in accordance with 40 CFR 51.304, the panoramas listed in the January 15, 1981, **Federal Register** (Table III–2) will be protected under the visibility SIP. These integral vistas were never finalized by the NPS. Thus, there are no federally recognized integral vistas to be protected. In the interim, no emission limitation was established for a source that specifically protected an integral vista, nor is the State proposing to revise and relax an emission limitation established for integral vista protection. The 1999 proposed SIP revision removes the provisions that would have continued these protections. The Federal visibility regulations (40 CFR 51.304(d)) indicate that a state need not in its implementation plan list any integral vista the identification of which was not made in accordance with the criteria in 40 CFR 51.304(a). Since no integral vistas have been identified by the FLM, there is no relaxation of SIP emission requirements and since the 1999 proposed SIP revision meets the applicable requirements for visibility protection in mandatory Class I Federal areas, EPA proposes approval of this revision.

B. Provisions To Revise the Smoke Management Plan

i. What Is Washington's Smoke Management Plan?

Washington's Smoke Management Plan (SMP) is a program designed to manage smoke impacts from the burning of silviculture and agriculture wastes. The SMP balances forest and agricultural land burning with preventing smoke from being carried to, or accumulating in, designated areas and other areas sensitive to smoke.

ii. How Does Washington's 1999 Proposed SIP Revision Change the Plan?

The SMP of 1998 submitted in the proposed 1999 Visibility SIP revision significantly improves the 1983 SMP included in the 1987 SIP. The 1983 SMP provided for reduced emissions from prescribed fires through optimization of fuel conditions (*i.e.* dry fuel), improves ventilation and dispersion through meteorology, and minimizes impact by controlling smoke drift into populated areas. There was no consideration for protection of visibility in mandatory Class I Federal areas.

The 1998 SMP requires approval from the Resource Protection Division Manager, Department of Natural Resources for all prescribed fires. Approval requirements differ depending whether the fire is a ''large fire'' involving over 100 tons of fuel or a small fire. Large fire burn approval considers a number of factors including likelihood of smoke intrusion into populated areas or mandatory Class I Federal areas, air quality regulations, violation of emission reductions targets, violation of another state's air quality standards, and whether smoke will disperse within given timeframes. Operators of small fires (less than 100 tons of fuel) must call a toll-free phone number and follow the instructions that apply for that day and location of the proposed fire.

The SMP further requires emissions from prescribed fires be reduced by 20% from baseline levels (defined in the SMP) by December 1994 and until December 2000. Emissions from burning must be permanently reduced by 50% from baseline levels by December 2000.

iii. How Does the Smoke Management Plan Compare to Federal Requirements?

The visibility protection provisions at 40 CFR part 51, subpart P suggest that states consider SMPs in developing long-term strategies for visibility protection. However, there are no specific Federal requirements for states to develop and adopt SMPs. In September 1992, the Environmental Protection Agency published *The Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures* to assist states in the development of Smoke Management Plans [EPA–450/2–92–003].

C. Provisions To Include the SWAPCA Reasonably Available Control Technology Emission Limits for Centralia Power Plant

The Centralia Power Plant (CPP) is a coal-fired electrical generating station that has a potential to emit (PTE) 90,000 t/yr Sulfur dioxide (SO2). It is a BART eligible source as defined by 40 CFR 51.301. It is located near the mandatory Class I Federal area, Mt. Rainier National Park in Washington state. The

NPS has certified visibility impairment at Mt. Rainier National Park. The State of Washington has not determined that this visibility impairment is reasonably attributable to the CPP.

The SIP must contain emission limitations representing BART and schedules for compliance with BART for each existing stationary facility identified according to 40 CFR 51.302 (c)(4). The state needs to identify each existing facility which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I Federal areas where the impairment in the mandatory Class I Federal area is reasonably attributable to that existing stationary facility. The State has not identified CPP, or any other source or group of small sources as an existing facility that may reasonably be expected to contribute to visibility impairment to mandatory Class I Federal areas. Therefore, under 40 CFR 51.302(c)(4), a BART analysis is not required for CPP. In the future regional haze SIP, a BART analysis may be required for the CPP under 40 CFR 51.308(e).

In a separate activity, the State, SWAPCA, the NPS and U.S. Forest Service, owners of the CPP, and EPA entered into a negotiated agreement to establish emission limits for SO2, oxides of nitrogen (NO_X), and particulate matter with an aerodynamic diameter of less than 10 micrometers (PM–10) for the CPP. The SWAPCA, who has regulatory authority over the CPP, issued the CPP a Reasonably Available Control Technology (RACT) order under state law that contain the negotiated emission limitations. This RACT Order is included in the proposed 1999 Visibility SIP revision.

Both SWAPCA in their Technical Support Document for the RACT Order and EPA Region 10 have independently conducted an analysis of the emission limits in the RACT Order comparing them against what would have been required using the Clean Air Act definition of BART and EPA BART guidelines. Additional details on this analyses can be found in the Technical Support Document in the docket of this action. The conclusion of both analyses is that the RACT Order emission limits for SO2 and PM–10 represent BART. EPA is approving these emissions limitations as meeting the BART requirements of 40 CFR 51.308(c)(4). Additionally, while the NO_X emission limitation may have represented BART when the emission limits in the RACT Order were negotiated, recent technology advancements have been made. EPA cannot now say that the emission limitations in the SWAPCA RACT Order for NO_X represent BART. However EPA is approving the emission limits for NO_X as a strengthening of the SIP for visibility purposes.

D. Provisions To Revise the State's Best Available Retrofit Technology and New Source Review Rules.

The proposed 1999 SIP revision also included revised BART rules (WAC 173–400–151) and New Source Review (NSR) (WAC 173–400–110, 112, 113, & 141). Subsequent to the submittal in 1999, the State has verbally indicated that new rules are being developed and the rules in this submittal will soon be obsolete. Therefore EPA is taking no action on these rules.

V. Response to Comments

EPA solicited comments on the proposed action in the October 23, 2002, **Federal Register** document (67 FR 65077). EPA received no comments. Therefore, there is no response to comments.

VI. Statutory and Executive Order Reviews

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

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

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

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does

not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 24, 2003.

L. John Iani,

Regional Administrator, Region 10.

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

PART 52—[AMENDED]

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

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

Subpart WW—Washington

■ 2. Amend § 52.2470 by adding paragraph (c)(82) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(82) On November 5, 1999, the State of Washington, Department of Ecology submitted a revision to the Visibility SIP. EPA approves all provisions to the November 5, 1999 Visibility SIP revision including, but not limited to the 1998 Smoke Management Plan, and South West Air Pollution Control Agency, Reasonably Available Control Technology order on the Centralia Power plant. EPA is taking no action on Section VIII. Identification and Analysis for Best Available Retrofit Technology (BART) and Section X, New Source Review, of the November 5, 1999, Visibility SIP revision.

(i) Incorporation by reference.

(A) South West Air Pollution Control Agency (SWAPCA) regulatory order, SWAPCA 97–2057R1, Regulatory Order to Establish RACT Limits and Order of Approval, Adopted February 26, 1998.

(B) [Reserved]

■ 3. Amend § 52.2475 by adding paragraph (g) to read as follows:

§ 52.2475 Approval of plans.

* * * * *

(g) Visibility.

(1) EPA approves as a revision to the Washington State Implementation Plan, the November 5, 1999, Visibility SIP revision, except that EPA is taking no action on Section VIII. Identification and Analysis for Best Available Retrofit Technology (BART), and Section X, New Source Review of the November 5, 1999, Visibility SIP revision.

(2) [Reserved]

■ 4. In § 52.2479, the table is amended by revising the entries under Section 5 to read as follows:

§ 52.2479 Contents of the Federally approved, State submitted implementation plan.

* * * * *

WASHINGTON STATE IMPLEMENTATION PLAN FOR AIR QUALITY STATE AND LOCAL REQUIREMENTS—TABLE OF CONTENTS

Section 5—Federally Mandated Programs [Dates in brackets indicate EPA effective date]
5.BAP—Business Assistance Program [5/8/95]
5.IM—Motor Vehicle Inspection/Maintenance Program [9/25/96]
5.OXY—Oxygenated Gasoline Program [3/21/94]
5.SMP—Smoke Management Program [7/6/87]
5.VIS—Washington State Visibility Protection Program [7/6/87]
5.VIS.NSR—Visibility New Source Review (NSR) for nonattainment areas for Washington [7/28/86]
Supplemental Section A—Reference Material [Date in brackets indicate EPA effective date]
A.1—Description of Source test Program for the State Implementation Plan [10/24/84]
Supplemental B—Administrative and Procedural Material [Dates in brackets indicate EPA effective date]
B.3—Correspondence
B.3.1—Legal Authority [6/05/80]
B.3.2—Correspondence prior to 1991
B.3.2.1—New Source Performance Standards (NSPS) for Tri-Counties [9/23/81]

[FR Doc. 03–14573 Filed 6–10–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0159; FRL–7309–5]

Methoprene, Watermelon Mosaic Virus-2 Coat Protein, and Zucchini Yellow Mosaic Virus Coat Protein; Final Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the text of the exemption from the requirement of a tolerance for methoprene and is revoking all of the tolerances for residues for methoprene because a recent EPA review finds that no harm is expected to the public from exposure to residues of methoprene. Therefore, these tolerances are no longer needed and their associated uses are covered by tolerance exemptions. Also, EPA is revoking the exemptions for watermelon mosaic virus-2 coat protein, and zucchini yellow mosaic virus coat protein and specific portions of the viral genetic material when used as plant-incorporated protectants in squash, because these exemptions are covered in later sections of 40 CFR part 180. Because methoprene's 35 tolerances and the 2 exemptions from the virus materials were previously reassessed, the regulatory actions taken in this document do not contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996.

DATES: This regulation is effective June 11, 2003. Objections and requests for hearings, identified by docket ID

number OPP–2003–0159, must be received on or before August 11, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Mandula, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–7378; e-mail address: mandula.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit IIA. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification ID number OPP–2003–0159. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of February 12, 2003 (68 FR 7097) (FRL–7288–7), EPA issued a proposed rule to amend the exemption expression for methoprene to indicate that methoprene is exempt from tolerances when used on food commodities as an insect larvicide, to revoke all the tolerances for residues of methoprene because they are no longer needed to protect the public, and to revoke the exemptions for watermelon mosaic virus-2 coat protein and zucchini yellow mosaic virus coat protein and specific portions of the viral genetic material when used as plant-incorporated protectants in squash, because these exemptions are covered in later sections of 40 CFR part 180. Also, the February 12, 2003 proposal provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards. No comments were received.

On August 1, 2002, EPA concluded that there is a reasonable certainty that no harm will result to the general population, infants, and children from aggregate exposure to residues of methoprene based on its review and evaluation of available information and conservative assumptions that assumed the existence of a broad-based tolerance exemption; i.e., that methoprene can be used on all crop commodities. In addition, EPA determined that all methoprene tolerances in 40 CFR 180.359 and its exemption in § 180.1033 were considered to be reassessed. For reassessment counting purposes, the tolerance for the cereal grain milled fractions was counted as two to reflect the original tolerances found previously in 40 CFR 185.4150 and 186.4150. Methoprene is being granted a tolerance exemption for use as an insect larvicide on all food commodities based on the Agency's safety finding which supports tolerance exemption. The tolerances revoked by this final rule are no longer necessary for the continued use of methoprene as a pesticide. A copy of EPA's August 1, 2002 memo is available in e-docket OPP–2002–0274.

EPA is aware that revocation of some of the methoprene tolerances leads to or continues a lack of harmonization with some of the existing methoprene CODEX maximum residue limits (MRLs). For egg, the EPA tolerance of 0.1 ppm is being revoked while the CODEX MRL remains at 0.05 milligrams/kilogram (mg/kg). For mushroom, EPA's tolerance of 1.0 ppm is being revoked while the CODEX MRL remains at 0.2 mg/kg. For peanut, EPA's tolerance of 2.0 ppm is being revoked while the CODEX MRL remains at 2 mg/kg. For residues of methoprene in other food commodities, there was either a tolerance or there is a CODEX MRL, but not both; therefore, a lack of harmonization remains for residues in these other food commodities.

EPA is revoking the methoprene tolerances in all food commodities because a thorough risk analysis has shown that these tolerances are not necessary to protect human health or the environment. Risk assessments were performed for oral exposure for acute, short-term, intermediate-term, and chronic exposures. No evidence of risk to adults, infants, or children were found, and the EPA review stated ''There are no concerns for chronic dietary exposure.'' Similarly, the review states ''There are no concerns for any oral, dermal, or inhalation intermediate-term exosures to methoprene.'' The review concludes, ''Based on its review and evaluation of the available information, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children, from aggregate exposure to residues of methoprene.'' In

addition, EPA's risk assessment was based on conservative assumptions that assumed the existence of the tolerance exemption.

Therefore, EPA is amending 40 CFR 180.1033 to exempt methoprene from the requirement of a tolerance by revising the commodities from ''raw agricultural'' to ''food'' and the use of control from ''mosquito'' to ''insect'' larvae. Because they are no longer needed, EPA is revoking all 35 tolerances for methoprene in 40 CFR 180.359, including: barley; buckwheat; cattle, fat; cattle, meat; cattle, meat byproducts; cereal grain milled fractions (except flour and rice hulls); corn (except popcorn and sweetcorn); egg; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; milk; millet; mushroom; oat; peanut; poultry, fat; poultry, meat; poultry, meat byproducts; rice; rice, hulls; rye; sheep, fat; sheep, meat; sheep, meat byproducts; sorghum (milo); and wheat in § 180.359(a)(1), and feed supplement tolerances for beef cattle and dairy cattle in § 180.359(a)(2).

On July 9, 2002, EPA concluded that exemptions in 40 CFR 180.1132 watermelon mosaic virus-2 coat protein and zucchini yellow mosaic virus coat protein, and the genetic material necessary for the production of these proteins in or on summer squash were superseded by the exemption in 40 CFR 180.1184 in or on all food commodities. In addition, the Agency determined that these two exemptions were considered to be reassessed. Therefore, EPA is revoking the exemptions in 40 CFR 180.1132 because they are no longer needed. This final rule does not change availability or use of the pesticides mentioned. A copy of the July 9, 2002 memo is in the docket for this action.

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses if a numerical tolerance is being replaced by a tolerance exemption for those uses, or if the tolerance statement is redundant or has been superceded. EPA also proposes revocation of tolerances for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

The actions in this final rule are effective on the date of its publication in the **Federal Register**. The only effect of the final rule will be to remove redundancies and inconsistencies in 40 CFR part 180. No person or entity is expected to be adversely affected. This final rule does not change the regulatory status of any registered products.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of May 7, 2003, EPA has reassessed over 6,500 tolerances. In this final rule, EPA is revoking 35 tolerances and 2 exemptions. These tolerances and exemptions were previously reassessed and counted as described in Unit II.A.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex MRLs in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the Internet at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IV. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0159 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 11, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked

confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0159, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Statutory and Executive Order Reviews

This final rule revokes tolerances established under section 408(d) of the FFDCA. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, the pesticides mentioned in this rule have tolerance exemptions and will therefore remain available after this rule becomes effective. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination*

with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 21, 2003.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§180.359 and 180.1132 [Removed]

■ 2. Sections 180.359 and 180.1132 are removed.

■ 3. Section 180.1033 is revised to read as follows:

§180.1033 Methoprene; exemption from the requirement of a tolerance.

Methoprene is exempt from the requirement of a tolerance in or on all food commodities when used to control insect larvae.

[FR Doc. 03–14330 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7511–1]

Utah: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Utah applied to EPA for Final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reached a final determination that these changes satisfy all requirements needed to qualify for Final authorization. Thus, with respect to these revisions, EPA is granting Final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments (HSWA) of 1984.

DATES: Final authorization for the revisions to Utah's hazardous waste management program will become effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139 or e-mail: *shurr.kris@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Utah initially received Final Authorization on October 10, 1984, effective October 24, 1984 (49 FR 39683) to implement its base hazardous waste management program. Utah received authorization for revisions to its program on February 21, 1989 (54 FR 7417), effective March 7, 1989; May 23, 1991 (56 FR 23648) and August 6, 1991 (56 FR 37291), both effective July 22, 1991; May 15, 1992 (57 FR 20770), effective July 14, 1992; February 12, 1993 (58 FR 8232) and May 5, 1993 (58 FR 26689), both effective April 13, 1993; October 14, 1994 (59 FR 52084), effective December 13, 1994; May 20, 1997 (62 FR 27501), effective July 21, 1997; January 13, 1999 (64 FR 02144), effective March 15, 1999; October 16, 2000 (65 FR 61109), effective January 16, 2001, and May 7, 2002 (67 FR 30599), effective July 7, 2002.

On February 12, 2003, Utah submitted a final complete program revision application, seeking authorization of additional changes to its program in accordance with 40 CFR 271.21. On April 10, 2003, EPA published both an Immediate Final Rule (68 FR 17556) granting Utah Final authorization for these revisions to its Federally-authorized hazardous waste program, along with a companion Proposed Rule announcing EPA's proposal to grant such a Final authorization (68 FR 17577). EPA announced in both notices that the Immediate Final Rule and the Proposed Rule were subject to a thirty-day public comment period. The public comment period ended on May 12, 2003. EPA did receive identical written comments from two commenters during the public comment period. Today's action responds to the comments EPA received and publishes EPA's Final determination granting Utah Final authorization of its program revisions. Further background on EPA's Immediate Final Rule and its tentative determination to grant authorization to Utah for its program revisions appears in the aforementioned **Federal Register** notices. The issues raised by the commenters are summarized and responded to in Item B.

B. What Were the Comments and Responses to EPA's Proposal?

Both commenters challenged Region VIII's process for authorizing revisions

to Utah's program in not providing for a public hearing, which, they state, is required by 40 CFR 271.20. EPA disagrees. The regulations relied upon by the commenters apply to initial program authorization, and not program revision authorizations. Rather, we have proceeded in accordance with 40 CFR 271.21, which does not require public hearings. On March 4, 1986, at 51 FR 07540, EPA promulgated amendments to 40 CFR 271.21 that eliminated public hearing requirements for program revisions. In this March 4, 1986 **Federal Register**, EPA stated: ''As discussed in the proposal, the new procedures do not require public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of State programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change. However, while the regulatory requirement is deleted, a Regional Administrator, in his discretion, could decide to hold a hearing.'' (51 FR 07541).

Consequently, EPA Region VIII believes it adhered to the governing regulations regarding opportunities for public hearings during the EPA approval process for State program revisions. We also believe, that due to the nature and limited number of comments received, the opportunity to provide for written comments, in lieu of a public hearing, was an adequate process to obtain public comment.

Both commenters shared a concern about the ''use constituting disposal'' provisions of 40 CFR part 266, subpart C. They appear to have concerns about the provisions of Utah regulations (which incorporate the Federal rules by reference) that allow, under certain conditions, ''hazardous wastes,'' like lime-based slag, to be used as a ''fertilizer.'' They argue that Utah's statute (like RCRA) does not allow the land application of hazardous wastes (beneficial or not) unless it occurs at a permitted disposal facility. For the reasons set forth below, EPA disagrees. EPA's regulations accommodate the proper reuse, recycling, and reclamation of as many resources destined for disposal as possible, while regulating hazardous wastes and hazardous waste residuals that must be discarded. EPA's regulations at 40 CFR part 266, subpart C, place controls on the management of hazardous wastes before such wastes are made into a fertilizer. Producing fertilizer from an otherwise hazardous waste is a type of recycling which, in EPA's regulations, is referred to as ''use constituting disposal.'' Rather than prohibiting the use of waste-derived fertilizers, EPA promulgated regulations to require that hazardous wastes that are going to be made into fertilizers be managed in accordance with all applicable hazardous waste management requirements until the wastes are actually made into a fertilizer. With regard to the ''use constituting disposal'' provisions of 40 CFR part 266, subpart C, in the context of fertilizer applications, these provisions in Utah's program were authorized by EPA as part of Utah's first program revision, which took effect on March 7, 1989—over fourteen years ago. Utah's rules currently incorporate the Federal rules by reference making them identical. Utah's current revision application, for which we recently published a tentative approval, with an opportunity for public comment, does not include any regulatory revisions to 40 CFR part 266, subpart C. Since the comment we has received on ''use constituting disposal'' is not part of Utah's most recent program revision application, we believe the public comments on ''use constituting disposal'' are not within the scope of this Agency action.

Both commenters raised concerns that the ''Express RCRA Authorization'' process circumvents the requirements of 40 CFR 271.7. They feel that the use of this process fails to identify deficiencies in the State program and does not allow the State to have regulations that are more protective than the Federal minimum requirements.

The ''Express RCRA Authorization'' initiative should not be confused with the ''Abbreviated Authorization Revisions'' discussed at 40 CFR 271.21(h). The Abbreviated Authorization Revision process is an optional process, may only be used under limited circumstances, and the prerequisite provisions must be listed in 40 CFR 271.21, Table 1. Any change to this process must be publicly noticed and opportunity for public comment provided.

The ''Express RCRA Authorization'' initiative is only a restructuring of the components submitted by the State in an authorization revision application. It was designed to make the application process more efficient and less resource intensive for the States and EPA. Although the submittal format is significantly different from what was previously used, all the components required by 40 CFR 271.21 (and thus, 40 CFR 271.7) are still provided in the revision application. Since there was no change in the required components, a public notice and public comment period was not required.

An Express Authorization application now requires a simplified State Attorney General's statement which certifies the State's statutory authority along with a table identifying the applicable State statutes. In the past, the State Attorney General had to submit a complex statutory and regulatory statement that could obscure the State's statutory authority and often duplicated the rule checklists (which are still provided and used as a tool to identify the State's equivalent rules). This new statement actually makes the State's statutory authority more apparent, rather than less, while maintaining all the requirements of 40 CFR 271.7. In addition to clarifying the State's statutory authority, the new format also makes it more apparent to the Region where the State's rules are different from the Federal rules, especially those that are more stringent or broader-in-scope, thereby reducing the time to review and approve a revision application. The Express Authorization approach does not restrict, in any way, the State's ability to adopt rules that are either more protective of human health and the environment or broader in scope than the Federal program. Nor does it limit the requirement for EPA to make a determination that the State's rules are equivalent and no less stringent than the Federal rules.

Both commenters point out that Utah's Solid and Hazardous Waste Act at 19–6–102(17)(b)(iii) exempts certain wastes, specifically: fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily for the combustion of coal or other fossil fuels, from the definition of solid waste that are not exempt from the Federal definition of solid waste at 40 CFR 261.4(b)(4).

An authorization review generally compares Federal regulations to State regulations. We would compare a State statute to a Federal regulation only if the State does not adopt a regulation and uses the State statute as its equivalent provision. In addition, the review of a State program revision focuses on the changes identified by the EPA-generated checklist (a tool used by both the State and EPA to identify all required changes) and any other changes identified by the State. A review of a State's entire program is conducted periodically using a different review process.

Our review has determined that Utah has adopted equivalent rules to 40 CFR

261.4(b)(4) at R315–2–4(b)(4) where it lists ''fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily for the combustion of coal or other fossil fuels, * * *'' as solid wastes which are not hazardous wastes. Since neither the federal nor state rules consider these wastes as hazardous wastes, Utah's exclusion in its Statutes of these wastes from the definition of solid waste is not within the scope of this action.

C. What Decisions Have We Made in This Rule?

Based on EPA's response to public comments, the Agency has determined that approval of Utah's RCRA program revisions should proceed. EPA has made a final determination that Utah's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Utah Final authorization to operate its hazardous waste program with the changes described in its application for program revisions. Utah has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA adopts under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such HSWA requirements and prohibitions in Utah, including issuing HSWA permits, until the State is granted authorization to do so. For further background on the scope and effect of today's action to approve Utah's RCRA program revisions, please refer to the preambles of EPA's April 10, 2003 Proposed and Immediate Final Rules at 68 FR 17577 and 68 FR 17556, respectively.

D. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective June 11, 2003.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 2, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–14748 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 439

[FRL–7510–6]

RIN 2040–AD85

Partial Withdrawal of Direct Final Rule; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Pharmaceutical Manufacturing Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule and revisions.

SUMMARY: Because EPA received adverse comment, we are withdrawing certain portions of the direct final rule for the Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Pharmaceutical Manufacturing Point Source Category. The direct final rule published on March 13, 2003 (68 FR 12265) made three amendments to the final regulations published on September 21, 1998 (63 FR 50424) and non-substantive editorial and format changes. We stated in the direct final rule that if we received adverse comment by May 12, 2003, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received adverse comment on the direct final rule. We will address that comment in a subsequent final action based on the parallel proposal also published on March 13, 2003 (68 FR 12276). As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of June 11, 2003, EPA withdraws amendments to §§ 439.17 (a) and (b), 439.27(a) and (b), 439.37(a) and (b), and 439.47(a) and (b) published at 68 FR 12265, on March 13, 2003. Revisions to the introductory text and paragraph (a) of §§ 439.17 and 439.37 are effective on June 11, 2003. The remaining provisions published on March 13, 2003 will be effective on June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Hund, Engineering and Analysis Division (4303T), USEPA Office of Science and Technology, 1200 Pennsylvania Ave., NW., Washington, DC, 20460; telephone: 202–566–1027; e-mail: *hund.frank@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a direct final rule (68 FR 12265) and parallel proposed rule (68 FR 12276) on March 13, 2003, to make minor amendments to the final rule establishing effluent guidelines and standards for the Pharmaceutical Manufacturing Point Source Category (40 CFR part 439) published on September 21, 1998. In this direct final rule, EPA clarified the date on which a discharger subject to the New Source Performance Standards (NSPS) and the Pretreatment Standards for New Sources (PSNS) would be subject to effluent limitations and pretreatment standards established in the 1998 regulation. In addition, EPA re-established a minimum concentration for the monthly average BOD_5 limitation that EPA inadvertently omitted from the Best Practicable Control Technology (BPT) requirements in two subcategories of the 1998 regulation and corrected an error in EPA's pass-through analysis from the 1998 rule by deleting methyl Cellosolve (2-methoxyethanol) from the pretreatment standards in two subcategories and from Appendix A, Table 2, ''Surrogate Parameters for Indirect Dischargers.'' Finally, the Agency made other non-substantive editorial and format changes such as removing redundancies, and adding definitions.

The partial withdrawal of the direct final rule involves withdrawing language in (a) and (b) from §§ 439.17, 439.27, 439.37, and 439.47 of the direct final rule regarding the compliance schedule for new source dischargers who commenced operations after November 21, 1988 and prior to November 20, 1998. Today's action also revises the introductory text and paragraph (a) in §§ 439.17 and 439.37 to be consistent with the remaining amendments of the direct final rule. EPA has received comment concerning the applicability of the 10-year protection period provided in section 306(d) of the Clean Water Act for new source facilities. EPA will address those comments in a subsequent final action based on the parallel proposal. The provisions for which we did not receive adverse comment will become effective on June 11, 2003, as provided in the preamble to the direct final rule.

List of Subjects in 40 CFR Part 439

Environmental protection, Drugs, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: June 5, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

■ For reasons set out in the preamble, part 439, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 439—PHARMACEUTICAL MANUFACTURING POINT SOURCE CATEGORY

■ 1. The authority citation for part 439 continues to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

■ 2. Section 439.17 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 439.17 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart must achieve the same standards as specified in § 439.16.

(a) Sources that discharge to a POTW with nitrification capability (defined at § 439.2(i)) are not required to achieve the pretreatment standard for ammonia (as N).

* * * * *

■ 3. Section 439.37 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 439.37 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart must achieve the same standards as specified in § 439.36.

(a) Sources that discharge to a POTW with nitrification capability (defined at § 439.2(i)) are not required to achieve the pretreatment standard for ammonia (as N).

* * * * *

[FR Doc. 03–14744 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPPT–2002–0061; FRL–7306–7]

Preliminary Assessment Information Reporting; Addition of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule addresses the request of the Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) in its 48th Report, as modified in its 50th and 51st ITC Reports, by adding benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)- to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule. It also addresses the request of the ITC in its 50th Report by adding stannane, dimethylbis[(1-oxoneodecyl)oxy]-; benzene, 1,3,5-tribromo-2-(2-propenyloxy)-; and 1-triazene, 1,3-diphenyl- to the PAIR rule. Finally, it addresses the request of the ITC in its 51st Report by adding 43 vanadium compounds to the PAIR rule. This PAIR rule will require manufacturers (including importers) of these 47 Chemical Abstract Service (CAS)-numbered chemicals added to the ITC's TSCA section 4(e) *Priority Testing List* to submit certain production, importation, use, and exposure-related information to EPA.

DATES: This final rule is effective on July 11, 2003.

Any person who believes that TSCA section 8(a) reporting required by this

rule is not warranted, should promptly submit to EPA on or before June 25, 2003, detailed reasons for that belief.

See Unit II.D. of the **SUPPLEMENTARY INFORMATION** concerning the submission date for those manufacturers required to submit PAIR Forms.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Gerry Brown, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–4780; fax number: (202) 564–4765; e-mail address: *ccd.citb@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in § 712.30(d) of the regulatory text portion of this document. Entities potentially affected by this action may include, but are not limited to:

- Chemical manufacturers (including importers), (NAICS 325, 32411), e.g., persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0061. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 712 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr712_00.html*, a beta site currently under development.

Copies of the PAIR Form are also available electronically from the Chemical Testing and Information Branch Home Page on the Internet at *http://www.epa.gov/opptintr/chemtest/pairform.pdf* .

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to

consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2002–0061. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2002–0061. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0061. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve this final rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is issuing a final TSCA section 8(a) PAIR rule which will require manufacturers (including importers) of 47 CAS-numbered chemicals added to the ITC's TSCA section 4(e) *Priority Testing List* to submit production and exposure reports. The regulatory text of this rule lists the 47 chemicals that are being added to the PAIR rule.

B. What is the Agency's Authority?

EPA promulgated the PAIR rule in 40 CFR part 712 under TSCA section 8(a) (15 U.S.C. 2607(a)). This model TSCA section 8(a) rule establishes standard reporting requirements for manufacturers (including importers) of the chemicals listed in the rule at § 712.30. These entities are required to submit a one-time report on general production/importation volume, end use, and exposure-related information using the PAIR Form entitled *Manufacturer's Report-Preliminary Assessment Information* (EPA Form No. 7710–35). EPA uses this model section 8(a) rule to quickly gather current information on chemicals.

This model rule provides for the automatic addition of TSCA section 4(e) *Priority Testing List* chemicals. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time without providing notice and opportunity for public comment, amend the model information-gathering rule by adding the recommended (or designated) chemicals. The amendment adding these chemicals to the PAIR rule is effective July 11, 2003.

C. What Chemicals are to be Added ?

In this document, EPA is adding 47 chemicals to the TSCA section 8(a) PAIR rule. This document addresses the request of the ITC in its 48th Report (Ref.

1), as modified in its 50th ITC Report (Ref. 2) and 51st ITC Report (Ref. 3), by adding benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)- (CAS No. 29091–20–1) to the PAIR rule.This document also addresses the request of the 50th ITC Report by adding stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7); benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5); and 1-triazene, 1,3-diphenyl- (CAS No.136–35–6) to the PAIR rule. Finally, this document addresses the request of the 51st ITC Report by adding 43 vanadium compounds which are listed in the amendment to § 712.30(e) of this document.

D. Who Must Report Under this PAIR Rule?

All persons who manufactured (defined by statute to include import) the chemicals identified in the regulatory text of this document during their latest complete corporate fiscal year must submit a PAIR Form (EPA Form No. 7710–35) for each site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency as specified in § 712.28 no later than September 9, 2003. Persons who have previously and voluntarily submitted a PAIR Form to the ITC or EPA may be able to submit a copy of the original report to EPA or to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. See § 712.30(a)(3).

Details of the PAIR reporting requirements, including the basis for exemptions, are provided in 40 CFR part 712. Copies of the PAIR Form are available from the Environmental Assistance Division at the address listed under **FOR FURTHER INFORMATION CONTACT**. Copies of the PAIR Form are also available electronically from the Chemical Testing and Information Branch Home Page on the Internet at *http://www.epa.gov/opptintr/chemtest/pairform.pdf* .

E. How is a Chemical Substances Removed From the PAIR Rule?

Any person who believes that section 8(a) reporting required by this rule is not warranted, should promptly submit to EPA on or before June 25, 2003, detailed reasons for that belief. EPA, in its discretion, may remove the substance from this rule (see § 712.30(c)). When withdrawing a chemical from the PAIR rule, EPA will publish a final rule amending the PAIR rule in the **Federal Register**.

F. References

The following documents constitute the public record for this rule under docket ID number OPPT–2002–0061.

1. ITC. 2001. Forty-Eighth Report of the ITC. **Federal Register** (66 FR 51276, October 5, 2001) (FRL–6786–7). Available online at *http://www.epa.gov/fedrgstr/*.

2. ITC. 2002. Fiftieth Report of the ITC. **Federal Register** (67 FR 49530, July 30, 2002) (FRL–7183–7). Available online at *http://www.epa.gov/fedrgstr/*.

3. ITC. 2003. Fifty-first Report of the ITC. **Federal Register** (68 FR 8976, February 26,2003) (FRL–7183–7). Available online at *http://www.epa.gov/fedrgstr/*.

4. EPA. 2003. Economic Analysis for the Addition of 47 Chemical Abstract Service (CAS)-numbered Chemicals Requested to be added to EPA's Preliminary Assessment Information Reporting (PAIR) Rule in the 48th, 50th, and 51st Reports of the TSCA Interagency Testing Committee. April 18, 2003.

G. Why is this Action Being Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and an opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary. As discussed in Unit III., whenever EPA announces the receipt of an ITC report, EPA may, at the same time and without providing notice and opportunity for public comment, amend the model information-gathering rule by adding the recommended (or designated) chemicals. EPA finds, therefore, that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553 (b)(3)(B)) to make these amendments without prior notice and comment.

H. Economic Analysis

The economic analysis for the addition of the 47 chemicals to the TSCA section 8(a) PAIR rule is entitled, ''Economic Analysis for the Addition of 47 Chemical Abstract Service (CAS)-numbered Chemicals Requested to be added to EPA's Preliminary Assessment Information Reporting (PAIR) Rule in the 48th, 50th, and 51st Reports of the TSCA Interagency Testing Committee'' (Ref. 4). Seven of the 47 chemicals were located in EPA's 1998 Chemical Update System (CUS) utilizing the ITC-supplied CAS numbers, yielding 6 companies producing these chemicals at 7 sites. Because the threshold for reporting to CUS under the Inventory Update Rule is 10,000 lbs., and the threshold for PAIR reporting is 500 kg (1,100 lbs.), and because there is no requirement that inorganic chemicals be reported to CUS (the majority of the vanadium compounds are inorganic), EPA assumed that one manufacturer exists per chemical to account for the possibility that there may be manufacturers producing PAIR-reportable amounts that weren't captured by CUS. But EPA has no way of ascertaining this, a fact which highlights the need for PAIR reporting on these chemicals. Given the assumptions in this unit, the costs and burden associated with this rule are estimated in the Economic Analysis (Ref. 4) to be the following:

Reporting Costs (dollars)

47 reports estimated at [cost] per report = $1465.88

Total Cost = $61537.12

Mean cost per site/firm = $61537.12/47 sites = $1465.88

Reporting Burden (hours)

Rule familiarization: 7 hours/site x 47 sites =329 hours

Reporting:1001.3 hours

Total burden hours = 1330.3 hours

Average burden per site/firm = 1330.3 hours/37 sites = 28.3 hours/site

EPA Costs (dollars)

It is estimated that the annual cost to the Federal Government will be $10,226.11 (47 reports x $217.58), plus 0.0176 Full Time Equivalent Employees (FTEs). At an estimated $91,873.60 per FTE, the total of 0.1186 FTEs will cost EPA $10,898.95 in salaries, bringing the total costs to the Federal Government to $21,125.06 (i.e., $10,226.11 + $10,898.95) (Ref. 4).

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted actions under TSCA section 8(a) related to the PAIR rule from the requirements of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, and

included on the related collection instrument. The information collection activities related to this action have already been approved by OMB, under OMB control number 2070–0054 (EPA ICR No. 586) for PAIR reporting. This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to be 1330.3 hours (Ref. 4). Of that total, an estimated 329 hours are spent in an initial review of the rule, and the remaining 1001.3 hours are associated with actual reporting activities (Ref. 4). Because this rule does not contain any new information collection activities, additional review and approval of these activities by OMB under the PRA is not necessary.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) and the Small Business Enforcement Fairness Act (SBREFA), EPA is required to consider whether a regulatory action will have a significant adverse impact on small entities. Both the RFA and SBREFA require EPA to determine whether a rulemaking may result in ''significant economic impact on requirements of the rule on a substantial number of small entities,'' and if so, to tailor the requirements of the rule to mitigate such impacts, while still maintaining a high level of environmental protection.

The small business size standards promulgated by the Small Business Administration (SBA) (61 FR 3280, 3289–3291, January 31, 1996) for chemical manufacturers are based solely on the number of employees, with a base threshold of 1,000 employees for the ultimate corporate parent, under which all businesses are considered small. Of the 47 businesses assumed to be affected by this rule, none meet this definition of small business. Thus, EPA has determined that this rule will not impose a significant impact on a substantial number of small entities. Information relating to this EPA determination is included in the docket for this rule (OPPT–2002–0061). Any comments regarding the economic impacts that this action imposes on small entities should be submitted to the Agency at any time after June 11, 2003 using the methods discussed in Unit I.C.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

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

Based on EPA's experience with past TSCA section 8(a) rulemakings, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As a result, this action is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

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

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (52 FR 19855, April 23, 1997), does not apply to this rule, because it is not ''economically significant'' as defined under Executive Order 12866, and does not concern an environmental health or safety risk that may have a disproportionate effect on children. This rule requires the reporting of production, importation, use, and exposure-related information to EPA by manufacturers (including importers) of certain chemicals requested by the ITC to be added to the PAIR rule in its 48th ITC Report (Ref. 1), in its 50th ITC Report (Ref. 2), and its 51st ITC Report (Ref. 3).

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

This rule is not subject to Executive Order 13211, entitled *Actions that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

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

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

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

K. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order.

L. Executive Order 12988: Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting

errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

M. Congressional Review Act

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

List of Subjects in 40 CFR Part 712

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: June 3, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is amended as follows:

PART 712—[AMENDED]

■ 1. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ 2. In § 712.30, the table in paragraph (d) is amended by adding the chemicals: ''Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-;'' ''stannane, dimethylbis[(1-oxoneodecyl)oxy]-;'' ''benzene, 1,3,5-tribromo-2-(2-propenyloxy)-;'' and ''1-triazene, 1,3-diphenyl-'' listed in ascending CAS number order to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(d) * * *

CAS No.	Substance	Effective date	Reporting date
	* * * *	* * *	
136–35–6	1-Triazene, 1,3-diphenyl-	July 11, 2003	September 9, 2003
	* * * *	* * *	
3278–89–5	Benzene, 1,3,5-tribromo-2-(2-propenyloxy)-	July 11, 2003	September 9, 2003
	* * * *	* * *	
29091–20–1	Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-	July 11, 2003	September 9, 2003
	* * * *	* * *	
68928–76–7	Stannane, dimethylbis[(1-oxoneodecyl)oxy]-	July 11, 2003	September 9, 2003
	* * * *	* * *	

* * * * *

■ 3. In § 712.30, the table in paragraph (e) is amended by adding in alphabetical order the category ''Vanadium Compounds'' to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(e) * * *

CAS No.	Substance	Effective date	Reporting date
	* * * *	* * *	
Vanadium compounds:			
1314–34–7	Vanadium oxide (V2O3) [Vanadium trioxide]	July 11, 2003	September 9, 2003
1314–62–1	Vanadium oxide (V2O5) [Vanadium pentoxide]	July 11, 2003	September 9, 2003
1686–22–2	Vanadium, triethoxyoxo-, (T-4)- [Triethyl orthovanadate].	July 11, 2003	September 9, 2003
3153–26–2	Vanadium, oxobis (2,4-pentanedionato-.kappa.O,.kappa.O')-, (SP-5-21)-.	July 11, 2003	September 9, 2003
5588–84–1	Vanadium, oxotris(2-propanolato)-, (T-4)- [Vanadium triisopropoxide oxide].	July 11, 2003	September 9, 2003
7440–62–2	Vanadium	July 11, 2003	September 9, 2003
7632–51–1	Vanadium chloride (VCl4), (T-4)- [Vanadium tetrachloride].	July 11, 2003	September 9, 2003
7718–98–1	Vanadium chloride (VCl3) [Vanadium trichloride]	July 11, 2003	September 9, 2003
7727–18–6	Vanadium, trichlorooxo-, (T-4)- [Vanadium oxytrichloride].	July 11, 2003	September 9, 2003
7803–55–6	Vanadate (VO31-), ammonium [Ammonium metavanadate].	July 11, 2003	September 9, 2003
10049–16–8	Vanadium fluoride (VF4) [Vanadium tetrafluoride]	July 11, 2003	September 9, 2003
10213–09–9	Vanadium, dichlorooxo- [Vanadyl dichloride]	July 11, 2003	September 9, 2003
10580–52–6	Vanadium chloride (VCl2) [Vanadium dichloride]	July 11, 2003	September 9, 2003
11099–11–9	Vanadium oxide [Polyvanadic acid]	July 11, 2003	September 9, 2003
11115–67–6	Ammonium vanadium oxide	July 11, 2003	September 9, 2003
11130–21–5	Vanadium carbide	July 11, 2003	September 9, 2003
12007–37–3	Vanadium boride (VB2)	July 11, 2003	September 9, 2003
12035–98–2	Vanadium oxide (VO)	July 11, 2003	September 9, 2003
12036–21–4	Vanadium oxide (VO2)	July 11, 2003	September 9, 2003
12070–10–9	Vanadium carbide (VC)	July 11, 2003	September 9, 2003

CAS No.	Substance	Effective date	Reporting date
12083–48–6	Vanadium, dichlorobis (.eta.5-2,4-cyclopentadien-1-yl)-.	July 11, 2003	September 9, 2003
12166–27–7	Vanadium sulfide (VS)	July 11, 2003	September 9, 2003
12439–96–2	Vanadium, oxo[sulfato(2-)-.kappa.O]-, pentahydrate [Vanadyl sulfate (VOSO4), pentahydrate].	July 11, 2003	September 9, 2003
12604–58–9	Vanadium alloy, base, V,C,Fe (Ferrovanadium)	July 11, 2003	September 9, 2003
13470–26–3	Vanadium bromide (VBr3)	July 11, 2003	September 9, 2003
13476–99–8	Vanadium, tris(2,4-pentanedionato-.kappa.O,.kappa.O')-, (OC-6-11)- [Vanadium tris(acetylacetonate)].	July 11, 2003	September 9, 2003
13497–94–4	Silver vanadium oxide (AgVO3)	July 11, 2003	September 9, 2003
13517–26–5	Sodium vanadium oxide (Na4V2O7) [Sodium pyrovanadate].	July 11, 2003	September 9, 2003
13718–26–8	Vanadate (VO31-), sodium [Sodium metavanadate].	July 11, 2003	September 9, 2003
13721–39–6	Sodium vanadium oxide (Na3VO4) [Sodium orthovanadate].	July 11, 2003	September 9, 2003
13769–43–2	Vanadate (VO31-), potassium [Potassium metavanadate].	July 11, 2003	September 9, 2003
13930–88–6	Vanadium, oxo[29H,31H-phthalocyaninato(2-)-*COM001*.kappa.N29,.kappa.N30,.kappa.N31,.kappa.N32]-, (SP-5-12)-.	July 11, 2003	September 9, 2003
14059–33–7	Bismuth vanadium oxide (BiVO4)	July 11, 2003	September 9, 2003
19120–62–8	Vanadium, tris(2-methyl-1-propanolato)oxo-, (T-4)- [Isobutyl orthovanadate].	July 11, 2003	September 9, 2003
24646–85–3	Vanadium nitride (VN)	July 11, 2003	September 9, 2003
27774–13–6	Vanadium, oxo[sulfato(2-)-.kappa.O]- [Vanadyl sulfate].	July 11, 2003	September 9, 2003
30486–37–4	Vanadium hydroxide oxide (V(OH)2O)	July 11, 2003	September 9, 2003
39455–80–6	Ammonium sodium vanadium oxide	July 11, 2003	September 9, 2003
53801–77–7	Bismuth vanadium oxide	July 11, 2003	September 9, 2003
65232–89–5	Vanadium hydroxide oxide phosphate	July 11, 2003	September 9, 2003
68130–18–7	Vanadium hydroxide oxide phosphate (V6(OH)3O3(PO4)7).	July 11, 2003	September 9, 2003
68815–09–8	Naphthenic acids, vanadium salts	July 11, 2003	September 9, 2003
68990–29–4	Balsams, copaiba, sulfurized, vanadium salts	July 11, 2003	September 9, 2003

* * * * *

[FR Doc. 03–14749 Filed 6–10–03; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–15343]

RIN 2127–AJ09

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Correcting amendment.

SUMMARY: This rule corrects errors in Figures 6a, 6b, 7, 8, and 9 of Federal Motor Vehicle Safety Standard No. 208, *Occupant crash protection* (FMVSS No. 208). These figures were added to the standard in two separate and unrelated rulemakings. They provide instructions regarding format that are inconsistent with the requirements in the regulatory text of the standard. This document resolves the problem by removing the inconsistent instructions from the figures.

DATES: This final rule is effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Lou Molino, Office of Crashworthiness Standards, Light Duty Vehicle Division, NVS–112. Telephone: (202) 366–2264. Fax: (202) 493–2739.

For legal issues, you may contact Rebecca MacPherson, Office of Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On March 19, 2001, NHTSA provided Mr. Todd Mitchell of ITW Meyercord with a letter of legal interpretation stating that three of four warning labels specified in FMVSS No. 208 were required to be outlined with black horizontal and vertical lines. This interpretation was based on the figures in the standard for those labels. The figures depict labels with an outline and contain an instruction specifying the color of the outline (''Label Outline, Vertical and Horizontal Line Black''). Based on the depiction of an outline and on the specification of a color for the outline, the agency concluded that an outline is required. NHTSA determined that the fourth label is not required to have an outline because the instructions in the figure for that label do not include a color specification explicitly referring to an ''outline.'' [1]

On May 2, 2001, the Alliance of Automobile Manufacturers submitted a letter to NHTSA asking the agency to reconsider the interpretation. It argued that the regulatory text of the standard neither requires conformity with the format of the label shown in the figures

[1] NHTSA determined that the labels depicted in Figures 6a, 6b, and 8 required an outline. The label depicted in Figure 6c did not. Two other labels, depicted in the regulation in Figures 7 and 9, were not addressed. However, the response would have been the same as the agency response regarding Figures 6a, 6b, and 8.

nor requires that the label have an outline.

We agree with the Alliance that the standard does not require an outline. Instead of simply reversing the legal interpretation, we believe it is more appropriate to resolve the matter by issuing a correcting amendment to the standard.

On August 6, 1996, NHTSA published in the **Federal Register** a notice of proposed rulemaking (NPRM) (61 FR 40784, Docket No. NHTSA–97–2705) proposing the adoption of new, attention-getting air bag warning labels. The regulatory text in the NPRM simply stated that the labels ''shall conform in size, content, color, and format'' to the labels shown in the figures. No other requirements regarding label size, content, color or format were included in the regulatory text. Figures 6a through 8 depicted the messages and, if any, pictogram for each label. The figures also contained instructions specifying color and size of each label.[2]

In their comments on the NPRM, vehicle manufacturers requested that only the content of the labels be required to conform to the figures.

In the final rule (61 FR 60206, NHTSA Docket No. NHTSA–97–2716, November 27, 1996), NHTSA agreed there was no need to specify either the arrangement of the information on the labels or the shape of the labels, both of which it characterized as formatting. It also determined that it did not need to specify the size of the label or typeface, although it did specify minimum areas for the message text and pictogram.

Accordingly, the agency replaced the proposed requirement in the regulatory text that labels ''shall conform in size, content, color, and format'' with the figures with a narrower requirement that labels ''shall conform in content'' with the figures. At the same time, it expanded the regulatory text by adding requirements that restated most, but not all, of the color instructions in the figures. The agency also deleted the instructions about minimum size of the labels.

There are two instructions in Figures 6a and 6b and one instruction in Figure 7 that are not restated in any requirements in the regulatory text. One is a format/color instruction about a black outline. The other is a color instruction about using red for bullets in the message area. Figure 7 contains only the format/color instruction about the black outline.

The presence of the instructions creates an ambiguity as to whether the black outline instruction and the red bullet instruction are required components of the standard. The labels proposed in the NPRM and those adopted in the final rule are different. Accordingly, it is not possible to argue that the instruction in the figures that the labels be outlined with horizontal and vertical black lines was an inadvertent remnant of the proposed labels. However, there is nothing in the preamble to the final rule to suggest that the agency intended to require these format/color instructions. Rather, as the new labels went through various iterations before the agency decided on a final version, the reference was inadvertently left in the figures, even though the agency ultimately decided not to specify these format and color instructions in the regulatory text.

We believe that these instructions in the figures are more akin to format than to content and were not specifically included in the regulatory text because the agency did not wish to require them. This position is bolstered by the language of the regulatory text in S4.5.1(b)(1) which states that the labels shall conform in content with the referenced figures and meet the requirements listed in S4.5.1(b)(1)(i) through S4.5.1(b)(1)(iv) and similar language in S4.5.1(b)(2) and in S4.5.1(e)(1) and S4.5.1(e)(2). These requirements include the limitations on color provided in the figure instructions, but do not include the instruction regarding an outline or bullets.

Accordingly, we are amending Figures 6a, 6b and 7 of FMVSS No. 208 to remove the reference to a black outline. We are also amending Figures 6a and 6b to delete the reference to red bullets. We are likewise amending Figures 8 and 9. Figure 8 was based, in large part, on Figures 6a and 6b. Figure 9 was based on Figure 7. When the advance air bag final rule incorporating Figures 8 and 9 was published (65 FR 30680, Docket No. NHTSA–00–7013, May 12, 2000), the agency had already indicated in the earlier rollover label rulemaking that it did not believe the outline in Figures 6a, 6b and 7 were required. The instruction should not have been included in Figures 8 and 9, since we made no findings in that rulemaking that our previous position was incorrect.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.208 is amended by revising Figures 6a, 6b, 7, 8, and 9 to read as follows:

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[2] NHTSA ultimately decided against adopting one of the proposed labels. In the final rule, the labels were depicted in Figures 6a, 6b, 6c, and 7.

Figure 6a. Sun Visor Label Visible when Visor is in Down Position.

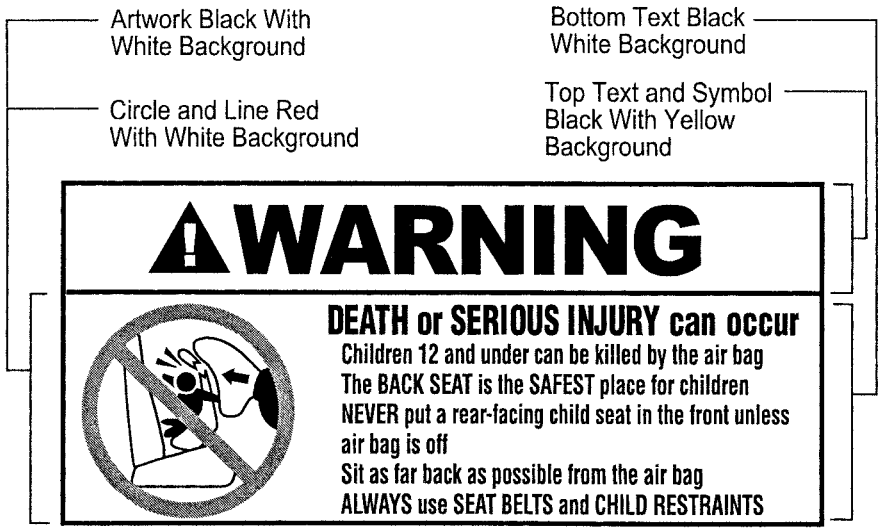

Figure 6b. Sun Visor Label Visible when Visor is in Down Position.

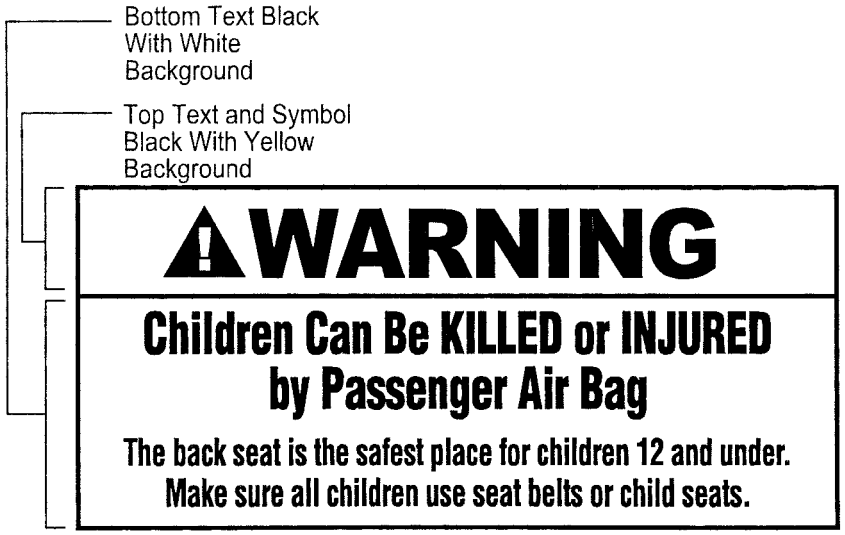

Figure 7. Removable Label on Dash.

Figure 8. Sun Visor Label Visible when Visor is in Down Position.

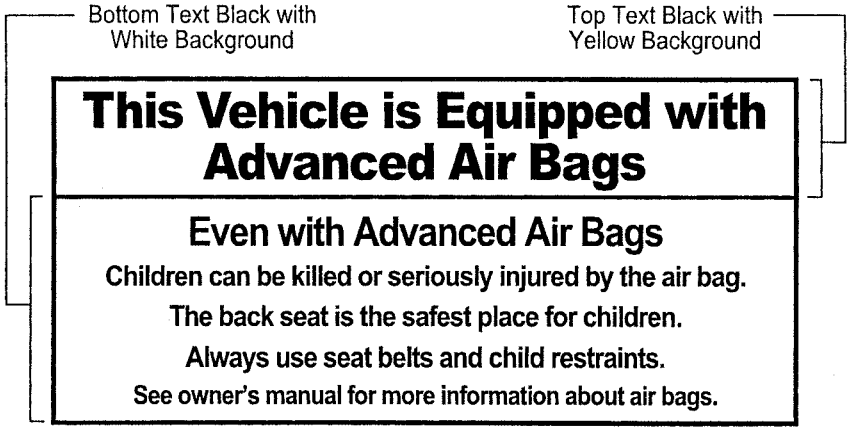

Figure 9. Removable Label on Dash.

Issued on: June 5, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–14694 Filed 6–10–03; 8:45 am]

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Proposed Rules

Federal Register
Vol. 68, No. 112
Wednesday, June 11, 2003

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–78–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing airplane models, that would have superseded an existing AD currently requiring either inspections for discrepancies of the fueling float switch wiring in the center fuel tank and follow-on actions, or deactivation of the float switch. The proposed AD would have removed the option to deactivate the float switch and would have required repetitive inspections for discrepancies of the float switch wiring and various other actions. This new action would require replacing the float switches in the center and wing fuel tanks with new, improved parts, installing a conduit liner system in the center fuel tank, and replacing conduit assemblies in the wing fuel tanks with new parts, which would terminate the existing requirements. For certain airplanes, this new action also would require replacing certain existing sections of the electrical conduit in the center fuel tank with new conduit. This new action also would add one additional airplane model to the applicability and remove another. These actions are necessary to prevent contamination of the fueling float switch by moisture or fuel, and chafing of the float switch wiring against the fuel tank conduit, which could present an ignition source inside the fuel tank that could cause a fire or explosion. These actions are 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. 99–NM–78–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. 99–NM–78–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sherry Vevea, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6514; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–78–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. 99–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 28, 2000 (65 FR 24889). That NPRM proposed to supersede AD 99–05–12, amendment 39–11060 (64 FR 10213, March 3, 1999). (A correction of that AD was published in the **Federal Register** on March 9, 1999 (64 FR 11533).) That proposal would have continued to require inspection of the fueling float switch wiring in the center fuel tank to detect discrepancies, accomplishment of corrective actions, and installation of double Teflon sleeving over the wiring of the float switch. That NPRM would

have eliminated deactivation of the float switch as an option for complying with the existing AD, and would have required, for all affected airplanes, repetitive inspections of the float switch wiring to detect discrepancies, replacement of the float switch and wiring if necessary, and replacement of the double Teflon sleeving. For certain airplanes, that NPRM also would have added a new requirement for inspection and installation of partial double Teflon sleeving in a certain area. That NPRM was prompted by a report indicating that chafing of the direct current (DC) powered float switch wiring insulation in the center fuel tank occurred on several airplanes. That condition, if not corrected, could result in arcing from the wiring to the in-tank conduit, which could present an ignition source inside the fuel tank and result in consequent fire/explosion.

In the preamble to AD 99–05–12, we stated that the actions required by that AD were considered ''interim action'' and that we were considering further rulemaking action. We have now determined that further rulemaking action is indeed necessary, and this supplemental NPRM follows from that determination.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has reviewed and approved Boeing Alert Service Bulletin 737–28A1141, Revision 1, dated December 19, 2002. That service bulletin describes procedures for replacing the existing float switches with new, improved float switches and installing a conduit liner system in the center fuel tanks, and replacing the float switches and conduit assemblies with new, improved float switches and conduit assemblies in the wing fuel tanks. The new, improved float switches are more resistant to contamination by fuel or moisture, and the new conduit assemblies for the float switch eliminate sharp bends within the conduit and include a conduit liner system that provides added protection against chafing of the float switch wiring. For airplanes on which the float switch for the center fuel tank was deactivated previously, the service bulletin also contains procedures for removal of placards and stencils associated with that deactivation. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Other Relevant Rulemaking

We have previously issued AD 2002–26–18, amendment 39–13006 (68 FR 481, January 6, 2003), which applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That AD requires replacement of the existing fueling float switch and conduit assemblies in the main and center fuel tanks with new, improved assemblies. This supplemental NPRM would require similar actions for Model 737–200, –200C, –300, –400, and –500 series airplanes.

Comments

Due consideration has been given to the comments received in response to the original NPRM. Certain comments are no longer relevant because of the issuance of the service bulletin described previously. Certain other comments have revealed a need for clarification, as explained below.

Support for the Original NPRM

Two commenters support the original NPRM.

Request To Provide Credit for Actions Accomplished Previously

One commenter requests that a statement be added to the proposed AD to clarify that credit is given for accomplishment of the proposed initial inspection and replacement prior to the effective date of this AD.

Though the FAA concurs with the commenter's intent, the FAA does not concur that any change to the supplemental NPRM is necessary. Credit for actions accomplished previously is given by means of the phrase in the ''Compliance'' section of the AD, ''Required as indicated, unless accomplished previously.''

Request To Provide for Airplanes Grounded for Extended Period

One commenter requests that the original NPRM be revised ''to be written in such a manner [that] would not require inspecting airplanes [that] have been grounded for an extended period, until they are prepared for return to service.''

The FAA points out that no change to the supplemental NPRM is necessary to meet the intent of the commenter's request. Part 39.3 of the Federal Aviation Regulations (14 CFR 39.3) states that, ''No person may operate a product to which an airworthiness directive applies except in accordance with the requirements of that airworthiness directive.'' This regulation provides relief for airplanes that are not being operated because affected airplanes need only be in compliance prior to their return to service.

Explanation of Change Made to Restatement of AD 99–05–12

As explained in the original NPRM, paragraph (a) of this supplemental NPRM, which is restated from AD 99–05–12, states that the paragraph applies to Model 737–200, –300, –400, and –500 series airplanes having line numbers 1 through 3108 inclusive. Paragraph (a) of AD 99–05–12 did not specify the line numbers affected by that paragraph. The FAA has determined that airplanes having line numbers 3109 and subsequent had double Teflon sleeving installed over the wiring of the float switch during production. Therefore, it is not necessary for operators of these airplanes to accomplish paragraph (a) of this supplemental NPRM.

Explanation of Applicability of Supplemental NPRM

Boeing Model 737–200C series airplanes are not specifically identified in the applicability of the existing AD or the original NPRM. However, certain Model 737–200C series airplanes are included in the effectivity listings of Boeing Alert Service Bulletins 737–28A1132 and 737–28A1141, and those airplanes are subject to the actions specified in those service bulletins. Therefore, for Model 737–200C series airplanes, we have added a new paragraph (f) to this supplemental NPRM to require accomplishment of the actions required by paragraph (b) or (c) of this AD prior to the accumulation of 30,000 flight hours, or within 30 days after the effective date of this AD, whichever is later. If the actions specified in paragraph (b) or (c) of this AD have already been accomplished before the effective date of the AD, no further action would be required by paragraph (f) of this AD.

Also, Model 737–100 series airplanes have been removed from the applicability statement of this supplemental NPRM. These airplanes are not affected by the proposed actions and were inadvertently included in the original NPRM.

Explanation of Additional Changes to Original NPRM

We have changed all references to ''detailed visual inspection'' in the original NPRM to ''detailed inspection'' in this supplemental NPRM.

Conclusion

Since certain changes described previously expand the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Explanation of Proposed Requirements of Supplemental NPRM

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this supplemental NPRM proposes to supersede AD 99–05–12 to continue to require inspection of the fueling float switch wiring in the center fuel tank to detect discrepancies, accomplishment of corrective actions, and installation of double Teflon sleeving over the wiring of the float switch. The supplemental NPRM would require replacement of the float switches with new, improved float switches and installation of a conduit liner system in the center fuel tank, and replacement of the float switches and conduit assemblies with new, improved float switches and conduit assemblies in the wing fuel tanks. This replacement would terminate the requirements of the existing AD. The float switch replacements would be required to be done in accordance with Boeing Alert Service Bulletin 737–28A1141, Revision 1. For certain airplanes, the supplemental NPRM would require replacement of certain sections of conduit in the center fuel tank with new conduit, in accordance with Boeing Alert Service Bulletin 737–28A1132, Revision 2, dated June 17, 1999.

Cost Impact

There are approximately 2,886 Model 737–200, –200C, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,111 airplanes of U.S. registry would be affected by this supplemental NPRM.

The removal and inspection of the fueling float switch in the center fuel tank and installation of double Teflon sleeving, which is provided as one alternative for compliance with AD 99–05–12, takes approximately 18 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $30 per airplane. Based on these figures, the cost impact of the removal and inspection of the float switch and installation of double Teflon sleeving, if accomplished, is estimated to be $1,110 per airplane.

The deactivation of the float switch and installation of ''Caution'' signs that are provided as the other alternative for compliance with AD 99–05–12, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the deactivation and installation, if accomplished, is estimated to be $180 per airplane.

The new replacement of float switches and installation of a conduit liner in the center fuel tank, and the replacement of float switches and conduit assemblies in the wing fuel tanks, that are proposed in this supplemental NPRM would take approximately 62 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $3,633 and $5,061 per airplane. Based on these figures, the cost impact of the proposed replacement is estimated to be between $7,353 and $8,781 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11060 (64 FR 10213, March 3, 1999), corrected at 64 FR 11533, March 9, 1999, and by adding a new airworthiness directive (AD), to read as follows:

BOEING: Docket 99–NM–78–AD. Supersedes AD 99–05–12, Amendment 39–11060.

Applicability: Model 737–200, –200C, –300, –400, and –500 series airplanes; on which the center wing tanks are activated; excluding those airplanes equipped with center wing tank volumetric topoff systems, or alternating current (AC) powered center tank float switches; 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 (k)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent contamination of the fueling float switch by moisture or fuel, and chafing of the float switch wiring against the fuel tank conduit, which could present an ignition source inside the fuel tank that could cause a fire or explosion, accomplish the following:

Requirements of AD 99–05–12:

Compliance Time for Initial Action

(a) For Model 737–200, –300, –400, and —500 series airplanes having line numbers (L/N) 1 through 3108 inclusive: Prior to the accumulation of 30,000 total flight hours, or within 30 days after March 18, 1999 (the effective date of AD 99–05–12, amendment 39–11060), whichever occurs later, accomplish the requirements of paragraph (b) or (c) of this AD.

Initial Inspection: Procedures

(b) Remove the fueling float switch and wiring from the center fuel tank and perform a detailed inspection of the float switch wiring to detect discrepancies (*i.e.*, evidence of electrical arcing, exposure of the copper conductor, presence or scent of fuel on the electrical wires, or worn insulation), in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999. After the effective date of this AD, only Revision 2 may be used. Pay particular attention to the wire bundle where it passes through the wing pylon vapor seals and under the wire bundle clamps.

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

Initial Inspection: Follow-On Actions

(1) If no discrepancy is detected, prior to further flight, accomplish either paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(i) Measure the resistance between the wires and the float switch housing, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999.

(A) If the resistance is less than 200 megohms, prior to further flight, replace the float switch and wiring with a new float switch and wiring, and install double Teflon sleeving over the wiring of the float switch, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; or replace the float switch and wiring with a new, improved float switch and wiring in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1141, Revision 1, dated December 19, 2002. After the effective date of this AD, only a new, improved float switch and wiring may be installed. If a replacement float switch and wiring are not available, prior to further flight, accomplish the requirements specified in paragraphs (c) and (d) of this AD.

(B) If the resistance is greater than or equal to 200 megohms, prior to further flight, blow dirt out of the conduit, install double Teflon sleeving over the wiring of the float switch, and reinstall the existing float switch, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999.

(ii) Replace the float switch and wiring with a new float switch and wiring, and install double Teflon sleeving over the wiring of the float switch, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; or replace the float switch and wiring with a new, improved float switch and wiring in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1141, Revision 1, dated December 19, 2002. After the effective date of this AD, only a new, improved float switch and wiring may be installed. If a replacement float switch and wiring are not available, prior to further flight, accomplish the requirements specified in paragraphs (c) and (d) of this AD.

(2) If any worn insulation is detected, and if no copper conductor is exposed, and if no evidence of arcing is detected; accomplish the requirements specified in either paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(3) If any electrical arcing or exposed copper conductor is detected, prior to further flight, accomplish either paragraph (b)(3)(i) or (b)(3)(ii) of this AD.

(i) Replace any section of the electrical conduit where the arcing occurred with a new section, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; and accomplish the requirements specified in paragraph (b)(1)(ii) of this AD.

(ii) Perform a detailed inspection to detect fuel leaks of the electrical conduit, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999.

(A) If no fuel leak is detected, prior to further flight, accomplish the requirements specified in paragraph (b)(1)(ii) of this AD. Repeat the inspection required by paragraph (b)(3)(ii) of this AD thereafter at intervals not to exceed 1,500 flight hours, until the replacement required by paragraph (b)(3)(ii)(B) of this AD is accomplished.

(B) If any fuel leak is detected, prior to further flight, replace, with new conduit, any section of the electrical conduit where a leak is found, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999. Prior to further flight after accomplishment of the replacement, accomplish the requirements specified in paragraph (b)(1)(ii) of this AD. Accomplishment of electrical conduit replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(3)(ii)(A) of this AD.

(4) If any presence or scent of fuel on the electrical wires is detected, prior to further flight, locate the source of the leak and replace the damaged conduit with a new conduit, in accordance with the alert service bulletin; and accomplish the requirements specified in either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, unless accomplished previously in accordance with paragraph (b)(1), (b)(2), or (b)(3) of this AD.

Deactivation of Float Switch

(c) Accomplish the requirements specified in either paragraph (c)(1) or (c)(2) of this AD, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999.

(1) Deactivate the center tank float switch (*i.e.*, cut the two wires for the float switch at the splices on the front spar and cap and stow the four wire ends), paint a ''Caution'' sign that shows a conservative maximum fuel capacity for the center tank on the underside of the right-hand wing near the fueling station door, and install an INOP placard on the fueling panel.

(2) Deactivate the center tank float switch (*i.e.*, cut, stow, and splice the two wires for the float switch at the splices on the front spar), and paint a ''Caution'' sign that shows a conservative maximum fuel capacity for the center tank on the underside of the right-hand wing near the fueling station door.

Deactivation of Float Switch: Additional Requirements

(d) For airplanes on which the requirements specified in paragraph (c) of this AD have been accomplished: Accomplish the requirements specified in paragraphs (d)(1), (d)(2), and (d)(3) of this AD.

(1) Operators must ensure that airplane fueling crews are properly trained in accordance with the procedures specified in Boeing Telex M–7200–98–04486, dated December 1, 1998, or procedures approved by the FAA. This one-time training must be accomplished prior to utilizing the procedures specified in paragraph (d)(3) of this AD.

(2) Prior to fueling the airplane, perform a check to verify that the fueling panel center tank quantity indicator is operative. Repeat this check thereafter prior to fueling the airplane. If the fueling panel center tank quantity indicator is not operative, prior to further flight, replace the fueling panel center tank quantity indicator with a serviceable part.

(3) One of the two manual fueling procedures for the center fuel tank must be used for each fueling occurrence, in accordance with Boeing Telex M–7200–98–04486, dated December 1, 1998, or a method approved by the FAA.

Note 3: For the purposes of this AD, the term ''the FAA,'' is defined in paragraph (d) of this AD as ''the cognizant Principal Maintenance Inspector (PMI).''

Note 4: Where there are differences between Boeing Alert Service Bulletin 737–28A1132 and this AD, the AD prevails.

Deactivation of Float Switch: Dispatch

(e) Dispatch with the center fuel tank float switch deactivated, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; is allowed until replacement float switches and wiring are available for installation or until the compliance time for the replacement required by paragraph (h) of this AD. Where there are differences between the Master Minimum Equipment List (MMEL) and the AD, the AD prevails.

New Requirements of this AD

Compliance Time for Initial Action for Model 737–200C Series Airplanes

(f) For Model 737–200C series airplanes having L/Ns 1 through 3108 inclusive: Prior to the accumulation of 30,000 total flight hours, or within 30 days after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraph (b) or (c) of this AD. (If the actions specified in paragraph (b) or (c) of this AD have been accomplished before the effective date of this AD, no further action is required by this paragraph.) If the actions required by paragraph (h) of this AD are accomplished within the compliance time specified in this paragraph, operators are not required to do paragraph (b) or (c) of this AD.

Replacement of Conduit

(g) For airplanes having L/Ns 1 through 3108 inclusive, on which the inspection required by paragraph (b)(3)(ii) of this AD has been accomplished prior to the effective date of this AD, and on which replacement of conduit specified in paragraph (b)(3)(ii)(B) has NOT been accomplished: Within 1,500 flight hours or 6 months after the effective date of this AD, whichever occurs first, replace, with new conduit, any section of the electrical conduit where arcing or a leak occurred, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1132, Revision 2, dated June 17, 1999. Such replacement of the conduit constitutes terminating action for the repetitive inspection requirements of paragraph (b)(3)(ii)(A) of this AD.

Replacement of Center and Wing Tank Float Switches

(h) Within 2 years after the effective date of this AD, accomplish paragraphs (h)(1) and (h)(2) of this AD, as applicable. Except as provided by paragraph (j) of this AD, accomplishment of the actions in paragraphs (h)(1) and (h)(2) of this AD, as applicable, terminates the requirements of this AD.

(1) For all airplanes: In the center fuel tank, replace the existing float switches with new, improved float switches, and install a conduit liner system; and in the wing fuel tanks, replace the existing float switches and conduit assemblies with new, improved float switches and conduit assemblies that include a liner system inside the conduit. Do these replacements in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1141, Revision 1, dated December 19, 2002.

(2) For airplanes subject to the repetitive inspections required by paragraph (b)(3)(ii)(A) of this AD, on which the electrical conduit in the center fuel tank has not been replaced as specified in paragraph (b)(3)(ii)(B) or (g) of this AD: Prior to or concurrently with the replacement of the float switch in the center fuel tank required by paragraph (h)(1) of this AD, replace, with new conduit, any section of the center fuel tank electrical conduit where arcing or a leak occurred, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1132, Revision 2, dated June 17, 1999. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(3)(ii)(A) of this AD.

Credit for Previously Accomplished Actions

(i) Replacement of float switches and conduit assemblies, and installations of conduit liner systems, as applicable, accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–28A1141, dated September 5, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

Parts Installation

(j) As of the effective date of this AD, no person may install a float switch having part number F8300–146 on any airplane.

Alternative Method of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with AD 99–05–12, amendment 39–11060, are approved as alternative methods of compliance with the corresponding requirements of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(l) 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.

Issued in Renton, Washington, on June 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14666 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–74–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F airplanes. This proposal would require a one-time visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed, and corrective action if necessary. This action is necessary to prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–74–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–74–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; 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 2002-NM–74-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–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents of smoke and electrical odor in the flight compartment and cabin area of McDonnell Douglas Model DC–9–81, −82, and −83 airplanes. Investigation revealed that long-term use and breakdown of the internal components of circuit breakers manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation contributed to internal overheating and arcing of the circuit breakers. This condition, if not corrected, could result in smoke and fire in the flight compartment and main cabin.

The circuit breakers on certain Model MD–11 and MD–11F airplanes may be the same as those on the affected McDonnell Douglas Model DC–9–81, −82, and −83 airplanes. Therefore, these models may be subject to this same unsafe condition.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 and MD–11F airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11–24A137, Revision 01, dated March 11, 2003 (the original issue of the service bulletin specified installation of incorrect circuit breakers for the Wood Electric circuit breakers, if installed). Revision 01 of the service bulletin describes procedures for a one-time visual inspection to determine if discrepant circuit breakers are installed (includes circuit breakers manufactured by Wood Electric and Wood Electric Division of Potter Brumfield Corporations, and incorrect circuit breakers installed per Boeing Alert Service Bulletin MD11–24A137, dated February 28, 2002), and replacement of any discrepant circuit breaker with a new, approved circuit breaker. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Revision 01 of the service bulletin described previously, except as discussed below.

Difference Between This Proposed AD and the Service Bulletin

Although the service bulletin recommends that inspection be done within 18 months after release of the service bulletin, this AD would require a compliance time of within 24 months after the effective date of the proposed AD. We have determined that the proposed compliance time will better accommodate the time necessary for affected operators to schedule the work to be done without adversely affecting safety, and will allow the inspection to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary.

Clarification of Compliance Time for Circuit Breaker Replacement

We have confirmed that there could be a parts availability problem due to the fact that the number of discrepant circuit breakers on each airplane cannot be determined without accomplishing the proposed inspection. If there is a large number of suspect circuit breakers found during the inspection, there may not be sufficient parts available to return the airplane to service. Therefore, we have determined that the compliance time for replacement of affected circuit breakers, which would normally be before further flight after discrepant circuit breakers are found, will be at the next scheduled maintenance visit, but not later than 24 months after the effective date of the proposed AD.

Cost Impact

There are approximately 193 airplanes of the affected design in the worldwide fleet. The FAA estimates that 69 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per airplane to accomplish the proposed inspection of the circuit breakers (over 700 installed on each airplane), 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 $331,200, or $4,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD.

These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2002–NM–74–AD.

Applicability: Model MD–11 and MD–11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A137, Revision 01, dated March 11, 2003; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin, accomplish the following:

Inspection and Replacement

(a) Within 24 months after the effective date of this AD: Perform a one-time general visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed (includes circuit breakers manufactured by Wood Electric and Wood Electric Division of Brumfield Potter Corporations, and incorrect circuit breakers installed per Boeing Alert Service Bulletin MD11–24A137, dated February 28, 2002), per Boeing Alert Service Bulletin MD11–24A137, Revision 01, dated March 11, 2003.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no discrepant circuit breaker is found: No further action is required by this paragraph.

(2) If any discrepant circuit breaker is found: At the next scheduled maintenance visit, but not later than 24 months after the effective date of this AD, replace the circuit breaker with a new, approved circuit breaker, per Revision 01 of the service bulletin.

Part Installation

(b) As of the effective date of this AD, no person shall install, on any airplane, a circuit breaker having a part number listed in the ''Existing Part Number'' column in the table specified in paragraph 2.C.2., of Boeing Alert Service Bulletin MD11–24A137, Revision 01, dated March 11, 2003.

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 Permit

(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.

Issued in Renton, Washington, on June 5, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14673 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–103–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes. This proposal would require a one-time general visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed, and corrective action if necessary. This action is necessary to prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–103–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–103–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: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; 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 2002–NM–103–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–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents of smoke and electrical odor in the flight compartment and cabin area of McDonnell Douglas Model DC–9–81, -82, and -83 airplanes. Investigation revealed that long-term use and breakdown of the internal components of circuit breakers manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation contributed to internal overheating and arcing of the circuit breakers. This condition, if not corrected, could result in smoke and fire in the flight compartment and main cabin.

Although no Model MD–90–30 airplanes were delivered with circuit breakers manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation, they may have been installed during maintenance. Therefore, these models may be subject to this same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD90–24A081, Revision 01, dated March 7, 2003. (The original issue of the service bulletin specified installation of incorrect circuit breakers for the Wood Electric circuit breakers, if installed.) Revision 01 of the service bulletin describes procedures for a one-time visual inspection to determine if discrepant circuit breakers are installed (includes circuit breakers manufactured by Wood Electric and Wood Electric Division of Potter Brumfield Corporations, and incorrect circuit breakers installed per Boeing Alert Service Bulletin MD90–24A081, dated February 14, 2002), and replacement of any discrepant circuit breaker with a new, approved circuit breaker. Accomplishment of the actions specified in Revision 01 of the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Revision 01 of the service bulletin described previously.

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 altered products, 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 126 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed inspection of the circuit breakers (over 700 installed on each airplane), 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 $25,200, or $1,200 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 2002–NM–103–AD.

Applicability: Model MD–90–30 airplanes, as listed in Boeing Alert Service Bulletin MD90–24A081, Revision 01, dated March 7, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin, accomplish the following:

Inspection and Replacement

(a) Within 18 months after the effective date of this AD: Perform a one-time general visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed (includes circuit breakers manufactured by Wood Electric and Wood Electric Division of Brumfield Potter Corporations, and incorrect circuit breakers installed per Boeing Alert Service Bulletin MD90–24A081, dated February 14, 2002), per Boeing Alert Service Bulletin MD90–24A081, Revision 01, dated March 7, 2003.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no discrepant circuit breaker is found: No further action is required by this paragraph.

(2) If any discrepant circuit breaker is found: Before further flight, replace the circuit breaker with a new, approved circuit breaker, per the service bulletin.

Part Installation

(b) As of the effective date of this AD, no person shall install a circuit breaker manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation on any airplane.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 5, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14674 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 930

[Docket No. 030604145–3145–01]

RIN 0648–AR16

Coastal Zone Management Act Federal Consistency Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes to revise the Federal Consistency regulations under the Coastal Zone Management Act of 1972 (CZMA). NOAA is proposing this rule to address the CZMA-related recommendations of the Report of the National Energy Policy Development Group (Energy Report) as described in NOAA's July 2, 2002, Advanced Notice of Proposed Rulemaking (67 FR 44407–44410) (ANPR). This proposed rule seeks to make improvements to the Federal Consistency regulations to clarify some sections and provide greater transparency and predictability to the Federal Consistency regulations.

DATES: Comments on this document must be received by July 11, 2003.

ADDRESSES: Please send comments as an attachment to an email in either WordPerfect or MSWord, or in the body of an email, to *CZMAFC.ProposedRule@noaa.gov.*

Address all comments regarding this notice to David Kaiser, Federal Consistency Coordinator, Coastal Programs Division, Office of Ocean and Coastal Resource Management, NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910. Written comments may also be sent to this address.

All comments received by the comment deadline, this **Federal Register** notice, and an underline/strikeout version of the sections of the regulations proposed to be revised will be posted at OCRM's Federal Consistency Web page at: *http://coastalmanagement.noaa.gov/czm/federal_consistency.html.*

FOR FURTHER INFORMATION CONTACT: David Kaiser, Federal Consistency Coordinator, OCRM/NOAA, 301–713–3155 ext. 144, *david.kaiser@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

For nearly 30 years the CZMA has met the needs of coastal States, Great Lake States and United States Trust Territories and Commonwealths (collectively referred to as ''coastal States'' or ''States''), Federal agencies, industry and the public to balance the protection of coastal resources with coastal development, including energy development. When States develop and amend their Coastal Management Programs (CMPs), and when making coastal management decisions, the CZMA requires the States to adequately consider the national interest in the CZMA objectives and to give priority consideration to coastal dependant uses and processes for facilities related to national defense, energy, fisheries, recreation, ports and transportation.

States have collaborated with industry on a variety of energy facilities, including oil and gas pipelines, nuclear power plants, hydroelectric facilities, and alternative energy development. States have reviewed and approved thousands of offshore oil and gas facilities and related onshore support facilities. On December 8, 2000, NOAA issued a comprehensive revision to the Federal Consistency regulations, which reflected substantial effort and participation by Federal agencies, States, industry, and the public, over a five year period. Given this recent broad-based review, NOAA is not re-evaluating the 2000 final rule, rather it is making improvements to address the issues raised in the ANPR and to make other technical modifications.

In February 2001, the Vice President established the National Energy Policy Development Group to bring together business, government, local communities and citizens to promote a dependable, affordable, and environmentally sound National Energy Policy. Vice-President Cheney submitted the Energy Report to President Bush on May 16, 2001.

The Energy Report contains numerous recommendations for obtaining a long-term, comprehensive energy strategy to advance new, environmentally beneficial technologies to increase energy supplies and encourage less polluting, more efficient energy use. The CZMA and the Outer Continental Shelf Lands Act (OCSLA), a statute administered by the Minerals Management Service (MMS) within the Department of the Interior (Interior), are specifically mentioned. The Energy Report found that the effectiveness of Commerce and Interior programs are ''sometimes lost through a lack of clearly defined requirements and information needs from federal and state entities, as well as uncertain deadlines during the process.'' To address these issues, the Energy Report recommended that Commerce and Interior ''re-examine the current federal legal and policy regime (statutes, regulations, and Executive Orders) to determine if changes are needed regarding energy-related activities and the siting of energy facilities in the coastal zone and on the Outer Continental Shelf (OCS).'' Energy Report at 5–7.

In July 2002, NOAA published the ANPR seeking comments on whether improvements could be made to NOAA's Federal Consistency regulations. This proposed rulemaking is the product of recommendations contained in the Energy Report and comments received in response to the ANPR.

II. History of the CZMA and NOAA's Federal Consistency Regulations

The CZMA was enacted in 1972 to encourage States to be proactive in managing natural resources for their benefit and the benefit of the Nation. The CZMA recognizes a national interest in the resources of the coastal zone and in the balancing of competing uses of those resources. The CZMA is a voluntary program for States. If a State elects to participate it must develop and implement a CMP pursuant to Federal guidelines. State CMPs are comprehensive management plans that describe the uses subject to the management program, the authorities and enforceable policies of the management program, the boundaries of the State's coastal zone, the organization of the management program, and other State coastal management concerns. The State CMPs are developed with the participation of Federal agencies, industry, other interested groups and the public. Thirty-five coastal States are eligible to participate. Thirty-four of the eligible States have federally approved CMPs. Illinois is not currently participating.

Once NOAA approves a State's CMP, then the CZMA Federal Consistency provision applies. Federal Consistency is a limited waiver of Federal supremacy and authority. Federal agency activities that have coastal effects must be consistent to the maximum extent practicable with the federally approved enforceable policies of the State's CMP. In addition, non-Federal applicants for Federal authorizations and funding must be fully consistent with the enforceable policies of State CMPs. The Federal Consistency provision is a cornerstone of the CZMA program and a primary incentive for States to participate. While States have negotiated changes to thousands of Federal actions over the years, States have concurred with approximately 93% of all Federal actions reviewed.

NOAA's Federal Consistency regulations, first promulgated in 1979, are designed to provide reliable procedures and predictability to the implementation of Federal Consistency. In general, the regulations operate well for the Federal and State agencies and permit applicants and provide a reasonable interpretation of the CZMA's broad requirements. When Congress amended the CZMA in 1990, it specifically endorsed NOAA's consistency regulations and interpretation of the CZMA. However, changes to the CZMA in 1990 and 1996 also necessitated revisions to the regulations.

In late 1996, OCRM began a process to revise the regulations by informally consulting and collaborating with Federal agencies, States, industry, Congress, and other interested parties. NOAA submitted two sets of draft rules to States, Federal agencies and others for comments and produced written responses to comments to each draft, and then issued a proposed rule in April 2000. NOAA published a final rule on December 8, 2000, which became effective on January 8, 2001.

Most of the changes in the revised regulations were dictated by changes in the CZMA or by specific statements in the accompanying legislative history. For instance, the new regulations added language concerning the scope of the Federal Consistency ''effects test.'' Prior to the 1990 amendments, Federal agency activities ''directly affecting'' the coastal zone were subject to Federal Consistency. The amendments broadened this language by dropping the word ''directly'' to include actions with ''effects'' on any land or water use or natural resource of the coastal zone. Other changes in the 2000 final rule improved and clarified procedural processes based on long-standing interpretive practice by NOAA.

III. The Role of the CZMA in OCS Energy Development

The CZMA and the OCSLA interact both by explicit cross-reference in the statutes and through their regulatory implementation. Both statutes mandate State review of OCS oil and gas Exploration Plans (EP's) and Development and Production Plans (DPP's). Both statutes and their corresponding regulations provide a

compatible and interrelated process for States to review EP's and DPP's.

When MMS offers an OCS lease sale, it is considered a Federal agency activity. If MMS determines that the lease sale will have reasonably foreseeable coastal effects, then MMS provides a CZMA consistency determination to the affected State(s) stating whether the lease sale is ''consistent to the maximum extent practicable'' with the enforceable policies of the State's CMP. If the State objects, MMS may still proceed with the lease sale if MMS' administrative record and the OCSLA shows that it is fully consistent or consistent to the maximum extent practicable.

The CZMA requires that when a lessee seeks MMS approval for its EP or DPP, the lessee must certify to the affected State(s) that the activities authorized by the licenses or permits described in the plans are fully consistent with the enforceable policies of the State's CMP. If the State objects to the consistency certification, then MMS is prohibited from approving the license or permits described in detail in the EP or DPP. The lessee may appeal to the Secretary of Commerce to override the State objection and allow MMS to issue its approvals described in the plan. When deciding an appeal, the Secretary, among other elements, balances the national interest in energy development against adverse effects on coastal resources and coastal uses.

The CZMA and NOAA's regulations ensure that the national interest in the CZMA objectives are furthered. These safeguards are discussed below using OCS oil and gas activities to illustrate.

The ''*Effects Test.*'' As discussed above, Federal Consistency review is triggered only when a Federal action has reasonably foreseeable coastal effects, referred to as the ''effects test.'' Consistency does NOT apply to every action or authorization of a Federal agency, or of a non-Federal applicant for Federal authorizations.

For OCS oil and gas lease sales, MMS determines if coastal effects are reasonably foreseeable and provides affected States with a Consistency Determination. For example, MMS has established the Eastern Planning, Central Planning and Western Planning Areas for the Gulf of Mexico. MMS may determine that lease sales in the Eastern Planning Area will not have reasonably foreseeable effects on coastal uses or resources within the Central Planning Area. Therefore, MMS may choose not to provide States adjacent to the Central Planning Area with a Consistency Determination. MMS could also determine that a lease sale held far offshore in the Eastern Planning Area would not have coastal effects on Florida or Alabama coastal uses or resources.

For OCS EP's and DPP's the CZMA mandates, as a general matter, State consistency review. However, as with Federal agency activities, a coastal State's ability to review the Plans stops where coastal effects are not reasonably foreseeable. For OCS EP's and DPP's located far offshore, this would be a factual matter to be determined by the State, applicant and MMS on a case-by-case basis.

Under NOAA's regulations, if a State wanted to ensure that OCS EP's and DPP's located in a particular offshore area would automatically be subject to State CZMA review, a State could, if NOAA approved, amend its CMP to specifically describe a geographic location outside the State's coastal zone where such plans would be subject to State review. *See* 15 CFR 930.53. Or, if a State wanted to review an EP or DPP where the applicant and/or MMS have asserted that coastal effects are not reasonably foreseeable, the State could request approval from NOAA to review such plans on a case-by-case basis. See 15 CFR 930.54 (unlisted activities). In both situations, NOAA would approve only if the State could make a factual showing that effects on its coastal uses or resources are reasonably foreseeable as a result of a particular EP or DPP.

NOAA Approval of State CMPs. NOAA, with substantial input from Federal agencies, local governments, industry, non-governmental organizations and the public, must approve State CMPs and their enforceable policies, including later changes to a State's CMP. NOAA's required approval ensures consideration of Federal agency activities and authorizations. For example, NOAA has denied State requests to include policies in its federally approved CMP that would prohibit all oil and gas development or support facilities off its coast because such policies conflict with the CZMA requirements to consider the national interest in energy development and to balance resource protection with coastal uses of national significance.

''*Consistent to the Maximum Extent Practicable and Fully Consistent.*'' For Federal agency activities under CZMA section 307(c)(1), such as the OCS Lease Sales, a Federal agency may proceed with the activity over a State's objection if the Federal agency is Consistent to the Maximum Extent Practicable with the enforceable policies of the State's CMP. This means that even if a State objects, MMS may proceed with an OCS lease sale if MMS provides the State the reasons the OCSLA and MMS's administrative record for the lease sale requires MMS to proceed, despite inconsistency with the State's enforceable policies. MMS could also proceed if it determined that its activity was fully consistent. Under NOAA's regulations, the consistent to the maximum extent practicable standard also allows Federal agencies to deviate from State enforceable policies and CZMA procedures due to unforeseen circumstances and emergencies.

Appeal to the Secretary of Commerce. For non-Federal applicants for Federal authorizations, such as OCS lessees, the applicant may appeal a State's objection to the Secretary of Commerce pursuant to CZMA sections 307(c)(3) and (d). The State's objection is overridden if the Secretary finds that the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. If the Secretary overrides the State's objection, then the Federal agency may issue its authorization.

Since 1978, MMS has approved over 10,600 EP's and over 6,000 DPP's. States have concurred with nearly all of these plans. In the 30-year history of the CZMA, there have been only 14 instances where the oil and gas industry appealed a State's Federal Consistency objection to the Secretary of Commerce and the Secretary issued a decision (there were several appeals where the Secretary did not issue a decision because the appeals were withdrawn due to settlement negotiations between the State and applicant or a settlement agreement between the Federal government and the oil companies involved in the projects). Of the 14 decisions (1 DPP and 13 EP's), there were 7 decisions to override the State's objection and 7 decisions not to override the State.

Since the 1990 amendments to the CZMA, there have been several OCS oil and gas lease sales by MMS and only one State objection. In that one objection OCRM determined that the State's objection was not based on enforceable policies, MMS determined that it was consistent to the maximum extent practicable with the State's CMP, and the lease sale proceeded. Thus, all lease sales offered by MMS since the 1990 amendments have proceeded under the CZMA Federal Consistency provision. In addition, since 1990, there have been six State objections to OCS plans. In three of those cases, the Secretary did not override the State's objection. In two of the cases the Secretary did override the State allowing MMS approval of the permits

described in the plans, and in one case the State objection was withdrawn as a result of a settlement agreement between the Federal government and the oil companies involved in the project.

Presidential Exemption. After any final judgement, decree, or order of any Federal court, the President may exempt from compliance the elements of a Federal agency activity that are found by a Federal court to be inconsistent with a State's CMP, if the President determines that the activity is in the paramount interest of the United States. CZMA § 307(c)(1)(B). This exemption was added to the statute in 1990 and has not yet been used.

Mediation. While mediation is not technically a legal safeguard as those described above, it has been used to resolve Federal Consistency disputes and allowed Federal actions to proceed. In the event of a serious disagreement between a Federal agency and a State, either party may request that the Secretary of Commerce mediate the dispute. NOAA's regulations also provide for OCRM mediation to resolve disputes between States, Federal agencies, and other parties.

IV. Explanation of Proposed Changes to the Federal Consistency Regulations

Rule Change 1: § 930.1(b) Overall Objectives. This proposed change moves the parenthetical with the description of ''Federal action'' from § 930.11(g) to the first instance of the term. Federal action is used throughout the regulations to refer, when appropriate, to subparts C, D, E, F and I.

Rule Change 2: § 930.10 Definitions Table of Contents. Definition of Failure Substantially to Comply with an OCS Plan. The reference to section 930.86(d) is incorrect. There is no 930.86(d). The reference should be to 930.85(d) under the 2000 rule, and what is now proposed as 930.85(c).

Rule Change 3: § 930.11(g) Definitions. Effect on any coastal use or resource (coastal effects). This proposed change moves the parenthetical for ''Federal actions'' to the first instance of Federal action in § 930.1(b) and proposes to insert more specific language for Federal agency activity and federal license or permit activity.

Rule Change 4: § 930.31(a) Federal agency activity. This proposed change would not alter the current application of the definition of Federal agency activity, but would clarify that a ''function'' by a Federal agency refers to an actual *proposal for action.* The examples included would also be re-written to emphasize that a proposed action is an essential element of the definition.

It has always been NOAA's view that Federal Consistency applies to proposals to take an action or initiate a series of actions that have reasonably foreseeable coastal effects, and not to agency deliberations or internal tasks related to a proposed agency action. Thus, a planning document that explores possible projects or priorities for an agency is not a Federal agency activity, as there is no action proposed. However, as included in the proposed revised example, a Federal agency plan or rulemaking that documents a decision or proposes a new action would be a Federal agency activity subject to the effects test.

Once a Federal agency proposes an action, it is the proposal for action that is the subject of the consistency review. The State only reviews the proposed action and does not review all tasks, ministerial activities, meetings, discussions, and exchanges of views incidental or related to a proposed action, and does not review other aspects of a Federal agency's deliberative process. In addition, Federal agency activities do not include interim or preliminary activities incidental or related to a proposed action for which a consistency determination has been or will be submitted and which do not make new commitments for actions with coastal effects. Such interim or preliminary activities do not propose independent actions that are subject to Federal Consistency review.

For example, where a Federal agency has not yet submitted a consistency determination to a State or where a State has concurred with a Federal agency's consistency determination for a proposed action, planning activities may occur before or after the State's Federal Consistency review that are incidental to the proposed action and which are related to the agency's deliberative process. In these cases the interim or preliminary activity would not be subject to Federal Consistency review.

In the OCS oil and gas context, examples of interim or preliminary activities that are not Federal agency activities include the publication of OCS 5-Year programs, as discussed below; or rulemakings that establish administrative procedures for OCS-related activities that do not affect coastal uses or resources (*e.g.*, rulemaking prescribing the completion and submission of forms). Consistent with the Ninth Circuit's decision in *California ex rel. Cal. Coastal Comm'n* v. *Norton,* 150 F. Supp.2d 1046 (N.D. Cal. 2001), *aff'd,* 311 F.3d 1162 (9th Cir. 2002), granting or directing suspensions of OCS operations or production by MMS would be interim or preliminary activities and would not be Federal agency activities when a lease suspension would either not have coastal effects or, if the lease suspension set forth milestones that would have coastal effects, the State had previously reviewed the lease sale for Federal Consistency. (The Ninth Circuit emphasized that the leases at issue in *California* v. *Norton* had never been reviewed by California.) *See* NOAA's response to COMMENT 33 for further discussion on lease suspensions and *California* v. *Norton* and NOAA's conclusion that in all foreseeable instances, lease suspensions would not be subject to Federal Consistency review since (1) in general, they do not authorize activities with coastal effects, and (2) if they did contain activities with coastal effects, the activities and coastal effects would be covered in a State's review of a lease sale, an EP or a DPP. If a State believes that a particular lease suspension should be subject to Federal Consistency, the State could notify MMS. MMS could determine that the lease suspension is an interim activity that does not propose a new action with coastal effects and/or provide the State with a negative determination pursuant to 15 CFR § 930.35.

Not all ''planning'' or ''rulemaking'' activities are subject to Federal Consistency since such planning or rulemaking may merely be part of the agency's deliberative process. Likewise, the plan or rulemaking may not propose an action with reasonably foreseeable coastal effects and would therefore not be subject to Federal Consistency. If, however, an agency's administrative deliberations result in an actual plan to take an action, then that plan could be subject to Federal Consistency if coastal effects are reasonably foreseeable. For example, in the OCS oil and gas program, MMS produces a 5-year Leasing Program ''Plan.'' MMS has informed NOAA that the 5-Year Program Plan is a preliminary activity that does not set forth a proposal for action and thus, coastal effects cannot be determined at this stage. Accordingly, MMS' proposal for action would occur when MMS conducts a particular OCS oil and gas lease sale.

In another example of what is subject to State consistency review, consider the situation when the Navy proposes to construct a pier. The project involves compliance with numerous federal laws, *e.g.*, National Environmental Policy Act (NEPA) documents,

Endangered Species Act (ESA) section 7 consultation, a Rivers and Harbors Act section 10 permit from the Army Corps of Engineers (Corps), contracts with a construction company to build the pier, etc. These various authorizations and activities related to the Navy's proposal to build the pier are not separate Federal agency activities subject to Federal Consistency. The Federal agency activity for purposes of 15 CFR 930.31 is the proposal to build the pier. The State reviews the pier proposal. The State uses the information provided by the Navy, pursuant to 15 CFR 930.39(a), that is necessary to evaluate coastal effects and determine consistency with the State's enforceable policies. The State may request, or the Navy may provide, the Corps section 10 permit application, or the Biological Opinion under the ESA or the NEPA EIS, with the Navy's consistency determination. Or information in these documents may be used as part of the necessary information required by 15 CFR 930.39, but they are not required to be part of the information required in § 930.39(a) and are not reviewed as the proposed Federal agency activity for consistency.

NOAA has proposed to change ''event(s)'' to ''activity(ies)'' since the term ''activities'' more closely follows the statute and NOAA's regulations.

Rule Change 5: § 930.31(d) Federal agency activity. General Permits. In the 2000 rule, NOAA acknowledged the hybrid nature of general permits and gave Federal agencies the option of issuing a general permit under either CZMA § 307(c)(1) (Federal agency activity) or CZMA § 307(c)(3)(A) (Federal license or permit activity), even though NOAA has opined that, for CZMA purposes, a general permit was more appropriately treated as a Federal agency activity. In this proposed rule, NOAA would remove the option to allow Federal agencies to treat their general permits as a Federal license or permit activity for purposes of complying with CZMA § 307 and 15 CFR part 930. If a general permit is proposed by a Federal agency and coastal effects are reasonably foreseeable, then the general permit would be treated as a Federal agency activity under CZMA § 307(c)(1) and 15 CFR part 930, subpart C. NOAA's determination that general permits are Federal agency activities and not Federal license or permit activities under CZMA § 307 is for CZMA purposes only and does not affect the status of general permits under the Administrative Procedure Act or under any other Federal statute.

There are several reasons why a general permit cannot be a Federal license or permit activity under CZMA § 307. Under NOAA's regulations, Federal agencies are not ''applicants'' within the meaning of 15 CFR 930.52. *See* 65 FR 77145 (col 1&2) (Dec. 8, 2000). Even if NOAA were to change its regulations to allow a Federal agency to be an ''applicant,'' the Federal agency could not appeal the State's objection to the Secretary of Commerce.

Further, even if a general permit were treated as a Federal license or permit activity for CZMA § 307 purposes and a State objected, the potential users of a general permit could not appeal the State's objection since there would be no case specific factual inquiry on which the Secretary could base her decision.

Other changes would clarify that if a State objects to a Consistency Determination for a general permit, the general permit would still be in legal effect for that State, but that 15 CFR part 930, subpart C of the consistency regulations would no longer apply. Thus, a State objection to a Consistency Determination for the issuance of a general permit would alter the form of CZMA compliance required, transforming the general permit into a series of case-by-case CZMA decisions and requiring each potential user of the general permit to submit an individual consistency certification in compliance with 15 CFR part 930, subpart D.

NOAA reiterates that if a State concurs with a consistency determination for general permit, then the State may not subsequently review individual uses of the general permit under subpart C or D. For example, in the OCS oil and gas context, if a State has concurred with the Environmental Protection Agency's Consistency Determination for an OCS National Pollutant Discharge Elimination System (NPDES) general permit under the Clean Water Act, then the State may not review the use of the NPDES general permit for consistency at the OCS EP or DPP stage of reviews or when a facility files a notice of intent to be covered by a general permit under the NPDES regulations. If, however, a State objects to the OCS NPDES general permit, then each user, or ''applicant'' in CZMA parlance, must file a consistency certification with the State and obtain the State's concurrence before the applicant may avail itself of the NPDES general permit.

Rule Change 6: § 930.35(d) General Negative Determination. Section 930.35(d) would be changed to (e) and a new section 930.35(d) would be added. The General Negative Determination (General ND) would be an administrative convenience for Federal agencies to use when they undertake repetitive activities that, either on an individual, case-by-case basis or cumulatively, do not have coastal effects. The General ND would not diminish the factual basis required for Federal Consistency reviews. The Federal agency must still make a factual effects analysis for the repetitive activities. It is proposed as an analogue to the existing General Consistency Determinations (15 CFR 930.36(c)), for repetitive activities which do have cumulative effects.

A General ND would not affect the application of the ''effects test'' and the requirement for Federal agencies to provide Consistency Determinations to coastal States when there are reasonably foreseeable coastal effects. For example, a General ND may apply to activities far away from the coastal zone because coastal effects are not foreseeable, but might not apply to the same activities proposed in or near the coastal zone where the proximity to coastal uses or resources may have coastal effects and require a General Consistency Determination or Consistency Determination.

A Federal agency would not be required to use a General ND. If any of the conditions for a negative determination are met, then a Federal agency could choose to provide the State with either a Negative Determination, or if applicable, a General ND. The conditions for a Negative Determination are when a Federal agency determines that there will not be coastal effects and the activity is listed in the State's program, the State has notified the Federal agency that it believes coastal effects are reasonably foreseeable, the activity is the same as or is similar to activities for which consistency determinations have been prepared in the past, or the Federal agency undertook a thorough consistency assessment and developed initial findings on the coastal effects of the activity. *See* 15 CFR 930.35(a)(1)–(3).

If a State subsequently finds that a General ND may no longer be applicable, the State agency may request that the Federal agency reassess the General ND. In the case of a disagreement between the State and the Federal agency, the conflict resolution provisions of subpart G are available.

Rule Change 7: § 930.41(a) State agency response. This change would clarify when the State's consistency review period begins for Federal agency activities. The proposed changes provide additional clarification to States that the State's determination of whether the information provided by

the Federal agency pursuant to 15 CFR 930.39(a) is complete, is not a substantive review. Instead, it is a ''checklist'' review to see if the description of the activity, the coastal effects, and the evaluation of the State's enforceable policies are included in the submission to the State agency. If the items required by § 930.39(a) are included, then the 60-day review starts. This review does not determine or evaluate the *substantive adequacy* of the information. The adequacy of the information is a component of the State's substantive review which occurs during the 60-day review period.

To help resolve disputes as to when the 60-day review period started when a State later claims that required information was not provided, NOAA proposes to replace the requirement to ''immediately'' notify the Federal agency that information required by § 930.39(a) is missing with a 14-day notification period. If the State agency has not notified the Federal agency of missing information within this 14-day period, then the State waives the ability to make that claim and the 60-day review period started when the State received the initial determination and information. This would require that State agencies pay close attention to the consistency determinations they receive, but would not affect the State's ability to review the activity or to object for lack of information at the end of the 60-day review period.

Rule Change 8: § 930.51(a) Federal license or permit. The proposed changes would emphasize and clarify NOAA's long-standing view of the elements that are needed to subject a ''federal license or permit'' to State Federal Consistency review. First, Federal law must require that the applicant obtain the federal authorization. Second, the purpose of the federal authorization is to allow a non-federal applicant to conduct a proposed activity. Third, the proposed activity to be federally permitted must have reasonably foreseeable effects on a State's coastal uses or resources, and fourth, the proposed activity was not previously reviewed by the State agency for Federal Consistency (unless the authorization is a renewal or major amendment pursuant to § 930.51(b)). All four of these elements are required for Federal Consistency review.

Federal license or permit does not include, for CZMA Federal Consistency purposes, federal authorizations for activities that do not have coastal effects. Federal Consistency does not apply to a required federal certification of an applicant's ministerial paperwork which is merely incidental or related to an activity that either does not have coastal effects or an activity that is already subject to Federal Consistency review. For example, when MMS makes certain determinations such as the qualification of bidders for OCS lease sales, bonding certifications, certifications of financial responsibility, approvals of departures from regulations in order to enhance safety. Or a Federal agency may be required to certify the equipment to be used for an activity which has already been the subject of a consistency review. Each of these certifications are merely incidental to the activity undertaken by the applicant which has already or will in the near future be the subject of a full Federal Consistency review.

As another example, MMS has ''Notification requirements'' which are not subject to Federal Consistency since they only require the operator to notify MMS of an activity and MMS' approval is not required. Another example would be when a power plant is transporting spent nuclear waste by ship; the plant must provide the U.S. Coast Guard with a transportation plan which the Coast Guard reviews, but Coast Guard approval is not required by Federal law. Because Coast Guard approval was not required and the Coast Guard merely reviewed the transportation plan, there was no Federal Consistency review under CZMA § 307(c)(1) or 307(c)(3)(A).

However, a lease issued by a Federal agency to a non-Federal entity that is the only authorization to use federal property for a non-Federal activity would still be reviewable under the listed and unlisted requirements in §§ 930.53 and 930.54, if the lease was required by law, the proposed activity will have coastal effects, and the State did not previously review a Federal authorization for the same project.

Thus, the proposed change to the rule would ensure that the definition of ''Federal license or permits'' is not overly-inclusive or beyond the commonly understood meaning of license or permit, while at the same time retaining the phrase ''any required authorization'' to capture any form of Federal license or permit that is: (1) Required by Federal law, (2) authorizes an activity, (3) the activity authorized has reasonably foreseeable coastal effects, and (4) the authorization is not incidental to a Federal license or permit previously reviewed by the State. Thus, the removal of the forms of approvals listed in the current language would not exclude a category of Federal authorizations from Federal Consistency, but would emphasize that any form of Federal authorization must have the required elements to be considered a ''Federal license or permit'' for CZMA purposes.

Factual disputes concerning whether a Federal authorization is subject to Federal Consistency can be addressed through NOAA's regulations regarding the review of listed or unlisted federal license or permit activities. 15 CFR 930.53 and 930.54.

The effects test language at the end would be deleted as superfluous since subpart C contains the effects analysis for Federal agency activities.

Rule Change 9: § 930.51(e) Substantially different coastal effects. Section (e) was added in the 2000 rule to emphasize that determining whether the effects from a renewal or major amendment are substantially different is a case-by-case factual determination that requires the input of all parties. NOAA used the phrase ''the opinion of the State agency's views shall be *accorded deference,*'' (emphasis added) to help ensure that the State agency has the opportunity to review coastal effects which may be substantially different than previously reviewed. NOAA expected that the parties would discuss the matter and agree whether effects are substantially different. NOAA did not intend to use the phrase to have the State agency make the decision on whether coastal effects are substantially different. Thus, to provide clarification, NOAA proposes new language stating that the expert permitting Federal agency makes this determination after consulting with the State and applicant. If a State disagrees with a Federal agency's determination of substantially different coastal effects, then the State could either request NOAA mediation or seek judicial review to resolve the factual dispute.

Rule Change 10: § 930.58(a)(1) Necessary data and information. This change would provide a greater level of specificity for information requirements for federal license or permit activities. The purpose of § 930.58 is to identify the information needed to start the six-month consistency review period and to the extent possible, identify the information needed by the State agency to make its concurrence or objection. Thus, the more specific the information requirements are, the more predictable and transparent the process.

Section 930.58(a)(1) would be reorganized to clarify that ''necessary data and information'' includes (1) a copy of the federal application, and (2) all supporting material provided to the Federal agency in support of the application, (3) information that is required and specifically described in the State's management program, and (4) if not included in 1 or 2, a detailed

description of the activity, its associated facilities and the coastal effects.

NOAA proposes to remove the clause in § 930.58(a)(1) that says ''and comprehensive data and information sufficient to support the applicant's consistency certification.'' This clause is not needed since the rest of the section, especially as changed, describes the information NOAA determined necessary and § 930.58(a)(2) allows the State to describe in its CMP necessary information in addition to that required by NOAA regulations. The language proposed to be removed is ambiguous as it could refer to the other paragraphs in this section or to other undefined information, and could create uncertainty in the determination of when the six-month review period starts.

These changes would not affect a State's ability to specifically describe ''necessary data and information'' in the State's federally approved management program (§ 930.58(a)(2)), or to request additional information during the six-month review period (§ 930.60(b)), or to object for lack of information (§ 930.63(c)).

Rule Change 11: § 930.58(a)(2) Necessary data and information (State permits). In the 2000 rule, NOAA allowed States to describe State permits as necessary data and information. Unfortunately, implementation of this provision had the potential to require applicants to obtain State permit approval before the six-month consistency review period could begin. NOAA does not believe the statutorily defined six-month review process anticipated such a conundrum. While it may be appropriate or necessary for a State to include complete State permit *applications* as necessary data and information, it is not appropriate to require an approved permit. Thus, NOAA proposes to remove ''State permits'' as eligible necessary data and information, but has retained State permit applications.

Rule Change 12: § 930.60 Commencement of State agency review. This change would clarify when the State's consistency review period begins for federal license or permit activities. The changes would provide additional clarification to States that the State's determination of whether the information provided by the applicant pursuant to 15 CFR 930.58 is complete, is not a substantive review. Instead it is a ''checklist'' review to see if the application, description of the activity, the coastal effects, the evaluation of the State's enforceable policies, and specific information described in the State's federally approved program are included in the submission to the State agency. If the items required by § 930.58 are included, then the six-month review starts. This review does not determine or evaluate the *substantive adequacy* of the information. The adequacy of the information is a component of the State's substantive review which occurs during the six-month review period. The change would also further clarify that a State may not stop, stay or otherwise alter the consistency timeclock once it begins, unless the applicant agrees in writing to stay the time period for a specific or defined amount of time. NOAA proposes to delete the word ''extend'' because the six-month period is set by statute and cannot be extended by rule. Thus, the State agency and applicant can stay or ''toll'' the running of the six-month period for an agreed upon time, after which the remainder of six-month statutory period would continue.

NOAA reiterates that if a State wants to require certain information prior to starting the six-month review period, the only way it can do so is to amend the State's management program to identify specific ''necessary data and information'' pursuant to § 930.58(a)(2).

NOAA also proposes to change the section to remove a State's option of starting the six-month review period when a consistency certification has not been submitted. *See* below under *Collier Decision* for further information.

The proposed re-write of paragraph (a)(2) is not a substantive change, but is merely a more clear restatement of the existing paragraph.

The Collier Decision. Under the 2000 rule, § 930.60(a)(1)(ii) allowed a State to start the six-month consistency review period even if the applicant had not provided a consistency certification or the necessary data and information. However, now, as described in *Collier,* NOAA has determined that a State could not start the six-month review without the applicant's consistency certification. *See* NOAA's Dismissal Letter in the Consistency Appeal of Collier Resources Company (April 17, 2002). In *Collier,* NOAA determined that:

> An applicant's failure to provide a state with a consistency certification cannot divest a state of its authority pursuant to CZMA section 307(c)(3)(A). However, filing a state objection without an underlying consistency certification provided by the applicant is neither a remedy for the applicant's failure to comply with the CZMA, nor a valid exercise of [the State's] own CZMA authorities.
>
> The statutory language and scheme of the CZMA presumes that the applicant has the first opportunity to demonstrate that its activity is consistent with the enforceable policies of the state CMP. Section 307(c)(3)(A) provides in pertinent part: ''[a]t the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification.'' The NOAA regulations also require a state objection be made in response to the applicant's consistency certification. 15 CFR 930.64. Likewise, consistency cannot be presumed without the receipt of a consistency certification. 16 U.S.C. 1456(c)(3)(A) and 15 CFR 930.63. Finally, NOAA's regulations anticipate that the applicant will have the first opportunity to provide the state with the necessary information and data to demonstrate consistency with the state CMP and that only after the receipt of that information can the state consistency review process begin. *See* 15 CFR 930.58.
>
> Given the language and structure of the statute and NOAA's implementing regulations, it is clear that an applicant's consistency certification is essential to a state's Federal consistency review. Therefore, I conclude that a State may not ''object'' within the meaning of the CZMA, to an application for a Federal license or permit when no consistency certification has been submitted. Florida's objection in this case has no effect or is not valid.
>
> A coastal state is not without remedy, however, when a recalcitrant applicant declines to provide the necessary consistency certification. First, both the statute and the regulations make it clear that a Federal agency cannot issue a license or permit until ''the state or its designated agency has concurred with the applicant's consistency certification or until by the state's failure to act, the concurrence is conclusively presumed.'' 16 U.S.C. 1456(c)(3)(A). In addition, a state may seek enforcement of the CZMA in Federal court. Unlike the Secretary of Commerce, the Federal courts have the authority to require compliance with Federal law through the issuance of mandamus, injunction and other relief.
>
> Optimally, in matters such as this, where an applicant disagrees that its permit or license activity is subject to the provisions of a state CMP can be resolved through the availability of mediation services of NOAA's Office of Ocean and Coastal Resource Management (OCRM), 15 CFR 930.55, or an advisory letter issued by OCRM pursuant to 15 CFR 930.142 (15 CFR 930.3(2001)). While these informal procedures do not carry the weight of a federal court order, they represent the views of the expert agency charged with the implementation of the CZMA. These informal remedies are also more expedient and less costly than the Secretarial appeals process or federal litigation.

While not central to the decision made in *Collier,* NOAA opined in *Collier* that the six-month review period could also only start after receipt of the necessary data and information. *Id.* However, NOAA has determined that a State could, if it wished to, start the six-month review upon receipt of a consistency certification, but without the necessary data and information (but could not then later stop the six-month

time period without agreement from the applicant). NOAA makes this distinction because, as discussed in *Collier,* a consistency certification is central to the State's jurisdiction and authority under the statute to conduct a consistency review. Allowing necessary data and information to be submitted after the six-month period has begun provides flexibility to the State and applicant to remedy the submission of the necessary data and information during the six-month review.

Rule Change 13: § 930.63(d). The cross reference to 930.121(d) is incorrect. There is no 930.121(d). The reference should be to 930.121(c).

Rule Change 14: § 930.76(a) and (b) Submission of an OCS plan, necessary data and information and consistency certification. These proposed changes would address information requirements for OCS plans. The changes would provide a more specific list of the information required. Clean Air Act and Clean Water Act permits are not added to NOAA's regulations as these permits are already required to be ''described in detail'' in OCS plans and are covered under the State's review of the OCS plan. *See* 30 CFR 250.203(b)(4), 203(b)(19), 204(b)(8)(ii) and 204(b)(14). Thus, States should not review CWA and CAA permit applications independently of the OCS plan review.

While the status of the completion of NEPA documents is an issue raised by coastal States when performing consistency reviews, NOAA is not adding language requiring that NEPA documents be included as information necessary to start the six-month review period. A requirement that NEPA documents (draft or final) be completed prior to the start of the six-month review period would be incompatible with statutory requirements in the OCSLA. MMS must make its decision whether to approve an EP within 30 days of receipt of the EP. Within that 30-day period, MMS completes its Environmental Assessment (EA). Thus, to meet OCSLA requirements and not to delay the CZMA process, MMS submits the EP and accompanying information to the State within days of receipt of the EP. The six-month review period starts when the State receives that information. MMS sends the EA to the State when the EA is completed. Since the State receives the EA within a very short period (20–30 days) after the start of the six-month review period, there is no harm to the State and the CZMA process is not delayed unnecessarily.

For DPP's, where MMS prepares a new Environmental Impact Statement (EIS), there is additional time in the process and States, if they want a draft EIS prior to starting the six-month consistency review process, can amend their programs, pursuant to 15 CFR 930.58(a)(2), to include draft EIS' and other information as data and information necessary to start the six-month review. States will not be able to amend their programs to require final EIS' for OCSLA purposes as part of the necessary data and information because the OCSLA requires MMS to approve or deny a DPP within 60 days after completion of the final EIS. *See* 43 U.S.C. 1351(h) and 30 CFR 250.204(l). This would not provide sufficient time for the CZMA process.

Paragraph (a) is proposed to be deleted and combined with (b) as (a) is redundant with (b), particularly (1) and (3).

Rule Change 15: § 930.77(a) Commencement of State agency review and public notice. This change would clarify when the State's consistency review period begins for OCS plans. The proposed changes would provide additional direction to States that the State's determination of whether the information provided by the person pursuant to 15 CFR 930.76 is complete, is not a substantive review. Instead, it is a ''checklist'' review to see if the OCS plan, description of the activity, the coastal effects, the evaluation of the State's enforceable policies, specific information described in the State's federally approved program, and information required by Interior's regulations are included in the submission to the State agency. If the items required by § 930.76 are included, then the six-month review starts. This review does not determine the *substantive adequacy* of the information. The adequacy of the information is a component of the State's substantive review which occurs during the six-month review period.

The proposed changes would also clarify that if the State wants to require additional information for its review of OCS plans, it must describe such information in its program, pursuant to § 930.58(a)(2).

This section would also be changed to address the circumstances where a State believes the information submitted pursuant to NOAA's regulations is insufficient (*e.g.*, either the analysis was substantively inadequate, or that the OCS plan addresses new activities or effects not foreseen and for which information was not provided). In such a case a State may request additional information. The proposed change would require that such a request be made within the first three months of the six-month review period. A request for additional information does not stop, stay or otherwise alter the six-month review period.

Rule Change 16: § 930.82 Amended OCS plans. To be consistent with § 930.76(c), this proposed change would clarify that it is Interior, not the person, that submits the consistency certification and information to the State for amended OCS plans.

Rule Change 17: § 930.85(c) Failure to comply substantially with an approved OCS plan. While this section existed prior to the 2000 rule revisions, NOAA proposes this change to more closely coordinate CZMA and OCSLA requirements. Under NOAA's regulations and the OCSLA program, it is MMS that determines whether a change to an OCS plan is ''significant'' and thus, whether the change requires CZMA Federal Consistency review. This determination should be the same for failure to substantially comply with an approved OCS plan. This change would be consistent with CZMA section 307(c)(3)(B), and in fact the language is taken directly from the statute. The previous language was developed in the 1979 regulations as a means of determining when a person has substantially failed to comply. However, the existing section has not been used and NOAA believes that such determinations should be made by MMS. Also, to be consistent with § 930.76(c), this change would clarify that it is Interior, not the person, that submits the consistency certification and information to the State for OCS plans.

Rule Change 18: § 930.121(c) Alternatives on appeal. This provision was amended in the 2000 rule to address ''confusion as to when alternatives may be raised, the consequences of a State agency not providing alternatives or [sic] when it issues its objection, and the level of specificity that the State agency needs to provide to satisfy the element on appeal.'' 65 FR 77151 (December 8, 2000). Implementation of this change has prompted NOAA to propose several refinements in the language. The word ''new'' would be struck to clarify that all information submitted to the Secretary during the appeal may be considered in determining whether an alternative is reasonable and available. The word ''submitted'' would be substituted for the word ''described'' to reflect more accurately the manner in which information becomes part of the decision record of an appeal.

The last sentence has been proposed to make clear that the Secretary would not substitute the Secretary's judgement for that of the State in determining whether an alternative is consistent

with the enforceable policies of the management program. This is not a change in standards or practice, only a clarification. As in the 2000 rule, both the State and appellant and commenters on the appeal will be able to provide the Secretary with information concerning an alternative. The addition of this sentence, however, would make clear that any alternative, whether submitted to the Secretary by the appellant, the State, a third party, or identified by the Secretary from previous appeal decisions, will not be considered by the Secretary as ''reasonable'' or ''available'' unless the State submits a statement to the administrative record of the appeal that the alternative will allow the activity to be conducted in a manner consistent with the enforceable policies of the management program. To allow otherwise would require the Secretary to make a finding that the alternative would be consistent with the management program and would effectively substitute the Secretary's judgement for that of the State. The Secretarial appeals process is a *de novo* consideration of whether a proposed activity is consistent with the objectives of the CZMA or otherwise necessary in the interest of national security. It does not review whether the proposed activity is consistent with the State's enforceable policies. Likewise, the Secretary relies on the State to determine whether an alternative is consistent with the enforceable policies of the management program.

Rule Change 19: § 930.125 Notice of appeal and application fee to the Secretary. In order to process an appeal within the proposed time frames under § 930.130, necessary changes are proposed to various sections (§§ 125, 127, 128, 129 and 130) to ensure that briefs, information, and public and Federal agency comment periods accommodate a shorter time period for developing the decision record and issuing a decision. These proposed procedures will provide sufficient due process to all parties, but will be strictly adhered to, otherwise NOAA will not be able to meet the proposed appeal time frames.

Rule Change 20: § 930.127 Briefs and Supporting Materials. The proposed changes in § 930.127 are to reflect changes in practice necessary to accommodate the proposed time frames for the closure of the decision record in § 930.130 and to make the administration of the appeals process more efficient and transparent to the public, States and potential appellants. These changes would likely mean that States, appellants, Federal agencies and the public will have to be more diligent in providing thorough and complete information to the Secretary in a shorter amount of time. The proposed changes would allow each party and the public, in most cases, only one opportunity to provide their arguments to the Secretary. The proposed changes reflect the fact that the Secretary needs only sufficient time and information required to make a rational and well-reasoned determination of each of the elements in 15 CFR 930.121 or 930.122.

The proposed change to § 930.127(d) would move language from § 930.130(d) regarding the appellant's burden to support its appeal, and makes clear the State's burden of submitting evidence when asserting an alternative to the proposed action is reasonable, available and consistent with the State management program. This has been the Secretary's long-standing practice in accordance with the Secretary's decision in Korea Drilling Inc. (1989). This change would codify existing practice and consistency appeal precedent.

Rule Change 21: § 930.128 Public notice, comment period, and public hearing. The proposed changes to § 930.128 would accommodate the proposed 270-day period to develop the decision record in § 930.130. Other changes are intended to promote clarity and efficiency, obtaining comments from the public and interested Federal agencies, and in processing the appeal. In addition, NOAA proposes to make explicit the Secretary's practice of giving additional weight to Federal agencies' comments when they concern topics within the area(s) of the Federal agency's technical expertise.

Rule Change 22: § 930.129 Dismissal, remand, stay, and procedural override. The proposed additions to 930.129 would accommodate the proposed 270-day period to develop the decision record in § 930.130.

Rule Change 23: § 930.130 Closure of the decision record and issuance of decision. This proposed change would provide 270 days as a definitive date by which the Secretary shall close the decision record in appeals filed from State objections under 15 CFR part 930, subparts D, E and F. Three exceptions to the 270-day period are proposed to allow the parties to mutually agree to stay the 270-day period and to ensure that the Secretary has relevant NEPA and ESA documents, if the Secretary determines that such information is needed to decide the appeal. These exceptions would not mean that the Secretary would create NEPA or ESA documents for the appeal. The stay of the 270-day decision record period would apply *only* when the NEPA and/or ESA documents are *required* to issue for the Federal agency authorization or funding subject to the appeal. If the parties to an appeal wanted to provide comments on the NEPA and/or ESA document to the Secretary as part of the decision record for an appeal, then the parties could avail themselves of proposed section 930.130(a)(2)(i) and mutually agree to stay the closing of the decision record.

Other changes are proposed to more accurately track the existing statutory language.

V. Comments Received by NOAA on the ANPR

NOAA issued an ANPR on July 2, 2002, primarily to address issues raised by the Energy Report related to the scope of information needed by the States and the Secretary in their respective reviews of OCS oil and gas activities. In the ANPR NOAA sought public comment on the following six questions:

1. Whether NOAA needs to further describe the scope and nature of information necessary for a State CMP and the Secretary to complete their CZMA reviews and the best way of informing Federal agencies and the industry of the information requirements.

2. Whether a definitive date by which the Secretary must issue a decision in a consistency appeal under CZMA sections 307(c)(3)(A), (B) and 307(d) can be established taking into consideration the standards of the Administrative Procedures Act and which, if any, Federal environmental reviews should be included in the administrative record to meet those standards.

3. Whether there is a more effective way to coordinate the completion of Federal environmental review documents, the information needs of the States, MMS and the Secretary within the various statutory time frames of the CZMA and OCSLA.

4. Whether a regulatory provision for a ''general negative determination,'' similar to the existing regulation for ''general consistency determinations,'' 15 CFR 930.36(c), for repetitive Federal agency activities that a Federal agency determines will not have reasonably foreseeable coastal effects individually or cumulatively, would improve the efficiency of the Federal consistency process.

5. Whether guidance or regulatory action is needed to assist Federal agencies and State CMPs in determining when activities undertaken far offshore from State waters have reasonably foreseeable coastal effects and whether the ''listing'' and ''geographic location''

descriptions in 15 CFR 930.53 should be modified to provide additional clarity and predictability to the applicability of State CZMA Federal Consistency review for activities located far offshore.

6. Whether multiple federal approvals needed for an OCS EP or DPP should be or can be consolidated into a single consistency review. For instance, in addition to the permits described in detail in EP's and DPP's, whether other associated approvals, air and water permits not ''described in detail'' in an EP or DPP, can or should be consolidated in a single State consistency review of the EP or DPP.

NOAA received comments from States, environmental groups, industry, the public, members of Congress, and Federal agencies. This proposed rule is based on NOAA's evaluation of the ANPR issues, comments submitted in response to the ANPR, and some technical and clarifying changes that should be made to the regulations. Below are NOAA's response to comments on the ANPR.

General Comments. All commenters except two Federal agencies and the oil and gas industry representatives urged NOAA to take no action because the recent 2000 rulemaking was comprehensive and further rulemaking is unwarranted as no problems have emerged with the existing regulations. The majority of the commenters urged additional stakeholder meetings first, and noted that Congress has sought to broaden, not narrow, the scope of CZMA review. They also stated that the consistency process has worked well for many years, and that any controversy was not the result of the CZMA process, but the proposed projects and their effects on coastal uses and resources were themselves controversial. Commenters also suggested that any lack of effectiveness in CZMA–OCSLA interactions is the result of a project proponent's lack of early coordination, familiarity and experience with the CZMA. Further, these commenters urged NOAA to commit additional resources to its Federal Consistency education and outreach efforts. Many of these commenters also felt that changes to address many of the ANPR questions could jeopardize the CZMA effects test and public review. A few of these commenters, while generally opposing any changes, did offer some rulemaking suggestions on the six ANPR questions.

Federal agency and industry comments urged NOAA to make many changes to the regulations to refine and improve the partnership between Federal and State agencies. These commenters believe that NOAA's 2000 rule was overly broad and inconsistent with the CZMA's objective to consider the national interest. Further, the two Federal agencies that commented believe that States can use the CZMA for the cancellation of energy projects, even after a Federal agency has approved the project. NOAA's proposed changes address Federal agency and industry concerns.

NOAA Response to General Comments. As stated in the ANPR, NOAA is not seeking to alter the balance of State and Federal interests provided for in the CZMA and the 2000 rule. Neither the Energy Report nor the ANPR suggest changing the States' or public's rights under the CZMA or 2000 rule. NOAA does believe, however, that there are some improvements that can be made to the Federal Consistency regulations.

NOAA agrees that the Federal Consistency process is not primarily a source of conflict, but that the projects reviewed through the CZMA process are often controversial. Most projects are approved by the coastal States and there is little litigation.

Early coordination was stressed in NOAA's 2000 revision to the regulations and in recent Federal Consistency Workshops conducted by NOAA. NOAA hopes to continue its education and outreach efforts, as budget and resources allow. Through workshops and web based information NOAA intends help stakeholders avoid problems arising from inadequate knowledge of the consistency requirements, limited experience with consistency, or insufficient State-federal coordination.

NOAA agrees that some improvements can be made to the regulations, but does not believe that NOAA's regulations are overly broad. The 2000 rulemaking reflects CZMA directives and Congressional intent and was finalized after four years of coordination and collaboration with all stakeholders. It may be that some of the issues raised in the comments are not really problems with NOAA's regulations, but result from requirements and policy set forth by Congress in the statute. For example, NOAA does not have the authority to exempt federal actions from CZMA review and States have the authority to object to the issuance of federal licenses or permits to be issued by Federal agencies.

The figures discussed above and those provided by some of the State commenters demonstrate that offshore oil and gas exploration and development not only continues to occur, but flourishes. Coastal States continue to ensure that both the CZMA's energy development and resource protection objectives are met. There has, of course, been negotiation between coastal States, MMS and industry, and there have been some issues. NOAA is attempting to address some of those issues through this rulemaking.

NOAA appreciates the concern raised in the example provided by industry where a State required changes to oil and gas project to be located on an ice-platform. It may be that some of the changes proposed by NOAA will address those concerns or that better coordination is needed between the State, industry and MMS. However, the State's use of consistency to ensure that the ice-platform met State enforceable policies is in fact how a State is authorized by Congress to use Federal Consistency. Through the CZMA, Congress gave the States the ability to review federal actions, independent of the Federal agencies' reviews. It is important to note the statistics referred to above and acknowledge that States concur with most projects reviewed, including oil and gas projects.

ANPR Questions

Information Needs

Comment 1. Existing provisions in the CZMA regulations address information needs for most projects. Describing specific documents in the regulations that a State may need would be ineffective and cumbersome because information needs change from project-to-project. The type of information needs of a State can vary from project-to-project depending on how detailed the EP or DPP is and the complexity of a project. One of the fundamental attributes of the CZMA is that it allows each State to develop its own coastal management program in light of the individual characteristics and priorities of the States. Thus, the development and imposition of detailed nationwide information requirements appears to be incompatible with the statutory framework of the CZMA.

Most of the OCSLA information requirements ask for fairly specific and physical descriptions, while the CZMA requires an analysis of the proposed project's consistency with the enforceable policies of a State's CMP. Where there is a problem, the proper remedy is the development of guidance or memoranda of understanding coordinating information requirements between the State and Federal agencies. There have been few instances where the lack of availability of an EIS or other NEPA document led to an objection based on lack of information. If

information problems (such as lack of NEPA documents) do occur, they can be resolved using the procedures available under 15 CFR 930.60, adopted when the Federal Consistency regulations were updated in 1990, which clarified when the consistency time clock may begin. If OCRM does revise the information requirements aspect of the regulations, California stated it would not oppose language analogous to that of § 930.37 being placed in subparts D and E of the regulations.

NOAA Response to Comment 1. NOAA's regulations at 15 CFR 930.58 and 930.76, and MMS' regulations already provide ''national standards'' for information needs for OCS oil and gas plans. NOAA's regulations also provide the mechanism for addressing individual State information needs, both through each State's enforceable policies which are approved by NOAA and the ''necessary data and information'' specifically identified in a State's federally approved management program, pursuant to 15 CFR 930.58(a)(2). Section 930.76(b) and includes the information requirements of § 930.58.

These information requirements provide adequate guidance for most projects. Issues have been raised regarding OCS oil and gas projects and whether MMS and NOAA regulations provide enough detail about the information needed or whether additional information should be described in the regulations. In addressing these issues, NOAA recognizes that information required for MMS' purposes may not be sufficient for State CZMA purposes. Thus, NOAA is not proposing to eliminate 15 CFR 930.58(a)(2), but, rather encourages States to make better use of the section so that State information needs will be known before CZMA review begins and the applicant and Federal agency will be able to plan for the State information needs when developing the project. NOAA has proposed various improvements to increase clarity and efficiency to the Federal Consistency regulations concerning information needs.

NOAA agrees that States and Federal agencies should have flexibility to coordinate NEPA information issues.

Comment 2. MMS' comprehensive Notice to Lessees for the Gulf of Mexico addresses many of the same issues as NOAA's proposed rule-making and can be used as a model for those States and regions outside the Gulf region, precluding the need for NOAA to further revise the regulations on these issues.

NOAA Response to Comment 2. Neither the current nor the proposed regulations would prohibit State-Federal memoranda of understanding on information needs, such as the recent effort by MMS and the Gulf States. NOAA will continue to encourage such agreements.

Comment 3. For Virginia's Chesapeake Bay Preservation Act Program, the State would like detailed maps showing (1) the layout of proposed on shore facilities and other elements of the project (*i.e.*, transmission lines, reservoirs, borrow areas, waste disposal locations, etc.); and (2) delineation of Chesapeake Bay Preservation Areas on the properties under study.

NOAA Response to Comment 3. The State could amend its management program to describe the information as being ''necessary data and information,'' pursuant to 15 CFR 930.58(a)(2) and (c), and thus required of the applicant. If States include detailed information requirements in their management programs pursuant to § 930.58(a)(2), then problems associated with unpredictable State requests for additional information will dissipate.

Comment 4. States are allowed to request additional data and information during the CZMA process even though they may have already received this information, through MMS, in the documents prepared and submitted to the federal permitting authority by a company. Since MMS has very thorough environmental review regulations, information generated for this process should be honored by the States and not requested anew. States should work with the federal permitting agency and MMS to identify what information is necessary at the beginning of the OCSLA and CZMA processes.

NOAA Response to Comment 4. All parties should identify information needs as early as possible. This should occur before CZMA review begins. There should not be a need to develop information in addition to that required by MMS regulations and 15 CFR 930.58 and 930.76(b) once the CZMA review begins, except in limited, unforeseen circumstances and/or where issues regarding the substantive adequacy or completeness of the information submitted have arisen. Once the CZMA review begins, coastal States need to allow sufficient time for industry or MMS to respond to any requests for additional information. Thus, NOAA proposes to clarify information needs and, for OCS plans, proposes a cut off date at the three month period after which no additional information can be requested by a State.

Comment 5. A better description of the scope and nature of information will be beneficial. Preparation of a list of the specific information that is required to complete the CZMA process for energy projects is encouraged. The applicants should have access to these lists of informational needs when they are preparing the necessary applications. This approach would assure that all the players understand the type and extent of the information that must be submitted prior to the submission of any application. The information requirements should be keyed to the approved coastal management plan and enforceable policies of the plan. By ensuring that the information requests are firmly grounded in the approved plan, NOAA can encourage States to keep their plans current.

NOAA Response to Comment 5. NOAA agrees that one reason for information uncertainty is that some States do not list information needs pursuant to 15 CFR 930.58(a)(2). Another reason for uncertainty is that many States have not kept their management programs up to date by submitting program changes to NOAA. NOAA has begun to address this issue with the States. In addition, NOAA is looking for ways to facilitate the process to update State programs, which is primarily a resource issue for both the States and NOAA.

Comment 6. NOAA's regulation at 15 CFR 930.58(a)(1) includes: ''comprehensive data and information sufficient to support the applicant's consistency certification.'' This language is too broad and has been used as a basis for continual requests by States for additional information. Information required by MMS regulations should be adequate for the States to determine consistency. Unreasonable requests for more information result in substantial costs and delays, create differing requirements among the States and this unpredictability has a dampening effect on OCS energy projects.

NOAA Response to Comment 6. NOAA agrees that the language in § 930.58(a)(1) which says ''and comprehensive data and information sufficient to support the applicant's consistency certification'' is not needed since the section describes the information needed and § 930.58(a)(2) allows the State to describe any necessary information in addition to that required by NOAA regulations. The language proposed to be removed is ambiguous and could create uncertainty in the determination of when the six-month review period starts. NOAA proposes to remove this clause from

§ 930.58(a)(1) and replace it with a requirement for ''information, if any, relied on by the applicant.'' This phrase describes a set of information that can be specifically defined and does not require additional evaluation by the applicant. NOAA also proposes restructuring the section to provide greater clarity.

Comment 7. More and more frequently, States are delaying the issuance of the consistency concurrence until the NEPA process is completed. If a final NEPA document contains no further analysis of coastal effects, the information in it is irrelevant to the State's concurrence or objection to the consistency determination. Furthermore, by withholding a State response to the consistency determination until a final NEPA document is published, the State denies the Federal agency any benefit the agency might get from the State's comments on the consistency determination. We recommend that States not be allowed to delay their responses to consistency determinations under the ruse of the need for additional information. States should be held to the timelines established in 15 CFR part 930. To accomplish this, NOAA should clarify the purpose of the consistency analysis, and the importance of a timely State response, so that Federal agencies can address that response in any final NEPA documentation.

NOAA Response to Comment 7. States cannot delay their consistency responses for any reason, unless the State, Federal agency and, if applicable, the applicant agree. If a State does not concur or object within the regulatory time frames, the State's concurrence is presumed, and the Federal agency may proceed. Requests for additional information do not toll or stay the regulatory time periods. For Federal agency activities under CZMA section 307(c)(1), the Federal agency makes the determination of coastal effects, consistency with the State's enforceable policies and whether the Federal agency has sufficient information to make such determinations, pursuant to 15 CFR part 930, subpart C. The State may request additional information or object, but the Federal agency is not obligated to provide information in addition to that required by 15 CFR 930.39, or to extend the regulatory review period. NOAA agrees that a final NEPA document may not be needed for CZMA review, unless there is a substantial change between a draft and final document.

Comment 8. A State agency may effectively extend the required 60-day consistency determination review period merely by requesting additional information from the submitting Federal agency. The State agency is under no obligation to make its information request(s) in a timely manner.

NOAA Response to Comment 8. As discussed above and stated in the regulations, States cannot unilaterally alter the CZMA review periods. In this proposed rule NOAA has further clarified this fact. Section 930.39 sets out information requirements for consistency determinations. It is up to the Federal agency to determine the information necessary to support its consistency determination. NOAA's Federal Consistency regulations provide general information guidelines, but do not, and could not, presume to determine when another Federal agency's administrative record is complete and sufficient to support a consistency determination. Given the 60-day time period for review of Federal agency activities, NOAA proposes to require States to notify Federal agencies within 14 days of receipt of a consistency determination if the State believes the Federal agency has not submitted the information described in § 930.39. Otherwise, a Federal agency's submission is presumed complete and by operation of the NOAA rule, the 60-day review period began when the State received the consistency determination. If the Federal agency believes it has provided sufficient information to the State, the Federal agency can make a fully consistent finding or consistent to the maximum extent practicable finding based on its own administrative record.

Comment 9. Public participation is not required for State action on Federal Consistency determinations (*See* 16 U.S.C. 1456(c)(1) and (2)). There are times when, from the perspective of the Federal agency submitting information to a State agency, maintaining information security, especially handling of sensitive infrastructure and operational information (*e.g.,* anti-terrorist/force protection related projects), is a critical concern. Consequently, NOAA should revise its rules or provide guidance that clarifies that Federal agencies, not State reviewing agencies, should make final determinations concerning the release of sensitive infrastructure or operational information that is submitted in support of a consistency determination under 16 U.S.C. 1456(c)(1) or (2).

NOAA Response to Comment 9. Public participation is required for State review of a Federal agency's consistency determination for Federal agency activities. CZMA section 306(d)(14), 15 CFR 930.42; *see* 65 FR 77126, 77141 (Dec. 8, 2000). NOAA's regulations provide ample means for Federal agencies to deal with emergencies and sensitive information. *See* 15 CFR 930.32(a), (b) and (c). Section 930.32(c) on classified activities and information was added in 2000 with the assistance of the U.S. Navy.

Comment 10. Section 121(c), regarding the evaluation of alternatives on appeal to the Secretary, should be amended to require the Secretary to consult with expert Federal agencies regarding the availability or reasonableness of any alternatives considered by the Secretary.

NOAA Response to Comment 10. NOAA's regulations provide for Federal agency comment into all substantive aspects of a consistency appeal under § 930.121(a), (b) and (c) and Federal agency comments are a part of the Secretary's decision record. NOAA's regulation at 15 CFR 930.128(c) specifically provides for Federal agency comment. NOAA proposes to amend § 930.128 to clarify its historic practice regarding weight given to comments by Federal agencies.

Comment 11. A State can delay the start of the consistency review period for Federal agency activities by claiming the Federal agency's submission is incomplete or otherwise insufficient.

NOAA Response to Comment 11. NOAA proposes to clarify when the State's consistency review period begins for Federal agency activities.

Appeal Time Frames

Comment 12. States do not object to most Federal actions reviewed. No deadline for a Secretarial decision should be allowed to undermine the already well-established methods for resolving disputes in § 930.129(c) and (d) of the CZMA regulations. Retaining flexibility available under current regulations serves the interests of both applicants and regulatory agencies. The only way to further shorten the time frame for appeals would be to have a limited time period for development of the record, once an appeal is filed. However, this would prevent the Secretary from arriving at a decision based on all available information. It would also prejudice the States, because the State is the respondent to the appeal, which usually contains new information supplied by the appellant. If it is decided that a definitive date is necessary, it should not preclude consideration of federal environmental reviews, that include relevant information, in the administrative record.

NOAA Response to Comment 12. NOAA agrees that the States do not object to the great majority of projects reviewed and that of the few objections

there are very few appeals to the Secretary. However, NOAA believes that improvements can be made to the regulations governing the consistency appeals process and still allow the Secretary to develop an adequate record under the Administrative Procedure Act (APA). NOAA's proposed change to § 930.130 would provide parties to an appeal with the flexibility to agree to stay the appeal process in order to negotiate a resolution. Under these parameters, no party would be prejudiced. NOAA's proposed change to close the decision record 270 days after it issues a Notice of Appeal (notice issued within 30 days of the filing of an appeal) would provide a workable time frame for OCS appeals, so long as NOAA makes the procedural adjustments proposed in the other sections of subpart H.

Comment 13. A definitive time frame within which the Secretary of Commerce must issue a decision can be established. At minimum, a known action time frame would give the appellant applicant an understanding of the term of the process. Additional environmental reviews should not be required for a consistency appeal. A copy of the completed EA or EIS should be included as part of the administrative record, since many of the criteria for a secretarial override involve consideration of environmental issues. It should be clear, however, that the Secretary's role does not involve review of the legal sufficiency of the EA or EIS. Rather, the Secretary should rely on the conclusions of the EA or EIS with respect to environmental impacts and mitigations, and should accept the document as sufficient unless a court determines otherwise.

NOAA Response to Comment 13. NOAA has proposed a limited consistency appeal review period. *See* proposed change to § 930.130. The Secretary may rely on relevant materials such as NEPA documents. NOAA is not suggesting that the Secretary create new NEPA or ESA documents. In some appeals the NEPA and ESA documents being prepared to support the decision on the Federal authorization will be needed for the Secretary's review. The Secretary needs flexibility to adjust the closure of the decision record to accommodate the Federal agency preparing the necessary document(s).

Comment 14. It is not the function of the Secretary, in deciding an appeal, to adjudicate the merits of the underlying activity. For OCS plans, that function is with MMS. If the Secretary overrides a State's objection, then MMS may approve the plan and is still required to complete environmental clearances required by law. MMS supplies the Secretary with all relevant information including NEPA documents. Information contained in an EA or a draft EIS, added to the information provided by an applicant, is sufficient information for the Secretary to evaluate an appeal. An appeal before the Secretary will also include all the information that was before the State. We see no reason why the appeal process should be delayed in order to obtain additional information to add to that administrative record.

NOAA Response to Comment 14. The Secretary's review is *de novo*, to determine if the project is consistent with the CZMA or in the interest of national security. It is not a review of the basis for the State's objection or the basis for issuing the Federal agency authorization. The Secretary does not substitute the Secretary's judgement for that of the authorizing Federal agency regarding the merits of the project, nor does the Secretary determine whether a proposed project complies with other Federal law. However, because of the multiple national interest requirements of the CZMA, the Secretary must evaluate an authorization of a project in light of competing CZMA objectives. Varying levels of information and detail are required to make these determinations which are dictated by many factors such as the nature of the project, scale and scope of effects on coastal uses and resources, alterations to the proposal, etc. Normally, when the Secretary needs information, he waits for the authorizing Federal agency to complete some level of environmental review or generate a document. Since these documents are required by other federal law, there is no delay to the applicant or Federal agency.

Coordinated Federal Documents

Comment 15. While the CZMA regulations make an admirable attempt to coordinate CZMA and OCSLA requirements, problems with coordination of federal environmental review documents occur because of unrealistic timeframes imposed by OCSLA and its implementing regulations. The most troublesome requirement relates to comment deadlines imposed by OCSLA and the related regulations for reviews of EP's and DPP's. For EP's, the MMS has 30 days and for DPP's 60 days, to approve, disapprove or request modifications from the date the plan was deemed complete (30 CFR 250.204(i)). A change to OCSLA to allow the MMS to have a longer comment period before making a decision would alleviate this problem.

NOAA Response to Comment 15. While a change to the OCSLA timeframes might improve the CZMA-OCSLA interaction, that is beyond the scope of this rulemaking, which is to determine if there are improvements that can be made to NOAA's regulations.

Comment 16. Coordination is already a cornerstone of the Federal Consistency review process, and in practice it is the norm. Consistency reviews occur simultaneously with MMS and NEPA reviews to the degree practical under relevant statutes. If information problems (such as lack of NEPA documents) do occur, they can be resolved using the procedures available under 15 CFR 930.60, which clarify when the consistency time clock may begin. General consistency concurrences with the MMS help minimize the scope and duration of the review of an OCS plan for consistency. Coordination is best accomplished through the interaction of individual States and Federal agencies and this is what the CZMA consistency regulations recognize and encourage. Ambiguity and uncertainty can be eliminated by improved education on the part of the applicants as to the States' information requirements and consistency procedures.

States can use the analyses in the lease sale EIS to calibrate impacts from individual projects. Additionally, MMS has given notice of the preparation of a programmatic environmental assessment (EA) for exploratory drilling and associated activities in the Eastern Planning Area of the Gulf of Mexico. This programmatic EA is intended to consider the area wide environmental impacts of exploratory drilling. Subsequent site-specific EA's prepared by MMS for an operator's Exploration Plan can then be tiered from the programmatic EA and the analyses can be focused on specific activities proposed. This is a good example of a Federal agency working within the statutory framework of CZMA and OCSLA to coordinate the completion of environmental review documents with the information needs of the States. Industry recommends that this approach be adopted in the Federal Consistency requirements. Effective coordination is best achieved by maintaining the freedom and flexibility to enter into agreements and discussions among the parties. A regulatory mandate for such coordination may have a dampening effect and hinder the parties from negotiating resolution to specific cases.

NOAA Response to Comment 16. NOAA will continue to encourage early coordination between Federal agencies

and States. This early coordination is important for identifying information needs and coordinating reviews with completed documents. The MMS Gulf of Mexico Region's recent efforts to coordinate reviews and information needs may provide a useful model. NOAA also agrees that the tiering of NEPA documents is beneficial, especially when the documents are ready as the State starts its CZMA review.

Comment 17. The regulations at section 930.60 contain a consistency review ''start'' provision, which begins when the State receives the consistency determination and supporting information under section 930.58. The problem is that unlimited requests for additional information can delay the start of this review period indefinitely. The regulations should be revised to provide that a State's requests for information do not stop the timeline without NOAA approval. The State should not be the final arbiter of when the timeline begins.

NOAA Response to Comment 17. NOAA proposes to clarify that consistency starts when the certification and necessary data and information described in § 930.58 are received by the State.

General Negative Determination

Comment 18. We are not aware of repetitive Federal agency activities related to the OCS, so it appears that no efficiency would be gained by this provision. The flexibility already exists in the existing regulations for negative determinations that would enable submittals covering multiple activities.

We support a regulatory provision for a general negative determination, similar to the existing regulation for general consistency determinations. This would improve the efficiency of the Federal Consistency process.

No objection provided scope of the activity covered and geographical area are agreed upon with the State and Federal agency.

NOAA Response to Comment 18. NOAA's regulations provide for a ''general consistency determination'' (general CD) which result in one State review for multiple occurrences of an activity where the actions are repetitive, do not have coastal effects when performed separately, but have cumulative effects. The general CD was created in 1979 as an administrative efficiency so that Federal agencies may avoid the necessity of issuing separate CD's for each repetitive action. There may be times when a Federal agency proposes repetitive activities that do not have coastal effects, when performed separately or cumulatively. In such cases where an individual ND is required under 15 CFR 930.35, NOAA believes that the Federal agency should be able to issue a General Negative Determination (general ND). The Federal agency would have to provide supporting information as is the case for a ND. Since the use of a general ND would be an effects determination made by the Federal agency, as is the case for a CD, general CD or ND, State agreement to use a general ND would not be required. If a State objected, the resolution provisions of 15 CFR part 930, subpart C would apply.

Comment 19. We recommend that the Federal Consistency regulations be amended to grant ''Negative Determination'' status to any Federal agency activity meeting the definition of a categorical exclusion under its own agency's NEPA regulations. Second, we recommend that NOAA implement the proposed ''General Negative Determination'' process, but reserve it only for those Federal agency activities that are not covered by a NEPA Categorical Exclusion but still may be determined by the Federal agency to be repetitive and not reasonably likely to have either individual or cumulative coastal effects.

NOAA Response to Comment 19. A general ND would not be an exemption for any type of activity, including an ''environmentally non-adverse'' activity. Such an exemption, as discussed in the 2000 NOAA rulemaking, would not be authorized under the CZMA. Changing the CZMA Federal Consistency effects test to equate it with the NEPA test is not authorized by the CZMA because the NEPA test is different than the CZMA effects test (a categorical exclusion (CE) under NEPA is available when there is no potential for effects on the human environment, 40 CFR 1508.4). Like a CE, a general ND would still require a factual determination of coastal effects. (A CE is not an exemption from NEPA like an ND or general ND for the purposes of compliance with the CZMA, a CE is compliance with NEPA and a determination of no effect. *See* 65 FR 77124–77125, 77130–77133 (Dec. 8, 2000)(discussing effects test).

Comment 20. A general negative determination could obviate the need to revisit non-resolved issues and result in considerable savings to the Federal agencies and the States. Any such regulation must preserve the fact that the Federal agency determines whether there are coastal effects. NOAA's overly-broad definitions of some terms may hamper the use of a general negative determination.

NOAA Response to Comment 20. As discussed in NOAA's response to the general comments, NOAA disagrees that NOAA's CZMA consistency regulations are ''over-broad.'' As noted in the preamble to the 2000 rule, consistency is based on the ''effects test'' and there are no exceptions to this Congressionally mandated principle. NOAA's regulations would not hamper the use of a general ND. If a Federal agency determines a project will have no coastal effects, and a negative determination (ND) is not required, then the Federal agency does not have to coordinate with the State at all. 15 CFR 930.35, 930.33(a)(2). Administrative activities have not been subjected to consistency review in the past, probably because they do not propose an action with coastal effects. Even in the rare case where a State requested consistency review for such an activity, NOAA's regulation provides the solution: a negative determination. NOAA has also addressed administrative actions in the proposed change to the definition of Federal agency activities in § 930.31.

Geographic Considerations

Comment 21. The CZMA establishes an *effects-based* evaluation process rather than categorizing activities based on geographic location or type. It would be particularly difficult to develop geographic criteria for activities conducted in the open ocean, where effects can occur hundreds of miles from the point of origin. The existing regulations adequately address this question. State agencies are already required to describe geographic areas within which federally permitted activities beyond State waters are subject to consistency review. Moreover, as the ANPR points out (at p. 44409), a coastal State's ability to review the activities stops where coastal effects are not reasonably foreseeable.

NOAA Response to Comment 21. NOAA has not proposed a regulatory change to address State review of OCS plans located far offshore. NOAA has determined that conflicts are isolated examples, would most likely only occur in the Gulf of Mexico, and can be dealt with on a case-by-case basis should an issue arise. To create a new regulatory process to determine when an OCS plan will have coastal effects on a particular State would be difficult to develop and would likely increase administrative and fact-finding burdens on industry, the States and Federal agencies.

The determination of coastal effects for federal license or permit activities is made by NOAA, in coordination and consultation with the States and the

Federal agency. This is done through the listing and geographical location description requirements in NOAA's regulations at 15 CFR 930.53. States are required to list the federal license or permit activities that the State believes will have coastal effects in their management programs. The State either develops this list as part of management program development or after management program approval through NOAA's program change procedures. *See* 15 CFR 930.53(c), and 15 CFR part 923, subpart H. When listing Federal license or permit activities, States determine whether it is reasonably foreseeable that the activity, when conducted inside the coastal zone, will affect coastal resources. Once listed in the State's federally approved program, all applications for the listed Federal authorization in the coastal zone are automatically subject to the consistency process.

To review activities located outside the coastal zone, NOAA must approve or deny a State's request to describe a geographic location outside its coastal zone where activities will be presumed to have coastal effects. A State must describe with specificity the geographic areas from which it is reasonably foreseeable that activities will affect coastal uses or resources. Federal agencies and other interested parties may comment to NOAA. NOAA's approval is based on whether effects on the coastal zone are reasonably foreseeable.

A State can also review a listed activity located outside the coastal zone that is not in a described geographic location as an ''unlisted'' activity on a case-by-case basis, pursuant to 15 CFR 930.54. NOAA approval is required in such circumstances and NOAA's approval is also based on whether coastal effects are reasonably foreseeable.

The purpose of these listing requirements is to provide predictable procedures to determine when a Federal license or permit activity is subject to CZMA Federal Consistency review. These procedures provide reasonable notice to Federal agencies and applicants for federal authorizations as to when and how consistency applies. These requirements have been in place since 1979.

However, the geographic location description requirement for Federal license or permit activities has not applied to Federal authorizations described in detail in OCS plans because these activities are specifically described in the CZMA, 16 U.S.C. 1456(c)(3)(B), if coastal effects are reasonably foreseeable. In the past, most OCS oil and gas plans were for projects located near shore and coastal effects were readily identified. Now, however, technology allows industry to drill for oil and gas far offshore and the connection between a project and effects to a particular coastal State is not as clear. In these cases a person could assert that its project will not have coastal effects on a particular State. If MMS agreed with the person's assertion and factual basis but a coastal State still believed the OCS activity will have coastal effects, then the factual matter may be resolved through the mediation provisions of the CZMA, OCSLA provisions and/or litigation.

Comment 22. The 1990 amendments to the CZMA did not give *carte blanche* to the States to assert consistency review over all OCS leasing activities no matter how far beyond a State's coastal zone they take place. Rather, ''effects'' must still be demonstrated. Moreover, this legislative history does not apply to the entirely separate provisions regarding consistency review for federal permits in section 307(c)(3)(A), or OCS plans in section 307(c)(B). Congress made it very clear that technical amendments to the provision calling for State review of private permits were made solely to conform this provision to changes made to the Federal agency activity provision, and did not expand a State's scope of consistency review. Despite the clear legislative history, Commerce's preamble blurs the distinction between ''Federal agency activities'' and ''Federal activities,'' in general, *e.g.*, approval of private permits/licenses, and OCS plans, and incorrectly emphasizes the 1990 amendments' expansion of consistency review for ''Federal activities.'' (65 FR 77125 middle column, December 8, 2000). Such statements should be corrected.

NOAA Response to Comment 22. The 1990 CZMA amendments apply to all the consistency requirements. The ''technical amendments'' were to conform all of CZMA section 307 with the changes made to CZMA § 307(c)(1). Moreover, ''direct'' effects were not a limiting factor to the pre-1990 CZMA application of Federal Consistency for Federal license or permit activities. As noted by the comment, the effects test is the controlling factor. Thus, the preamble to the 2000 final rule at 65 FR 77125, 2d col, needs no correction.

The effects test, discussed in the Conference Report and other legislative history, speak to a cause and effect analysis, or the so-called series or chain of events analysis. If a Federal agency activity will have reasonably foreseeable effects, then consistency applies. Thus, as discussed in the preamble to the 2000 rule, the type of Federal agency activity is not the determinative factor. *Id.*

Comment 23. The term ''foreseeable coastal effects'' is ambiguous, recommend that guidance be developed to assist in making this determination.

NOAA Response to Comment 23. NOAA need not further define reasonably foreseeable coastal effects. The varied State programs, the analysis of effects, and the case-by-case nature of Federal Consistency precludes rigid definitions of effects and what is reasonably foreseeable. 65 FR 77130, 2d col. (Dec. 8, 2000). Further, as described above under the general comments and in detail in the preamble to the 2000 rule, the definitions of coastal effects and coastal uses and resources have not been expanded beyond what was already required by the statute, particularly the 1990 amendments to the CZMA.

Comment 24. NOAA should monitor the States' interpretations of the ''effects test,'' and the implementation of the ''listing and geographic location'' regulations found at 930.53, to ensure that States assert a right of consistency review in a reasonable manner. This is particularly applicable for projects at increasing distance from a State's coastal zone.

NOAA Response to Comment 24. NOAA monitor's the States' use of Federal Consistency through (1) day-to-day interactions with States, Federal agencies, industry and others; (2) periodic evaluations of the States' programs, pursuant to CZMA § 312; and (3) the Secretary of Commerce's review of consistency appeals.

Comment 25. NOAA should revise the definition of ''Coastal Use or Resource'' at § 930.11. By adding terms such as ''scenic and aesthetic enjoyment'' and ''air'', this definition goes far beyond the statutory definition of coastal use or resource, and inappropriately extends the ''reach of reasonably foreseeable effects.''

NOAA Response to Comment 25. NOAA need not revise the definition of ''coastal use or resource'' at § 930.11. The definition in the 2000 rule did not create new thresholds, but is based on the effects test as described in the statute and the Conference Report to the CZMA 1990 amendments, as discussed in the preamble to the 2000 rule.

Comment 26. Commerce regulations should delete the provision that an action with minimal or no environmental effects may affect coastal use. Requiring consistency review without regard to significance of environmental impact is not good public policy.

NOAA Response to Comment 26. As discussed throughout this proposed rule and the preamble to the 2000 rule, the CZMA applies to federal actions that have reasonably foreseeable coastal effects. The CZMA does not provide a ''significance'' threshold for such effects, and in fact the 1990 CZMA amendments removed thresholds by removing ''direct'' effects from the statute. Thus, NOAA has no authority to exempt an activity from consistency review. Likewise, regarding the ''significance'' of a coastal effect, the CZMA prohibits such a distinction. *See* 65 FR 77125, 2d col., 77129–77130, 77135–77136 (Dec. 8, 2000). The policy purposes of the CZMA are best fulfilled by the required analysis of the relationship between coastal effects and the State's enforceable policies.

Comment 27. We strongly object to the development of guidance or regulations that would extend State review to any Federal maritime activities that occur well beyond a State's lawful jurisdiction.

NOAA Response to Comment 27. NOAA is not extending in any way State review to activities that do not have coastal effects. Federal Consistency applies to a Federal agency activity, regardless of location, if coastal effects are reasonably foreseeable. NOAA's existing regulations provide geographic location considerations for the application of the effects test.

Consolidated Permit Reviews

Comment 28. Existing regulations already encourage, and many States already implement, to the extent practical, substantial interagency coordination and multiple-permit consolidated reviews. The requirements of the CZMA are independent of other Federal requirements, and mandatory consolidation would be inconsistent with the CZMA. In addition, industry often will not invest resources into the level of detailed design required for some permits, such as air permits, until they have secured overall discretionary approvals first.

Comment 29. Acceptable if sufficient information were available to inform of all the permits.

Comment 30. Multiple Federal authorizations should be consolidated into a single review process in order to reduce procedural delays.

Comment 31. A single consistency certification for an OCS EP or DPP should cover associated approvals such as air and water permits necessary to the EP or DPP. Ideally, MMS should issue a directive making it clear that air and water permits are required to be described in detail in the OCS plan, and are therefore covered under one consistency certification. Likewise, Federal Consistency regulations should be revised to clarify that the States must provide consistency review and, if applicable, Commerce should issue a decision on an override appeal of the OCS plan and OCS-related activities at the same time.

Comment 32. Such consolidation may prove impractical for a number of reasons. When a DPP is submitted to a State, the CZMA time clock starts. In order to consolidate reviews of all permits, the lessee would have had to submit all its applications to the appropriate agencies and certifications to the States at the same time. There would be a problem if not all applications were ready to go or if there was a problem with just one. It would not be appropriate to withhold consistency on all permits or the DPP while a State's objection for one permit was appealed to the Secretary.

NOAA Response to Comments 28–32. NOAA agrees that consolidation may not be practicable or desirable in some cases. One way to address consolidating as many permits as is practicable is to ensure that the permits ''described in detail'' in EP's and DPP's include air and water permits and other applicable federal authorizations, appropriate for inclusion in the EP's or DPP's as described in detail.

NOAA notes that the existing regulations allow Federal agencies to issue permits described in detail in an EP or DPP determined by the State agency to be consistent, even though the State may have objected to other permits in an OCS plan. *See* 15 CFR 930.81(b)(2).

Comment 33. The definition of ''Federal license or permit'' is too broad and the use of the term ''certification'' may encompass ministerial paperwork that does not grant any authorization to anyone to do something that otherwise would be impermissible. Also, the definition exposes other OCS approvals to the consistency process and includes OCS lease suspensions.

NOAA Response to Comment 33. The definition of Federal license or permit in § 930.51(a) does not expand the definition based on the 1990 CZMA amendments. The term ''required'' in the definition is self-explanatory: a Federal authorization is subject to consistency only if Federal law requires the applicant to obtain that Federal authorization in order to conduct the activity. As for OCS oil and gas approvals, all Federal authorizations described in detail in an EP or DPP are covered under the States' review of the plans under 15 CFR part 930, subpart E. Subpart E only applies to Federal authorizations described in detail in the OCS EP or DPP.

If an offshore operator is also required by Federal law to obtain a Federal authorization that is not described in detail in an EP or DPP, and the activity covered by the authorization will have coastal effects, then that Federal authorization may also be subject to State consistency review under 15 CFR part 930, subpart D, if the State has either listed the Federal authorization in its federally approved management program, or NOAA has approved the State's review on a case-by-case basis as an ''unlisted activity'' under 15 CFR 930.54. In both cases, the State would have to show, and NOAA would have to find, that the activity to be allowed under the Federal authorization would have reasonably foreseeable coastal effects. If the authorization is a ''purely ministerial paperwork,'' then it is extremely unlikely NOAA would approve the State's proposed listing of the Federal authorization or request to review as an unlisted activity because coastal effects would not be reasonably foreseeable and the ministerial action would be incidental or related to an action receiving Federal Consistency review.

However, as provided in the proposed change to § 930.51(a) and discussed in the accompanying explanation, NOAA proposes to remove the various descriptions of Federal license or permit types and have the phrase ''any required authorization'' become a catch-all for a Federal license or permit for an activity that would have a coastal effect. Further, NOAA notes that there are ministerial certifications which do not have coastal effects or are incidental/related to a Federal license or permit activity that was already reviewed by a State, and therefore would not be reviewed as a ''Federal license or permit.''

The Energy Report directs Commerce and Interior to re-examine CZMA and OCSLA requirements. While the OCSLA is under the purview of Interior and changes to the OCSLA or Interior's regulations are best left to Interior, Interior could help improve the efficiency and effectiveness of the OCSLA programs by including more Federal authorizations as ''described in detail'' in OCS plans.

In the preamble to the 2000 rule, NOAA posited that lease suspensions granted by Interior are Federal license or permit activities. Lease suspensions are not listed in any State's management program and NOAA has never approved a request to review a lease suspension as an unlisted activity (there was only

one such request made which was withdrawn). Activities covered under a lease suspension could either have been already covered under the State's review of the lease sale, EP or DPP. Thus, while NOAA could not exempt lease suspensions from potential consistency review, NOAA does not currently anticipate approving any State's request to either list lease suspensions or to review lease suspensions on a case-by-case basis as an unlisted activity, except in some rare, limited circumstance.

Further, NOAA's view on lease suspensions as federal license or permit activities has been superceded by the Ninth Circuit, at least for the lease suspensions that were the subject of the California litigation. *California ex rel. Cal. Coastal Comm'n* v. *Norton,* 150 F. Supp.2d 1046 (N.D. Cal. 2001), *aff'd,* 311 F.3d 1162 (9th Cir. 2002). On June 20, 2001, the U.S. District Court for Northern California ordered Interior to provide California with a consistency determination pursuant to CZMA section 307(c)(1) for the lease suspensions it issued for 36 leases located offshore California. The Court also ordered Interior to provide, pursuant to NEPA, a reasoned explanation for its reliance on a categorical exemption for the lease suspensions.

On appeal by the United States, the Ninth Circuit affirmed the District Court's finding that the lease suspensions, in the case of these 36 leases, whether granted or directed by Interior, were Federal agency activities under CZMA section 307(c)(1), and not ''Federal license or permit activities'' under CZMA section 307(c)(3)(A). The Ninth Circuit found that the suspensions allowed the leases to continue for lengthy additional terms and, more importantly, these leases had not been previously reviewed by California under the CZMA. The Court viewed the suspensions as an extension of the leases and thus any suspension of the lease was, in the Court's view, a Federal agency activity under CZMA section 307(c)(1). The Ninth Circuit further found that the lease suspensions at issue would have coastal effects since, among other things, the suspensions required lessees to engage in certain milestone activities which could affect coastal resources. The Ninth Circuit also determined that the effect of the 1990 amendments to the CZMA in overturning the decision of the Supreme Court in *Secretary of the Interior* v. *California,* 464 U.S. 312 (1984), is that lease suspensions are not subsidiary to exploration plans and development and production plans (and thus are not barred from consistency review by CZMA section 307(c)(3)(B)), and that activities with coastal effects preceding exploration plans and development and production plans are subject to consistency review. In making this finding, the Ninth Circuit stated:

> In subjecting lease sales to consistency review, Congress has made it clear that the statute [CZMA] does not prohibit consistency review of federal agency activities that are not subsidiary to exploration and development and production plans. The exploration and development and production plan stages are *not* the only opportunities for review afforded to States under the statutory scheme.

Referring to the fact-specific inquiry necessary to determine if a Federal action has coastal effects and, thus, is subject to Federal Consistency review, the Ninth Circuit, quoting from NOAA's preamble to its 2000 final rule, agreed ''with the reasoning of the National Oceanic and Atmospheric Administration that a lease suspension or set of lease suspensions might 'affect the uses or resources of the State's coastal zone, and thus CZMA bars * * * categorically exempting suspensions from consistency [review.]' ''

It is NOAA's view that the *California* v. *Norton* decision is limited to the 36 leases in that case and that in all foreseeable instances, lease suspensions would not be subject to Federal Consistency review since (1) as a general matter, they do not authorize activities with coastal effects, and (2) if they did contain activities with coastal effects, the activities and coastal effects should be covered in a State's review of a lease sale, an EP or a DPP. If a State believes that a particular lease suspension should be subject to Federal Consistency, the State could notify MMS. MMS could determine that the lease suspension is an interim activity that does not propose a new action with coastal effects and/or provide the State with a negative determination pursuant to 15 CFR 930.35.

Comment 34. Section 930.85(c) should be amended to ensure that Interior first determines that an amended plan meets the requirements of the OCSLA, before it is sent to the State agency.

NOAA Response to Comment 34. NOAA agrees that Interior should decide first that an amended OCS plan meets OCSLA requirements before sending to the State agency. The same technical change should also be made to § 930.82. In this way, Interior ensures completeness with the OCSLA prior to sending an amended plan to the State agency, as is the case for initial OCS plan review under § 930.76(c).

Other Comments

Comment 35. Delete Conditional Concurrence Procedures or Narrow the Conditions that Can be Imposed. Conditional Concurrences create an unclear process, neither a concurrence nor objection, and could delay or terminate OCS projects. Conditions may usurp Federal permitting authority.

NOAA Response to Comment 35. The new conditional concurrences section, § 930.4, contains adequate standards to ensure State conditions are based on specific enforceable policies. If the requirements for a conditional concurrence are not met, then it is automatically treated as an objection pursuant to 15 CFR 930.4. Thus, if an applicant does not agree with a condition and does not amend its application to the Federal agency, then it is automatically an objection. Likewise, if a Federal agency finds a condition is contrary to its statutory mandate and refuses to accept the condition, then it is automatically an objection. The benefit of the conditional concurrence is that if the requirements are met, and the conditions are acceptable to the applicant and the Federal agency, then the Federal agency can approve the project. If conditional concurrences were not allowed, then the State would simply object. All of this happens within the State consistency review time frames established by the CZMA and NOAA's regulations. Thus, there is no delay and there is very clear direction regarding time frames, the substance of the conditions, and whether the State has objected or concurred.

NOAA, the States and the Federal agencies spent considerable time discussing the pros and cons of conditional concurrences as part of the 2000 rulemaking. NOAA does not anticipate proposed changes to this section until such time as a problem arises in implementing the section.

Comment 36. Clarify that the determination of whether a Federal agency activity has coastal effects is in the purview of the Federal agency conducting the activity. Commerce has insisted that pre-lease activities such as the 5-Year OCS lease plan are ''development projects'' under section 930.33 and are subject to consistency review.

NOAA Response to Comment 36. NOAA has not declared that Interior's pre-lease activities are ''development projects'' under 15 CFR 930.33. All that NOAA has said is that a Federal agency activity is subject to consistency if there are coastal effects. This is required by the CZMA. *See* 65 FR 77125, 77129–

77133 (Dec. 8, 2000). NOAA defers to Interior regarding the determination of effects for any specific Interior activity.

Comment 37. Delete the Interstate Consistency regulations. A logical implementation of the new consistency review for activities ''outside of the coastal zone'' contained in the 1990 amendments does not lead to interstate review. These regulations also raise constitutional issues as to whether one State's policies can be legally enforceable against Federal activities taking place entirely in a different State.

NOAA Response to Comment 37. Interstate consistency review is authorized by the CZMA effects test. *See* 65 FR 77125, 77129–77133, 77152–77153 (Dec. 8, 2000) (discussion of the effects test and application to interstate review).

Comment 38. Commerce regulations at section 930.121 require that an activity must ''significantly or substantially'' further the national interest before the Secretary can override an objection based on the statutory ''national interest'' criteria. This change can potentially be very problematic. While the preamble to the 2000 regulations state that ''an example of an activity that significantly or substantially furthers the national interest is the siting of energy facilities or OCS oil and gas development,'' there is no such statement of intent with regard to oil and gas *exploration.* The preamble should be revised to make it clear that exploration meets the new override criteria otherwise the term ''significantly or substantially'' should be deleted from the regulations.

NOAA Response to Comment 38. The use of the phrase ''oil and gas development'' in the preamble to the 2000 rule when discussing the phrase ''significantly or substantially'' in 15 CFR 930.121, was intended as an example and not meant to apply only to DPP's. The term ''development'' was used as a general descriptor for OCS oil and gas activities. At this time, NOAA cannot foresee a case where OCS oil and gas activities do not further the national interest in a significant or substantial manner, inclusive of the exploration, development and production phases.

Comment 39. Section 930.3 imposes a requirement on OCRM to conduct a continuing review of approved management programs. This is a critical part of the Federal Consistency program and one that should receive sufficient resources and funding within OCRM to fully effectuate. OCRM should carefully monitor the States' application of their management programs to evaluate whether a State is inappropriately singling out a particular proposed federal activity in or outside its coastal zone, and objecting to such an activity on its face, without any demonstration that such activity may impact a State's coastal zone. We recommend that Commerce amend section 930.3 as follows: (1) To require that OCRM conduct a continuing review of the States' application of their enforceable programs on at least a semiannual basis, (2) the goal of such review would be, among others, to ensure that the States have supporting documentation and justification for an objection to a proposed federal activity, and that the States are not using their CZM programs to prevent a certain category of activity from taking place in or outside their coastal zone, and (3) the definition of ''enforceable policy'' in section 930.11 be changed to delete the statement that ''Enforceable policies need not establish detailed criteria such that a proponent of an activity could determine the consistency of an activity without interaction with the State agency.''

NOAA Response to Comment 39. NOAA conducts a statutorily mandated continuing review of State programs under CZMA § 312. As part of these section 312 evaluations, NOAA looks closely at the State's implementation of Federal Consistency. These reviews occur every three years. NOAA also scrutinizes State use of consistency on a case-by-case basis when called for and, as a threshold matter, on appeal of a State's objection to the Secretary. Conducting a more formalized review semi-annually or annually, would require substantial additional resources, with little foreseeable benefit.

NOAA also ensures that State programs continue to adequately address the national interest in, among other priority areas, energy facility siting. This is accomplished through the section 312 reviews and when reviewing proposed changes to a State's federally approved management program. For example, NOAA has denied State requests to include in their management programs State policies that ban all offshore oil and gas activities as inconsistent with the CZMA's national interest requirements.

The definition of enforceable policy in NOAA's regulations is based on the statutory definition and on *American Petroleum Institute* v. *Knecht*, 456 F. Supp. 889 (C.D. Cal. 1978), *aff'd*, 609 F.2d 1306 (9th Cir. 1979). *See* 65 FR 77130, 2d col., (Dec. 8, 2000) (discussion of ''enforceable policy'').

Comment 40. A State can delay the start of the consistency review period for Federal agency activities by claiming the Federal agency's submission is incomplete or otherwise insufficient.

NOAA Response to Comment 40. If the Federal agency has provided the consistency determination and information required by 15 CFR 930.39, then the 60-day State review period begins on the date of the State's receipt of the information. The State cannot stay, stop or alter the commencement of the 60-day period once it starts, unless the Federal agency and State agency agree to an alternative time period. The State is not the arbiter of completeness; the Federal agency is. If a consistency determination and the information required by § 930.39 are provided, even though the State may believe it needs clarification or additional information, the 60-day period begins when the State received the Federal agency's information. The State has no authority to delay the start of the 60-day period. If the Federal agency provided the information required by § 930.39, then the Federal agency may presume State concurrence if the State has not objected (or requested an extension as allowed under the regulations) within 60 days from the State's receipt of the information. However, NOAA proposes a modification to § 930.41(a) that would ensure that States notify Federal agencies if the State believes the consistency determination is not complete.

Comment 41. Modify the definition of consistent to the maximum extent practicable under § 930.32 to allow the Federal agency to determine that full consistency is not practical due, but not limited to, such factors as logistical impediments, lack of adequate technology, illegality, time and space considerations, conflicts with other statutory law, cost effectiveness, availability of equipment, etc., etc.

NOAA Response to Comment 41. The definition of ''consistent to the maximum extent practicable'' was not significantly changed in 2000. NOAA's definition is long-standing (since 1979) and clearly reflects the language and intent of the CZMA. NOAA's language was specifically endorsed by Congress in the conference report to the 1990 CZMA reauthorization and has been upheld by Courts since then.

The suggested changes would provide Federal agencies with complete discretion as to whether or not they would be consistent with a State's enforceable policies. Such a change would violate the statute and Congressional intent. The change would also cause untold and unwarranted ambiguity in the application of consistency and in legal precedent, particularly court decisions. Congress declared:

NOAA has interpreted the term ''maximum extent practicable'' in a manner which requires strict adherence to the enforceable policies of state programs where a federal agency has discretion (15 CFR 930.32). *The Committee supports this long-standing interpretation.*

Cong. Rec. H 8073, 8076 September 26, 1990 (emphasis added). A recent Federal court decision has addressed NOAA's definition of ''consistent to the maximum extent practicable.'' In *California Coastal Commission* v. *Dept. of the Navy*, 5 F. Supp. 2d. 1106 (S.D. Cal. 1998), the Navy argued that it complied to the ''maximum extent practicable'' with California's dredging and disposal policies because it was obligated to follow a modified § 404 permit issued by the Corps. The court noted that the federal permit was ''not existing Federal law'' that would excuse compliance with the State policies and consistency requirements of the CZMA. *Id.* at 1111.

Congress partially waived the Federal Government's supremacy over State law when it created the CZMA. As such, the only *objective* means to determine ''consistent to the maximum extent practicable'' is based on the legal requirements of Federal agencies and their administrative records. Otherwise, a Federal agency would be making arbitrary decisions, on an agency by agency basis, based on subjective criteria and outside the confines of Federal law applicable to the agency.

The 2000 rule provided clear guidance as to when a Federal agency can proceed over a State's objection: due to an unforeseen circumstance or emergency, or when a Federal agency asserts, based on its own administrative decision record, it is fully consistent, or because of the requirements of other Federal law. NOAA added these provisions in 2000 at Federal agencies' requests.

NOAA has provided, and will continue to provide, advice to Federal agencies on how to effectively use the consistent to the maximum extent practicable standard in connection with their statutes and case-by-case decision records.

Comment 42. The deference to be given a State's determination of ''substantially different coastal effects'' under 15 CFR § 930.51(e), for purposes of determining if a renewal or major amendment of a federal license or permit is an unlawful transfer of Federal authority to the States and could delay OCS permit activities.

NOAA Response to Comment 42. The determination of substantially different coastal effects should be made by input from all the parties. While NOAA's language did not transfer Federal authority to the States, NOAA agrees the section should be revised to reflect NOAA's original intent that the State's view be accorded some weight.

VI. Miscellaneous Rulemaking Requirements

Executive Order 12372: Intergovernmental Review

This program is subject to Executive Order 12372.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action is consistent with federalism principles, criteria, and requirements stated in Executive Order 13132. The proposed changes in the Federal Consistency regulations are intended to facilitate Federal agency coordination with coastal States, and ensure that Federal actions affecting any coastal use or resource are consistent with the enforceable policies of approved State coastal management programs. The CZMA and these revised implementing regulations promote the principles of federalism articulated in Executive Order 13132 by granting the States a qualified right to review certain Federal actions that affect the land and water uses or natural resources of State coastal zones. Congress partially waived the Federal government's supremacy over State law when it created the CZMA. Section 307 of the CZMA and NOAA's implementing regulations effectively balance responsibilities between Federal agencies and State agencies whenever Federal agencies propose activities or applicants for required federal license or permit propose to undertake activities affecting State coastal uses or resources. Through the CZMA, Federal agencies are required to carry out their activities in a manner that is consistent to the maximum extent practicable with federally approved State management programs and licensees and permittees to be fully consistent with the State programs. The CZMA and these implementing regulations, rather than preempting a State provide a mechanism for it to object to Federal actions that are not consistent with the State's management program. A State objection prevents the issuance of the Federal permit or license, unless the Secretary of Commerce overrides the objection. Because the CZMA and these regulations promote the principles of federalism and enhance State authorities, no federalism assessment need be prepared.

Executive Order 12866: Regulatory Planning and Review

This regulatory action is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule will make only minor changes to existing regulations. The existing regulations do not have a significant economic impact on a substantial number of small entities and, thus, these clarifying changes will not result in any additional economic impact on affected entities. To the extent the proposed rule impacts small entities, it is to diminish their regulatory burden and obligations. The proposed rule revises provisions of the Federal Consistency regulations to improve Federal-State coordination of actions affecting the coastal zone, and does not impose any new requirements on States, federal agencies, businesses, or the public.

The term ''small entity'' includes small businesses, small organizations, and small governmental jurisdictions. The Federal Consistency regulations, and the proposed rule, primarily affect States and federal agencies. Federal Consistency also applies to individual land owners proposing certain activities affecting the coastal zone that require federal authorizations. State and Federal agencies and individual landowners are not small entities under the Regulatory Flexibility Act (RFA). Federal Consistency does apply to some small businesses, small organizations and small governmental jurisdictions proposing activities that affect the coastal zone. The RFA defines a small jurisdiction as any government of a district with a population of less than 50,000.

The number of small entities affected by the consistency provisions of the CZMA generally, are insignificant when compared to the total number of small businesses and governmental jurisdictions in the 34 coastal States with approved coastal management programs. State coastal management programs concur with 95–97 percent of all federal license or permit activities, and over 99 percent of all applicable small organization and governmental jurisdiction federal assistance activities. For example, in the State of North Carolina, for the period January 1, 1998,

to December 31, 1998, the State reviewed 26 applications for federal licenses or permits under 15 CFR part 930, subpart D (the existing regulations), for activities that did not require a State permit. Of these 26 applications, no small entities were subject to the State's CZMA Federal Consistency review authority and the existing regulations. During the same period the State also reviewed 90 applications by State agencies and local governments for federal financial assistance. Of these 90 applications, 28 small entities were subject to the State's CZMA Federal Consistency review authority and the existing regulations. The State did not object to any of these financial assistance applications. Moreover, all of these financial assistance activities involved allowing federal funds to improve local infrastructure. North Carolina is a representative State in the use and application of the Federal Consistency requirement and the existing regulations.

In addition, the Federal Consistency appeal process affects very few entities of any kind. Since the CZMA was enacted in 1972, only 39 consistency appeals have been decided by the Secretary of Commerce. Of those 39 consistency appeals, only 5 appeals have involved small entities. In 27 years of implementation, only five small entities have been affected by these regulations governing consistency appeals to the Secretary of Commerce.

Thus, the existing regulations do not, and the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities. Accordingly, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains no additional collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

National Environmental Policy Act

NOAA has concluded that this proposed regulatory action does not have the potential to pose significant impacts on the quality of the human environment. Further, NOAA has concluded that this proposed rule, if adopted, would not result in any changes to the human environment. As defined in sections 5.05 and 6.03c3(i) of NAO 216–6, this proposed action is of limited scope, a technical and procedural nature and any environmental effects are too speculative or conjectural to lend themselves to meaningful analysis. Thus, this proposed rule, if adopted, is categorically excluded from further review pursuant to NEPA.

List of Subjects in 15 CFR Part 930

Administrative practice and procedure, Coastal zone, Reporting and record keeping requirements.

Dated: June 5, 2003.

Alan Neuschatz,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons stated in the preamble, NOAA proposes to revise 15 CFR part 930 as follows:

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1451 *et seq.*

2. Section 930.1 is proposed to be amended by revising paragraph (b) to read as follows:

§ 930.1 Overall Objectives.

* * * * *

(b) To implement the federal consistency requirement in a manner which strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs and the importance of federal activities (the term ''federal action'' includes all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.);

* * * * *

3. Section 930.10 is proposed to be amended by amending the table as follows:

§ 930.10 Index to definitions for terms defined in part 930.

Term	Section
* * * * *	
Failure substantially to comply with an OCS plan.	930.85(c).
* * * * *	

4. Section 930.11 is proposed to be amended by revising the first sentence of paragraph (g) to read as follows:

§ 930.11 Definitions.

* * * * *

(g) *Effect on any coastal use or resource (coastal effect).* The term ''effect on any coastal use or resource'' means any reasonably foreseeable effect on any coastal use or resource resulting from a Federal agency activity or federal license or permit activity (including all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.) * * *

* * * * *

5. Section 930.31 is proposed to be amended by revising paragraphs (a) and (d) as follows:

§ 930.31 Federal agency activity.

(a) The term ''Federal agency activity'' means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities, which includes a range of activities where the Federal agency makes a proposal for action which initiates an activity or series of activities and if coastal effects are reasonably foreseeable, *e.g.,* a Federal agency's proposal to physically alter coastal resources, a plan that is used to direct future agency actions, a proposed rulemaking that alters uses of the coastal zone. ''Federal agency activity'' does not include the issuance of a federal license or permit to an applicant or person (*see* subparts D and E of this part) or the granting of federal assistance to an applicant agency (*see* subpart F of this part).

* * * * *

(d) A general permit proposed by a Federal agency is subject to this subpart if the general permit does not involve case-by-case or individual approval of a license or permit by the Federal agency. When proposing a general permit, a Federal agency shall provide a consistency determination to the relevant management programs and request that the State agency(ies) provide the Federal agency with review, and if necessary, conditions that would permit the State agency to concur with the Federal agency's consistency determination. State concurrence shall remove the need for the State agency to review individual uses of the general permit for consistency with the enforceable policies of management programs. Federal agencies shall, to the maximum extent practicable, incorporate State conditions into the general permit. If the State's conditions are not incorporated into the general permit or a State agency objects to the general permit, then the Federal agency shall notify potential users of the general permit that the general permit is not available in that State unless the potential users in those States provide the State agency with a consistency certification under subpart D of this part and the State agency concurs.

* * * * *

6. Section 930.35 is proposed to amended by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) as follows:

§ 930.35 Negative determinations for proposed activities.

* * * * *

(d) *General Negative Determinations.* In cases where Federal agencies will be performing a repetitive activity, that the Federal agency determines will not have reasonably foreseeable coastal effects, whether performed separately or cumulatively, the Federal agency may provide a State agency(ies) with a General Negative Determination, thereby avoiding the necessity of issuing separate negative determinations for each occurrence of the activity. The General Negative Determination must adhere to all requirements for negative determinations under § 930.35. In addition, the General Negative Determination must describe in detail the activity covered by the General Negative Determination and the expected number of occurrences of the activity over a specified time period. If a Federal agency issues a General Negative Determination, it may periodically assess whether the General Negative Determination is still applicable.

* * * * *

7. Section 930.41 is proposed to be amended by revising paragraph (a) as follows:

§ 930.41 State agency response.

(a) A State agency shall inform the Federal agency of its concurrence with or objection to the Federal agency's consistency determination at the earliest practicable time, after providing for public participation in the State agency's review of the consistency determination. The Federal agency may presume State agency concurrence if the State agency's response is not received within 60 days from receipt of the Federal agency's consistency determination and supporting information required by § 930.39(a). The 60-day review period begins when the State agency receives the consistency determination and supporting information required by § 930.39(a). If the information required by § 930.39(a) is not included with the determination, the State agency shall notify the Federal agency in writing within 14 days of receiving the determination and supporting information that the 60-day review period has not begun, identify missing information required by § 930.39(a), and that the 60-day review period will begin when the missing information is received by the State agency. If the State agency has not notified the Federal agency that information required by § 930.39(a) is missing within the 14 day notification period, then the 60-day review period shall begin on the date the State agency received the consistency determination and accompanying information. The State agency's determination of whether the information required by § 930.39(a) is complete is not a substantive review of the adequacy of the information provided. Thus, If a Federal agency has submitted a consistency determination and information required by § 930.39(a), then the State agency shall not assert that the 60-day review period has not begun because the information contained in the items required by § 930.39(a) are substantively deficient, or for failure to submit information that is in addition to that required by § 930.39(a).

* * * * *

8. Section 930.51 is proposed to be amended by revising paragraph (a) and paragraph (e) as follows:

§ 930.51 Federal license or permit.

(a) The term ''federal license or permit'' means any required authorization which any Federal agency is empowered to issue to an applicant that an applicant is required by law to obtain in order to conduct activities affecting any land or water use or natural resource of the coastal zone. The term does not include OCS plans, and federal license or permit activities described in detail in OCS plans, which are subject to subpart E of this part, or leases issued pursuant to lease sales conducted by a Federal agency (*e.g.,* outer continental shelf (OCS) oil and gas lease sales conducted by the Minerals Management Service or oil and gas lease sales conducted by the Bureau of Land Management). Lease sales conducted by a Federal agency are Federal agency activities under subpart C of this part.

* * * * *

(e) The determination of substantially different coastal effects under paragraphs (b)(3), and (c) of this section is made on a case-by-case basis by the Federal agency after consulting with the State agency, and applicant. The Federal agency shall give considerable weight to the opinion of the State agency and the terms ''major amendment,'' ''renewals'' and ''substantially different'' shall be construed broadly to ensure that the State agency has the opportunity to review activities and coastal effects not previously reviewed.

* * * * *

9. Section 930.58 is proposed to be amended by revising paragraph (a)(1) and the third sentence of paragraph (a)(2) as follows:

§ 930.58 Necessary data and information.

(a) * * *

(1) A copy of the application for the Federal license or permit and

(i) all material provided to the Federal agency in support of the application; and

(ii) To the extent not included in paragraphs (a)(1) or (a)(1)(i) of this section, a detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal;

(2) * * * Necessary data and information may include State or local government permit applications which are required for the proposed activity.

* * *

* * * * *

10. Section 930.60 is proposed to be revised as follows:

§ 930.60 Commencement of State agency review.

(a) Except as provided in § 930.54(e) and paragraph (a)(1) of this section, State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the necessary data and information required pursuant to § 930.58.

(1) If an applicant fails to submit a consistency certification in accordance with § 930.57, or fails to submit necessary data and information required pursuant to § 930.58, the State agency shall, within 30 days of receipt of the incomplete information, notify the applicant and the Federal agency of the missing certification or information, and that:

(i) The State agency's review has not yet begun, and that its review will commence upon receipt of the missing certification or information; or

(ii) In the case where the applicant has provided a certification, but not all necessary data and information required pursuant to § 930.58, the State agency's review has begun, and that the missing information must be received by the State agency during the State's review period.

(2) Within 30 days of receipt of the certification or necessary data and information that was deemed missing, pursuant to paragraph (a)(1) of this section, the State agency shall notify the applicant and Federal agency that the certification and necessary data and

information required pursuant to § 930.58 is complete, the date the information deemed missing was received, and that the State agency's consistency review commenced on the date of receipt.

(3) Once the six-month review period has begun under paragraphs (a), (a)(1) or (2) of this section, State agencies shall not stop, stay, or otherwise alter the consistency timeclock without the applicant's written agreement. State agencies and applicants (and persons under subpart E of this part) may mutually agree to stay the consistency timeclock. Such an agreement shall be in writing and a copy shall be provided to the Federal agency. A Federal agency shall not presume State agency concurrence with an activity where such written agreement exists or where a State agency's review period, under paragraph (a)(1)(i) of this section, has not begun.

(b) The State agency's determination that a certification and necessary data and information under paragraph (a) of this section is complete is not a substantive review of the adequacy of the information provided. If an applicant has submitted the documents required by § 930.58, then a State agency's or Federal agency's assertion that the information contained in the submitted documents is substantively deficient, or a State agency's or Federal agency's request for clarification of the information provided, or information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

11. Section 930.63 is proposed to be amended by revising the fourth sentence in paragraph (d) as follows:

§ 930.63 State agency objection to a consistency certification.

* * * * *

(d) * * * See § 930.121(c) for further details regarding alternatives for appeals under subpart H of this part.

* * * * *

12. Section 930.76 is proposed to be amended by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising paragraphs (a) and (b) as follows:

§ 930.76 Submission of an OCS plan, necessary data and information and consistency certification.

(a) Any person submitting any OCS plan to the Secretary of the Interior or designee shall submit to the Secretary of the Interior or designee (1) a copy of the OCS plan, (2) the consistency certification, (3) the necessary data and information required pursuant to § 930.58, and (4) the information submitted pursuant to the Department of the Interior's OCS operating regulations (*see* 30 CFR 250.203 and 250.204) and OCS information program regulations (*see* 30 CFR part 252).

(b) The Secretary of the Interior or designee shall furnish the State agency with a copy of the information submitted under paragraph (a) of this section, (excluding proprietary information).

* * * * *

13. Section 930.77 is proposed to be amended by revising paragraph (a) as follows:

§ 930.77 Commencement of State agency review and public notice.

(a)(1) Except as provided in § 930.60(a), State agency review of the person's consistency certification begins at the time the State agency receives the information required pursuant to § 930.76(a) and (b). If a person has submitted the documents required by § 930.76(a) and (b), then a State agency's assertion that the information contained in the submitted documents is substantively deficient, or a State agency's request for clarification of the information provided, or information and data in addition to that required by § 930.76 shall not delay or otherwise change the date on which State agency review begins.

(2) To assess consistency, the State agency shall use the information submitted pursuant to § 930.76. If a State agency needs information in addition to the information required pursuant to § 930.76, it shall amend its management program pursuant to § 930.58(a)(2).

(3) After the State agency's review begins, if the State agency requests additional information, it shall describe in writing to the person and to the Secretary of the Interior or its designee the reasons why the information provided under § 930.76 is not adequate to complete its review, and the nature of the information requested and the necessity of having such information to determine consistency with the enforceable policies of the management program. The State agency shall make its request for additional information no later than three months after commencement of the State agency's review period. The State agency shall not request additional information after the three-month notification period described in § 930.78(a).

* * * * *

14. Section 930.82 is proposed to be revised as follows:

§ 930.82 Amended OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and/or if, pursuant to subpart H of this part, the Secretary does not determine that each of the objected to federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, and if the person still intends to conduct the activities described in the OCS plan, the person shall submit an amended plan to the Secretary of the Interior or designee along with a consistency certification and data and information necessary to support the amended consistency certification. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed federal license or permit activities described in detail in the amended plan will be conducted in a manner consistent with the management program. When satisfied that the person has met the requirements of the OCSLA and this subpart, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding proprietary information), necessary data and information and consistency certification.

15. Section 930.85 is proposed to be amended by removing paragraph (d) and revising paragraph (b) and paragraph (c) as follows:

§ 930.85 Failure to comply substantially with an approved OCS plan.

* * * * *

(b) If a State agency claims that a person is failing substantially to comply with an approved OCS plan subject to the requirements of this subpart, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the Minerals Management Service region involved. Such claim shall include a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim shall be sent to the person.

(c) If a person fails substantially to comply with an approved OCS plan, as determined by Minerals Management Service, pursuant to the Outer Continental Shelf Lands Act and applicable regulations, the person shall comply with the approved plan or shall submit an amendment to such plan or

a new plan to Minerals Management Service. When satisfied that the person has met the requirements of the OCSLA and this subpart, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding proprietary information), necessary data and information and consistency certification. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.

16. Section 930.121 is proposed to be amended by revising paragraph (c) as follows:

§ 930.121 Consistent with the objectives or purposes of the Act.

* * * * *

(c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program. The Secretary may consider but is not limited to considering previous appeal decisions, alternatives described in state objection letters and alternatives and other information submitted during the appeal. An alternative shall not be considered unless the State submits a statement, in a brief or other supporting material, to the Secretary that the alternative would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program.

17. Section 930.125 is proposed to be amended by redesignating paragraphs (b) through (e) as paragraphs (c) through (f), and by adding a new paragraph (b) as follows:

§ 930.125 Notice of appeal and application fee to the Secretary.

* * * * *

(b) The appellant's notice of appeal shall include a statement briefly explaining the appellant's argument for each ground for appeal of the State agency's objection under § 923.121, as well as any procedural/threshold arguments regarding the State's objection. Grounds for appeal or issues concerning the State agency's objection not identified in the appellant's notice of appeal shall not be considered by the Secretary and will not be considered part of the Secretary's decision record.

* * * * *

18. Section 930.127 is proposed to be revised as follows:

§ 930.127 Briefs and Supporting Materials.

(a) Within 30 days of the filing of the Notice of Appeal, the appellant shall submit to the Secretary a brief accompanied by all such supporting documentation and material as the appellant deems necessary for the consideration of the Secretary. Within 30 days of the State's receipt of the Appellant's brief and supporting documentation and material, the State shall submit to the Secretary a brief and all such supporting documentation and material the State deems necessary for the consideration of the Secretary.

(b)(1) Both the appellant and State agency shall send four copies of their briefs and supporting materials to the Office of General Counsel for Ocean Services (GCOS), NOAA, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910, one of which must be in an electronic format compatible (to the extent practicable) with the website maintained by the Secretary to provide public information concerning appeals under the CZMA.

(2) At the same time that materials are submitted to the Secretary, the appellant and State agency shall serve at least one copy of their briefs, supporting materials and all requests and communications to the Secretary and on each other.

(3) Each submission to the Secretary shall be accompanied by a certification of mailing and/or service on the other party and on GCOS. Service may be done by mail or hand delivery. Materials or briefs submitted to the Secretary not in compliance with time periods specified in this subpart for filing with the Secretary or without certification of service on the other party may be disregarded and not entered into the Secretary's decision record of the appeal.

(c)(1) The Secretary has broad authority to implement procedures governing the consistency appeal process to ensure efficiency and fairness to all parties. The Secretary determines the content of the appeal decision record. Briefs and supporting materials submitted by the State agency and appellant, public comments and the comments of interested Federal agencies usually comprise the decision record of an appeal. The Secretary may determine, on the Secretary's own initiative, that additional information is necessary to the Secretary's decision, including documents prepared by Federal agencies pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and may request such information.

(2) To promote efficient use of time and resources, the Secretary may, upon the Secretary's own initiative, require the appellant and the State agency to submit briefs and supporting materials addressing and/or relevant only to procedural or jurisdictional issues presented in the Notice of Appeal or identified by the Secretary. Following a decision of the procedural or jurisdictional issues, the Secretary may require briefs on substantive issues raised by the appeal if necessary.

(3) The Secretary may require the appellant and the State agency to submit briefs in addition to those described in 930.127(a) and (c)(1) as necessary.

(4) Unless additional briefs are requested by the Secretary under paragraphs (1) or (2), the parties shall not submit any briefs or materials in addition to those described in paragraph (a) of this section, and any unrequested briefs or materials may be disregarded and not entered into the Secretary's decision record of the appeal.

(d) The appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion. The State agency bears the burden of submitting evidence in support of any alternatives proposed by the State agency or submitted to the Secretary by the State agency during the conduct of the appeal.

(e) The Secretary may extend the time for submission of briefs and supporting materials only in the event of exigent or unforeseen circumstances.

(f) Where a State agency objection is based in whole or in part on a lack of information, the Secretary shall limit the record on appeal to information previously submitted to the State agency and relevant comments thereon, except as provided for in sections 930.129(b) and (c).

19. Section 930.128 is proposed to be revised as follows:

§ 930.128 Public notice, comment period, and public hearing.

(a) The Secretary shall provide public notice of the appeal within 30 days after the receipt of the Notice of Appeal and payment of application fees by publishing a Notice in the **Federal Register** and in a publication of general circulation in the immediate area of the coastal zone likely to be affected by the proposed activity.

(b) The Secretary shall provide an opportunity for public comment on the appeal of no less than 30 days to run concurrently with the opportunity to comment provided to interested Federal agencies. Notice of the public comment period shall take the same form as Notice required in paragraph (a) of this section and may be provided in the same Notice as the Notice of the filing of the appeal.

(c)(1) Notice of the opportunity for interested Federal agencies to comment

on the appeal shall take the same form as Notice required in paragraph (a) of this section and may be provided in the same Notice as the Notice of the filing of the appeal. The Secretary shall accord greater weight to those Federal agencies whose comments are within the areas of their expertise.

(2) The Secretary may, on the Secretary's own initiative or upon written request, for good cause shown, reopen the period for Federal agency comments before the closure of the decision record.

(d) The Secretary may hold a public hearing in response to a request or on the Secretary's own initiative. A request for a public hearing must be filed with the Secretary within 45 days of the publication of the Notice in the **Federal Register** required in paragraph (a). If a hearing is held by the Secretary, it shall be noticed in the **Federal Register** and guided by the procedures described within § 930.113.

20. Section 930.129 is proposed to be amended by revising paragraph (c) and paragraph (d) as follows:

§ 930.129 Dismissal, remand, stay, and procedural override.

* * * * *

(c) The Secretary may stay the processing of an appeal or extend the period for the development of the Secretary's decision record, in accordance with § 930.130.

(d) The Secretary may remand an appeal to the State agency for reconsideration of the project's consistency with the enforceable policies of the State's management program if significant new information relevant to the State agency's objection, that was not provided to the State agency as part of its consistency review, is submitted to the Secretary by the State agency, the appellant, the public or a Federal agency. The Secretary shall determine a time period for the remand to the State not to exceed 20 days and the time period for remand must be completed within the period described in § 930.130 for the development of the Secretary's decision record. If the State agency responds that it still objects to the activity, then the Secretary shall continue to process the appeal. If the State agency concurs that the activity is consistent with the enforceable policies of the State's management program, then the Secretary shall declare the appeal moot and notify the Federal agency that the activity may be federally approved.

21. Section 930.130 is proposed to be amended by revising paragraphs (a), (b), (c) and (d) as follows:

§ 930.130 Closure of the decision record and issuance of decision.

(a)(1) With the exception of paragraph (2), the Secretary shall close the decision record and not consider additional information, briefs or comments for an appeal no later than 270 days after the date of the Secretary's Notice of Appeal published in the **Federal Register** under § 930.128(a). Upon closure of the decision record, the Secretary shall immediately publish in the **Federal Register** a notice indicating when the decision record has been closed.

(2) The Secretary may stay the closing of the decision record beyond the 270-day period described in paragraph (1):

(i) for a specified period mutually agreed to in writing by the appellant and the State agency; or

(ii) as needed to receive, on an expedited basis, the final (A) environmental analyses required under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) for the Federal agency's proposed issuance of a license or permit or grant of assistance; or (B) Biological Opinions issued pursuant to the Endangered Species Act (16 U.S.C. 1531 *et seq.*) for the Federal agency's proposed issuance of a license or permit or grant of assistance.

(b) No later than 90 days after publication of a **Federal Register** notice indicating when the decision record for an appeal has been closed, the Secretary shall issue a decision or publish a notice in the **Federal Register** explaining why a decision cannot be issued at that time. The Secretary shall issue a decision within 45 days of the publication of a **Federal Register** notice explaining why a decision cannot be issued within the 90-day period.

(c) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

(d) In reviewing an appeal, the Secretary shall find that a proposed federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information in the decision record supports this conclusion.

* * * * *

[FR Doc. 03–14663 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131478–02]

RIN 1545–BB25

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

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section 1502 of the Internal Revenue Code that redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock.

DATES: The public hearing originally scheduled for June 20, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Regulations Unit, Associate Chief Counsel (Procedure and Administration), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, March 14, 2003, (68 FR 12324), announced that a public hearing was scheduled for June 20, 2003, at 10 a.m., in the auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code. The public comment period for these regulations expires on June 12, 2003. The outlines of oral testimony were due on May 30, 2003. The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, June 6, 2003, no one has requested to speak. Therefore, the public hearing scheduled for June 20, 2003, is cancelled.

Cynthia E. Grigsby,

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

[FR Doc. 03–14785 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 25, 31, 53, 55, and 156

[REG–107618–02]

RIN 1545–BB29

Automatic Extension of Time To File Certain Information Returns and Exempt Organization Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations providing an automatic extension of time to file certain information returns and exempt organization returns. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 9, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–107618–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–107618–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Treena Garret, (202) 622–7180; concerning the regulations, Charles A. Hall, (202) 622–4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP Washington, DC 20224. Comments on the collection of information should be received by August 11, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.6081–8T and § 1.6081–9T. This collection of information is required by the IRS for taxpayers to obtain a benefit (an automatic 30-day extension of time to file certain information returns and an automatic three-month extension of time to file exempt organization returns). The respondents are taxpayers required to file certain information returns or exempt organization returns.

Estimates of the reporting burden in § 1.6081–8T of these proposed regulations are reflected in the burden estimates of Form 8809, ''Request for Extension of Time to File Information Returns.''

Estimated total annual reporting burden for 2001 for Form 8809: 155,000 hours.

Estimated number of responses for 2001 Form 8809: 50,000.

Estimated average annual burden hours per response for 2001 Form 8809: 3 hours and 6 minutes.

Estimates of the reporting burden in § 1.6081–9T of these proposed regulations are reflected in the burden estimates of Form 8868, ''Application for Extension of Time To File an Exempt Organization Return.''

Estimated total annual reporting burden for 2001 for Form 8868: 1,373,335 hours.

Estimated number of responses for 2001 Form 8868: 248,932.

Estimated average annual burden hours per response for 2001 Form 8809: 5 hours and 31 minutes.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR parts 1 and 31. The temporary regulations provide that filers and transmitters of certain information returns may obtain an automatic 30-day extension of time to file. The temporary regulations also provide that exempt organizations may obtain an automatic three-month extension of time to file an exempt organization return. The text of those regulations also serves as the text of these regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. In addition, these regulations also propose other minor changes to conform the regulations under section 6081 to current law and practice.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the collection of information imposed by this regulation is not significant because the burden in these regulations is more than offset by the reduction of the burden in Forms 8809 and 8868. These regulations reduce the burden in those forms by removing the signature requirement and the requirement to provide an explanation of the need for the extension of time to file. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (preferably a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the regulations is Charles A. Hall of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 55

Excise taxes, Investments, Reporting and recordkeeping requirements.

26 CFR Part 156

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 25, 31, 53, 55, and 156 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.6081–8 also issued under 26 U.S.C. 6081(a).

Section 1.6081–9 also issued under 26 U.S.C. 6081(a). * * *

Par. 2. Section 1.6081–1 is amended by revising paragraph (a) to read as follows:

§ 1.6081–1 Extension of time for filing returns.

(a) *In general*. The Commissioner is authorized to grant a reasonable extension of time for filing any return, declaration, statement, or other document which relates to any tax imposed by subtitle A of the Code and which is required under the provisions of subtitle A or F of the Code or the regulations thereunder. However, other than in the case of taxpayers who are abroad, such extensions of time shall not be granted for more than 6 months, and the extension of time for filing the return of a DISC (as defined in section 992(a)), as specified in section 6072(b), shall not be granted. An extension of time for filing an income tax return shall not operate to extend the time for the payment of the tax or any installment thereof unless specified to the contrary in the extension. For rules relating to extensions of time for paying tax, see § 1.6161–1.

* * * * *

Par. 3. Section 1.6081–8 is added to read as follows:

§ 1.6081–8 Automatic extension of time to file certain information returns.

[The text of proposed § 1.6081–8 is the same as the text of § 1.6081–8T published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.6081–9 is added to read as follows:

§ 1.6081–9 Automatic extension of time to file exempt organization returns.

[The text of proposed § 1.6081–9 is the same as the text of § 1.6081–9T published elsewhere in this issue of the **Federal Register**].

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

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

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 6. The authority citation for part 31 continues to read in part as follows:

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

Par. 7. In § 31.6081(a)–1, paragraph(a)(2)(i) is revised to read as follows:

§ 31.6081(a)–1 Extensions of time for filing returns and other documents.

(a) * * *

(2) * * * (i) [The text of proposed § 31.6081(a)–1(a)(2)(i) is the same as the text of § 31.6081(a)–1T(a)(2)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 8. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

PART 55—EXCISE TAX ON REAL ESTATE INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

Par. 9. The first sentence of the authority citation for part 55 is revised to read as follows:

Authority: 26 U.S.C. 6001, 6011, 6071, 6091, and 7805. * * *

PART 156—EXCISE TAX ON GREENMAIL

Par. 10. The authority citation for part 156 is revised to read as follows:

Authority: 26 U.S.C. 6001, 6011, 6061, 6071, 6091, 6161, and 7805.

Par. 11. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column in its place:

Section	Remove	Add
1.6081–2(f), first sentence	District director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.

Section	Remove	Add
1.6081–3(d), first sentence	District director, including the Director of International Operations, or the director of a service center may, in his discretion.	Commissioner may.
1.6081–4(c), first sentence	District director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
1.6081–5(a)(1)	1.6031–1(e)(2)	1.6031(a)–1(e)(2).
1.6081–6(d), first sentence	District director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
1.6081–7(d), first sentence	District director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
25.6081–1, second sentence	District director or director of the service center.	Commissioner.
31.6081(a)–1(b), first sentence	District director or director of a service center	Commissioner.
53.6081–1(a), first sentence	District directors and directors of service centers are.	The Commissioner is.
53.6081–1(b), first sentence	To the district director or director of the service center with whom the return is to be filed.	In accordance with the instructions to the extension request form.
55.6081–1, first sentence	District directors and directors of service centers are.	The Commissioner is.
156.6081–1(a), first sentence	District directors and directors of service centers are.	The Commissioner is.
156.6081–1(b), first sentence	To the district director or director of the service center with whom the return is to be filed.	In accordance with the instructions to the extension request form.

Judith B. Tomaso,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–14604 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–03–050]

RIN 1625–AA09

Drawbridge Operating Regulation; Great Channel Between Stone Harbor and Nummy Island, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the regulations that govern the operation of the County of Cape May Bridge across Great Channel at mile 0.7 between Stone Harbor and Nummy Island, New Jersey. The bridge area would be closed to navigation beginning 8 a.m. on October 15, 2003, through 11 p.m. on May 14, 2004. This closure is necessary to facilitate extensive mechanical rehabilitation and to maintain the bridge's operational integrity.

DATES: Comments and related material must reach the Coast Guard on or before August 11, 2003.

ADDRESSES: You may mail comments and related material to Commander (Oan-b), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 431 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6334. The Commander (Oan-b), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Linda Bonenberger, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6227.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–03–050), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Cape May County Department of Public Works (CMC) owns and operates the County of Cape May Bridge across Great Channel. The bridge is located between Stone Harbor and Nummy Island, New Jersey. The current regulations at 33 CFR 117.720 require the draw to open on signal except from May 15 through October 15 from 10 p.m. to 6 a.m., the draw need only open if at least four hours notice has been given. From October 16 through May 14, the draw need only open if at least 24 hours notice has been given.

Agate Construction Company, on behalf of CMC, has requested a temporary change to existing regulations for the County of Cape May Bridge to facilitate necessary repairs. The repairs consist of extensive mechanical rehabilitation of the bascule span. To facilitate the repairs, the bascule span would be locked in the closed position to vessels from 8 a.m. on October 15, 2003, through 11 p.m. on May 14, 2004.

The Coast Guard reviewed the bridge logs for the last 10 years. From October 16 to May 14, the current regulation requires the draw need only open if at least 24 hours notice is given. From 1993 to 2002, the bridge logs revealed only two openings were provided each year, between October 15 and May 14. The earliest and latest opening dates occurred May 15, 1998, and November 6, 1994, respectively. Also, the bridge is not land-locked on either side of Great Channel providing alternate vessel access to the Atlantic Ocean, to the south, and to the New Jersey Intracoastal Waterway, to the north. We contacted the local Coast Guard unit (USCG Marine Safety Office Philadelphia) of the bridge's temporary inability to open for vessels and they did not object. Therefore, vessels should not be negatively impacted by this proposal.

Discussion of Proposed Temporary Rule

The Coast Guard proposes to temporarily amend 33 CFR 117.720 by inserting a new provision allowing the bridge to remain closed to navigation from 8 a.m. on October 15, 2003, to 11 p.m. on May 14, 2004. Upon completion of repairs, the bridge will return to the current operating schedule.

Regulatory Evaluation

This proposed temporary 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 temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This conclusion was based on the fact that the change will have a very limited impact on maritime traffic transiting this area. Mariners can plan their transits by using alternate routes to gain access to larger bodies of water.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed temporary 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 proposed temporary rule would not have a significant economic impact on a substantial number of small entities.

The proposed temporary rule would not have a significant economic impact on a substantial number of small entities because even though the rule closes this small area to mariners, they will not be land-locked at either end and will be able to plan their transits by using available alternate routes.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed temporary rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed temporary rule would economically affect it.

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 proposed temporary 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 Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District (757) 398–6222.

Collection of Information

This proposed temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3502).

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 proposed temporary 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 proposed temporary 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 proposed temporary rule would 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 proposed temporary 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 proposed temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on

how this proposed temporary rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed temporary rule and concluded that, under figure 2–1, paragraph (32) (e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to temporarily amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From October 15, 2003, through May 14, 2004, § 117.720(b) is temporarily suspended and a new paragraph (c) is added to read as follows:

§ 117.720 Great Channel.

* * * * *

(c) From 8 a.m. on October 15, 2003, until 11 p.m. on May 14, 2004, the draw of the County of Cape May Bridge, mile 0.7, between Stone Harbor and Nummy Island need not be opened for the passage of vessels.

Dated: June 3, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–14799 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

48 CFR Part 204 and Appendix G to Chapter 2

[DFARS Case 2003–D005]

Defense Federal Acquisition Regulation Supplement; DoD Activity Address Codes in Contract Numbers

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to prescribe the use of DoD activity address codes in the first six positions of solicitation and contract numbers, instead of the current practice of using DoD activity address numbers in the first six positions. This change will provide consistency in the method of identifying DoD activities and will eliminate the need for maintenance of the list of DoD activity address numbers in DFARS Appendix G.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 11, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2003–D005 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D005.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to DFARS Subpart 204.70 to prescribe the use of a contracting office's DoD activity address code in the first six positions of a solicitation or contract number, instead of the DoD activity address number found in DFARS Appendix G. DoD is planning to use activity address codes in numbering solicitations and contracts, beginning October 1, 2003. DoD activity address codes are maintained by the Defense Logistics Agency and are available at *https://day2k1.daas.dla.mil/dodaac/dodaac.asp.*

The proposed change will eliminate the need for maintenance of the list of activity address numbers in DFARS Appendix G. However, there will still be a need to maintain the two-position codes, presently found in Appendix G, that contracting offices use when placing an order against another activity's contract or agreement. These codes will be relocated to the Defense Procurement and Acquisition Policy Web site (*http://www.acq.osd.mil/dpap*), and Appendix G will be removed from the DFARS. The administrative information included in section 204.7005 of this proposed rule is also being considered for a location outside of the DFARS.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because assignment of solicitation and contract numbers is an administrative function performed by the Government. Since the rule makes no change to the number of characters in a solicitation or contract number, it should not have a significant effect on the operation of automated systems. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D005.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection

requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 204

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 204 and Appendix G to Chapter 2 as follows:

1. The authority citation for 48 CFR Part 204 and Appendix G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.7000 is revised to read as follows:

204.7000 Scope.

This subpart—

(a) Prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments; and

(b) Does not apply to communication service authorizations issued by the Defense Information Technology Contracting Organization of the Defense Information Systems Agency in accordance with 239.7407–2.

3. Section 204.7003 is amended by revising paragraph (a)(1) to read as follows:

204.7003 Basic PII number.

(a) * * *

(1) *Positions 1 through 6.* The first six positions identify the department/agency and office issuing the instrument. Use the DoD Activity Address Code (DoDAAC) assigned to the issuing office. DoDAACs can be found at *https://day2k1.daas.dla.mil/dodaac/dodaac.asp.*

* * * * *

4. Section 204.7004 is amended in paragraph (d)(2)(i) by revising the second sentence to read as follows:

204.7004 Supplementary PII numbers.

* * * * *

(d) * * *

(2) * * *

(i) * * * The first and second positions contain the call/order code assigned to the ordering office in accordance with 204.7005. * * *

* * * * *

5. Section 204.7005 is added to read as follows:

204.7005 Assignment of order codes.

(a) The Defense Logistics Agency, Acquisition Operations Team, Fort Belvoir, VA 22060–6221, is the executive agent for maintenance of code assignments for use in the first two positions of an order number when an activity places an order against another activity's contract or agreement (see 204.7004(d)(2)). The executive agent distributes blocks of two-character order codes to department/agency monitors for further assignment.

(b) Contracting activities submit requests for assignment of or changes in two-character order codes to their respective monitors in accordance with department/agency procedures. Order code monitors—

(1) Approve requests for additions, deletions, or changes; and

(2) Provide notification of additions, deletions, or changes to—

(i) The executive agent; and

(ii) The executive editor, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3062.

(c) Order code monitors are—

ARMY

Army Contracting Agency, Attn: SFCA-IT, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201

NAVY AND MARINE CORPS

Office of the Assistant Secretary of the Navy (RD&A), 2211 South Clark Place, Crystal Plaza 5, Room 506, Arlington, VA 22202–3738

AIR FORCE

SAF/AQCX, 1060 Air Force Pentagon, Washington, DC 20330–1060

DEFENSE LOGISTICS AGENCY

Defense Logistics Agency, Acquisition Operations Team, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221

OTHER DEFENSE AGENCIES

Army Contracting Agency, Attn: SFCA-IT, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201

(d) Order code assignments can be found at *http://www.acq.osd.mil/dpap.*

Appendix G to Chapter 2—[Removed and Reserved]

6. Appendix G to Chapter 2 is removed and reserved.

[FR Doc. 03–14782 Filed 6–10–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, and 173

[RSPA–03–15327 (Docket No. HM–206B)]

RIN 2137–AD28

Hazardous Materials: Changes to the Hazard Communication Requirements, Including Revision of Design of Labels and Placards for Materials Poisonous by Inhalation (PIH)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing changes to the hazard communication requirements of the Hazardous Materials Regulations (HMR), including revisions of the specifications for labels and placards, based on petitions for rulemaking, requests for clarification, and our own belief that clarifications and improvements in the HMR may be appropriate. The effect of the proposed regulatory changes would be to improve safety of emergency responders and the public, and of offerors and transporters of hazardous materials.

DATES: Comments must be submitted on or before August 11, 2003. To the extent possible, we will accept late-filed comments as we develop a final rule.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify Docket Number RSPA–03–15327 (HM–206B) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System Web site at ''*http://dms.dot.gov/*'' and following the instructions for submitting a document electronically. If you prefer, you can fax comments to 202–493–2251 for filing in the docket.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Dockets Management System Web site at *http://dms.dot.gov/.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov/*.

FOR FURTHER INFORMATION CONTACT:

Helen L. Engrum, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–8553.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Background
II. Marking Requirements
  A. NON-ODORIZED Marking on Cylinders, Portable Tanks, Cargo Tanks, and Tank Cars Containing Liquefied Petroleum Gas
  B. Organic Peroxide Identification Number Marking
  C. Fumigant Marking
III. Materials Poisonous by Inhalation (PIH)
  A. Revision of PIH Label and Placard and Transition Provisions
  B. Hydrogen Fluoride, Anhydrous, and Similar Materials
  C. Residues (When PIH Subsidiary)
IV. Other Requirements for Labels and Placards
  A. Color Standards for Labels and Placards
  B. ASTM D4956–95 (Red and White) for Reflective Colors
  C. Organic Peroxide, Subsidiary FLAMMABLE LIQUID Label
  D. Cylinder Markings in Accordance With CGA Pamphlet C–7
  E. Placarding Exception for Class 9 Materials (Domestic)
  F. Footnote to Table 1 (placards)—Editorial Correction
V. Training and Emergency Response Information
  A. Emergency Response Telephone Number Requirements
  B. Residues of Class 9 (Miscellaneous) Hazardous Substances, When Less Than RQ Remains
  C. Clarification of the Emergency Response Information and Training Requirements for Combustible Liquids
VI. Security Plans
  A. Infectious Substances—Select Agent
VII. Regulatory Analyses and Notices
  A. Executive Order 12866 and DOT Regulatory Policies and Procedures
  B. Executive Order 13132
  C. Executive Order 13175
  D. Regulatory Flexibility Act
  E. Paperwork Reduction Act
  F. Regulatory Identification Number (RIN)
  G. Unfunded Mandates Reform Act
  H. Environmental Assessment

I. Background

In general, the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) require that during transportation: (1) Non-bulk packages of hazardous materials must be marked with the shipping name and identification number of the material and have a hazard warning label; (2) bulk shipments of hazardous materials must be identified by placards and identification number markings attached to the transport vehicle or bulk package; and (3) hazardous materials must be described and identified on a shipping paper that accompanies the shipment in transportation and contains an emergency response telephone number that is monitored at all times while the hazardous material is in transportation. This telephone number is used by emergency responders to obtain detailed, product-specific information that includes guidance for the initial actions to be taken in the event of an incident. These requirements are designed to provide fire and emergency response personnel, transport workers, and the public with information in the event of a transportation incident involving hazardous materials. Hazard communication and emergency response information requirements are set forth in subparts C through G of part 172 of the HMR. The hazard communication system in the HMR is consistent with international standards.

In this NPRM, RSPA (we) is proposing a number of clarifications and improvements to the shipping paper, identification number, other marking, labeling and placarding, and emergency response telephone number requirements. The changes are intended to enhance the identification of hazardous materials in transportation and improve the availability of emergency response information. These changes should result in better response by, and protection of emergency response personnel, fire or police personnel and the public, and help to ensure that hazardous materials are transported with minimum risks to persons, property, and the environment.

We received a number of petitions for rulemaking requesting changes to the hazard communications requirements of the HMR. The following chart summarizes the petitions considered in this NPRM:

Petition No.	Request
0804	Amend placarding requirements for PROPANE to require the phrase NON-AEROMATIC be displayed on a placard when there is no detectable odor to alert emergency response personnel. Requested by New Jersey State Firemen's Mutual Benevolent Association (Proposed in §§ 172.301, 172.326, 172.328, 172.330).
1113	Amend the requirements for color standards for labels and placards to reference certain colors from the Pantone® Matching System, Pantone® Color Formula Guide, First Edition 2000–2001. Requested by the Dangerous Goods Advisory Council (DGAC, formerly HMAC) (Proposed in §§ 172.407(d) and 172.519(d)).
1285	Amend the labeling requirements to allow commercial motor carriers to transport Division 2.1 or 2.2 gases in cylinders or Dewars marked in conformance with CGA Pamphlet C–7. Requested by the Compressed Gas Association (CGA) (Proposed in § 172.400a(a)(1)).
1327	Amend the hazard communication system to require display of the identification number on each bulk packaging, unit load device, freight container, transport vehicle or rail car, when transporting an ''Organic peroxide, temperature controlled'' material subject to placarding provisions in § 172.504(e), Table 1. Requested by the Los Angeles Police Department (Proposed in § 172.336(b)(2)).
1368	Revise paragraphs (b) and (e) of § 173.9 to: (1) Require only the EPA FUMIGANT warning label to be prominently displayed instead of the FUMIGANT marking currently prescribed in the HMR; (2) allow for aeration of the transport vehicle or freight container without requiring unloading of the lading that has been fumigated; and (3) clarify that the phrase ''or treated with any material,'' applies to ready-to-use liquid formulations or ''foggers'', such as ant or roach repellants. Requested by the Industrial Fumigant Company (Proposed revision in paragraph (e) in § 173.9).

Petition No.	Request
1416	Amend the requirements for materials listed as hazardous substances in the § 172.101 Table, Appendix A, Table I, that only meet the hazard class definition of a Class 9 (miscellaneous) material. The petitioner requested that markings, labels, and placards be allowed to remain on such packages containing a residue of such substances, although the rail cars have been unloaded to a quantity less than the reportable quantity (RQ). Requested by Bayer Corporation (Proposed revision in § 172.514(b) to eliminate confusion regarding these types of returned rail car shipments).

II. Marking Requirements

A. Non-Odorized Marking on Cylinders, Portable Tanks, Cargo Tanks, and Tank Cars Containing Liquefied Petroleum Gas

With certain exceptions, all liquefied petroleum gas (LPG) must be odorized when transported in portable tanks or cargo tanks, as prescribed in Note 2 of § 173.315(b)(1). Odorization must indicate positively, with a distinctive odor, the presence of gas down to a concentration in air of not more than one-fifth the lower limit of combustibility. Exceptions are permitted if odorization is harmful in the use or further processing of LPG, or if odorization will serve no useful purpose as a warning agent. There is no requirement in the HMR to odorize LPG in cylinders or tank cars. The fact that LPG is odorized or not is not required to be communicated to emergency responders or the general public.

The New Jersey State Firemen's Mutual Benevolent Association (the Association) petition requested that packages containing non-odorized propane that are already required to be placarded have the phrase NON-AEROMATIC or NON-ODORIZED added either above or below the word ''propane.'' The Association stated that emergency response personnel may be unaware of leaks or spills of propane because there is no detectable odor to alert these persons of the hazardous condition present.

We believe this petition has merit. This lack of additional hazard warning information could cause emergency responders to make inappropriate decisions in mitigating an accident, potentially jeopardizing their safety or the public safety.

In 1984, we published an NPRM, Docket HM–126D; Notice No. 84–11 (49 FR 38164) that proposed several changes in parts 171, 172 and 173 regarding odorization of liquefied petroleum gas (LPG), in addition to other revisions. The comments we received ranged from complete support to direct opposition. In a final rule (52 FR 29526) published August 10, 1987, we stated that the odorization issue would be handled under a separate docket. In comments to the HM–126D rulemaking, an LPG carrier representative and the National LP-Gas Association stated that non-odorized LPG is transported in fewer than 300 cargo tanks, fewer than 600 tank cars, approximately 3500 cylinders, and approximately 100 portable tanks. Commenters also stated that less than 1 percent of the LPG transported by motor vehicle is non-odorized and approximately 94 percent of LPG is transported by motor vehicle.

Emergency responders may assume that each bulk packaging displaying the LPG proper shipping name, or a technical name such as butane, isobutylene, or propane, contains an odorant. However, to provide the appropriate hazard warning information when packagings do not contain an odorant, we believe NON-ODORIZED should be marked in association with the proper shipping name on a cylinder (except for DOT 2P and 2Q containers and DOT 39 cylinders), portable tank, cargo tank, or tank car containing LPG. The specification DOT 2P, 2Q or 39 packagings would not be subject to the marking requirement because of their small size. At an incident involving such cylinders, emergency response personnel would have to get too close to such packages to determine whether they were marked NON-ODORIZED, which could jeopardize the health and safety of the responders.

Therefore, to provide the necessary warning, we propose to require NON-ODORIZED marking on certain cylinders, portable tanks, cargo tanks and tank cars. For portable tanks, cargo tanks and tank cars, the size of the marking would be as prescribed in the general marking requirements for bulk packagings. The annual cost of this marking, using pressure sensitive, vinyl labels that have a 5- to 7-year life expectancy, would be minimal. Accordingly, we propose to amend §§ 172.301, 172.326, 172.328, and 172.330, to require the marking NON-ODORIZED for LPG that does not contain an odorant.

B. Organic Peroxide Identification Number Marking

Currently, a Division 5.2 ORGANIC PEROXIDE placard is specified in both Table 1 and Table 2 of § 172.504. In Table 1, a Division 5.2 placard is required for any quantity of an organic peroxide, Type B, liquid or solid, temperature controlled. In Table 2, a Division 5.2 placard is required for organic peroxides not covered by Table 1 when 1,001 pounds or more are on a transport vehicle. Thus, an ORGANIC PEROXIDE placard may or may not indicate that the material is temperature controlled.

The Los Angeles Police Department (LAPD) petition (P–1327) requested that we require an identification number to be displayed on each bulk packaging, unit load device, freight container, transport vehicle, or rail car, when the material transported is a temperature-controlled organic peroxide subject to placarding under § 172.504(e), Table 1. The LAPD said this will clearly identify the organic peroxides requiring special response needs based on temperature controls. The LAPD said that the current requirement to placard any amount of ''5.2, Organic peroxide, Type B, liquid or solid, temperature-controlled'' material does not convey the warning to emergency personnel that the material must be temperature controlled. This issue was previously discussed in a final rule responding to petitions for reconsideration under HM–206 (62 FR 39398; 07/22/97). During that process, we denied LAPD's petition because such a change was not proposed in the NPRM, and was beyond the scope of that rulemaking. However, because organic peroxides that require refrigeration for stabilization purposes during transportation pose a substantial hazard in any incident that would result in a loss of temperature control, we said this suggestion had merit, and would be considered in future rulemaking.

Under the current regulations, a bulk packaging is required to display an identification number marking. Similarly, a transport vehicle or freight container containing a single hazardous material in non-bulk packagings having an aggregate gross weight of 4000 kg (8,820 pounds) or more is also required to display the identification number on the exterior of the transport vehicle or freight container. In addition, the shipping paper provides appropriate information on organic peroxide temperature-controlled material,

including the identification number. However, the shipping paper may not be immediately available at the scene of an incident. Thus, other than the ORGANIC PEROXIDE placard, there may not be other information readily available to inform responders of the unique characteristic (*i.e.*, temperature controlled) of this type of material to assist them in determining an appropriate response. We believe the LAPD petition has merit and propose to add a new paragraph (b)(2) in § 172.336 to require the identification number to be displayed on a transport vehicle or freight container containing any quantity of an organic peroxide, temperature controlled, material that is required to be placarded in accordance with the requirements in § 172.504(e), Table 1.

C. Fumigant Marking

Effective October 1, 1998, we adopted new requirements for fumigated loads (62 FR 1217; 01/08/97). Formerly, fumigation requirements applied only to rail transportation and set forth different provisions depending on the type of fumigant used. We adopted requirements in § 173.9 specifying that a fumigated transport vehicle or freight container is a ''package'' for purposes of the fumigation requirements, and expanded the requirements to cover all modes of transportation. The rule applies to fumigation with any material and set forth defining criteria and concentration thresholds for unlisted fumigants. This approach benefits shippers, carriers, law enforcement agencies, and, in particular, transport workers who may be exposed unknowingly when they open transport units. Thus, if the transport unit or freight container has been treated with any material, or is undergoing fumigation, it is subject to the fumigation marking requirements of the HMR.

The Industrial Fumigant Company (IFC) petitioned us (P–1368) to amend the HMR to revise paragraphs (b) and (e) of § 173.9 to require only the EPA FUMIGANT warning label to be prominently displayed instead of the FUMIGANT marking currently prescribed in the HMR. The petition also requested that we allow for aeration of the transport vehicle or freight container without requiring unloading of the lading that has been fumigated. In addition, the petitioner requested that we clarify the phrase ''or treated with any material,'' as it applies to materials, such as ready-to-use liquid formulations or ''foggers,'' such as ant and roach repellants. IFC said that these ''foggers,'' or non-residual insecticides, are lower in toxicity than fumigants and can be found in ready-to-use liquid formulations used in a household environment. IFC stated it would be incorrect to place a FUMIGANT marking on an application such as this, and that the phrase ''or treated with any material'' is too broad and could cause confusion.

In regard to ready-to-use liquid formulations, such as pyrethrin, we believe persons entering a transport unit should be made aware of the presence of chemicals that may pose a threat to their health and safety. We do not agree with IFC that such chemicals do not pose a risk during transportation, and we continue to believe that persons offering or transporting treated or fumigated loads must have immediate knowledge relative to such materials or fumigants.

We also do not agree that only the EPA fumigant marking or label should be displayed on a transport vehicle or freight container containing fumigated lading. The design of the FUMIGANT marking was adopted for consistency with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) for fumigated lading in transportation in commerce. For domestic transportation, we allow the hazard warning label authorized by EPA under 40 CFR part 156 as an alternative to the FUMIGANT marking.

However, we believe that this petition has merit and should, in part, be granted. We understand that some fumigated materials are aerated without being unloaded from the transport vehicle or freight container. Thus, the requirement as written in § 173.9(e)(1), that the FUMIGANT marking must remain on the package unless both the fumigated lading is unloaded and the transport vehicle is sufficiently aerated may be an unnecessary burden on the fumigation industry. In this NPRM, we propose to revise the requirements in paragraph (e) of § 173.9 to specify that the FUMIGANT marking must remain on the vehicle or container until the fumigated lading is ''unloaded or has undergone sufficient aeration.'' The word ''or'' replaces the word ''and'' in the current paragraph (e)(1). This revision will permit aeration or ventilation of the vehicle or container without unloading.

III. Materials Poisonous by Inhalation (PIH)

A. Revision of PIH Label and Placard and Transition Periods

In a final rule issued January 8, 1997 (62 FR 1217), we adopted new labels and placards for both liquids (Division 6.1) and gases (Division 2.3) that are PIH materials to enhance their identification when transported in commerce. The dark background for skull and crossbones of the symbol depicted on the PIH label and placard graphically conveys the appropriate information to alert responders to the hazards of PIH materials. The new PIH label and placard also improve hazard communication by creating an instantly recognizable difference between PIH materials and other poisons. The effective date was delayed one year, until October 1, 1998. At that time, we included transitional provisions for continued use of the POISON or POISON GAS labels and placards, until October 1, 1999, and October 1, 2001, respectively.

However, on the new PIH label and placard, we inadvertently specified a smaller skull and crossbones symbol in the upper black diamond than currently shown on the Poison placard and label. In this notice, we are proposing to enlarge the upper black diamond above the horizontal center line and, proportionally, the skull and crossbones symbol at the top of the placards and labels to conform, pictorially, in size, with the symbol on the Poison placard and label used for poisons other than those that are PIH materials. Increasing the size of the symbol will make these placards and labels more visible from a distance and will enhance the ability of emergency responders and transport workers to identify the PIH materials.

Identification number markings are not prohibited on the POISON GAS or POISON INHALATION HAZARD placards, as specified in § 172.334. Display of an identification number on a hazard warning placard must be in conformance with the identification number marking requirements prescribed in § 172.332(c) of the HMR. That is, the identification number must be displayed across the center area of the placard in 88 mm (3.5 inches) black Alpine Gothic or Alternate Gothic No. 3 numerals on a white background 100 mm (3.9 inches) high and approximately 215 mm (8.5 inches) wide, and the top of the 100 mm (3.9 inches) high white background must be 40 mm (1.6 inches) above the placard horizontal center line. Because we are proposing to enlarge the upper black diamond above the horizontal center line and, proportionally, the skull and crossbones symbol at the top of the PIH placards, identification number markings displayed on the proposed PIH placards may cause overlapping of the lower point of the upper black diamond and

impinge on space used for identification number display on such placards.

To allow space for the identification number, we propose allowing the lower point of the upper black diamond to impinge on space used to display an identification number marking on a PIH placard. A provision would be added in § 172.332(c) to allow the overlapping or clipping-off of the lower point of the black square-on-point (upper black diamond) above the horizontal center line on both the POISON GAS and POISON INHALATION HAZARD placards displayed on transport vehicles or freight containers containing materials poisonous by inhalation.

We are also proposing in § 171.14(a) and (b) to allow those persons who had begun, prior to October 1, 2001, to use and maintain a supply of the new PIH labels and placards with smaller size symbols to continue to use them in transportation. For non-permanent placard displays (*e.g.*, tagboard), the proposed compliance date would be October 1, 2006. The proposed compliance date for use of the proposed revised labels (with enlarged symbols on the upper black background) would be October 1, 2004, except that if a permanent PIH label (*e.g.*, labels printed, embossed or stamped on the surface of a package) conforms to the specifications in effect on October 1, 1998, and is manufactured and installed prior to October 1, 2003, it may continue to be used for its useful life. For permanent placard displays (*e.g.*, metal ''flip-type'', that cannot be transferred to another motor vehicle, rail car, freight container, etc.), we propose that if a permanently-mounted PIH placard conforms to the specifications in effect on October 1, 1998 (delayed effective date of HM–206), and is manufactured and installed prior to October 1, 2003, it may continue to be used for its useful life. Accordingly, the present requirements in paragraphs (a) and (b) in § 171.14, which are obsolete and therefore no longer necessary, would be removed and new paragraphs (a) and (b) would be added to include continued use provisions and transition dates for PIH labels and placards.

B. Hydrogen Fluoride, Anhydrous, and Similar Materials

In the HM–206 final rule (62 FR 1217; 1/8/97), materials such as hydrogen fluoride, anhydrous, that meet the definition of a PIH material, were not specifically addressed in the provisions for labeling and placarding PIH materials in Division 6.1. To correct this oversight, we are proposing to revise §§ 172.400 and 172.504 to require an inhalation hazard label or placard for all materials that meet the definition of a PIH material in § 171.8.

C. Placarding Requirement for Residues (When PIH Subsidiary)

In accordance with § 173.29, a non-bulk packaging containing only a residue of a hazardous material covered by placarding Table 2 of § 172.504 of the HMR need not be included in determining the applicability of the placarding requirements in subpart F of part 172 and is not subject to shipping paper requirements when collected and transported by a contract or private carrier for reconditioning, manufacturing, or reuse. However, the exception in § 173.29(c) was not intended to apply to the residue of a material shipped in non-bulk packagings that has a subsidiary PIH hazard that would require the transport vehicle to be placarded in accordance with the subsidiary placarding requirements in § 172.505(a). Therefore, we are proposing to clarify that the exception in § 173.29(c) does not apply to the residue of a PIH material.

IV. Other Requirements for Labels and Placards

A. Color Standards for Labels and Placards

The Dangerous Goods Advisory Council (DGAC) (formerly, the Hazardous Materials Advisory Council) petitioned RSPA (P–1113) to consider alternative means of achieving reasonable conformance to color standards for hazard warning labels and placards. DGAC said the specifications for colors in the Tables in Appendix A of part 172 of the HMR cause difficulty since the systems on which they are based (*i.e.*, Munsell Notations) are not in common use. According to DGAC, this is reinforced by the lack of specified standards in the UN Recommendations, the International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air. DGAC said that, while the text of each document refers to some degree of conformance to the illustrations shown, variation does exist within a given color. Some of DGAC's member companies note that the color tolerance charts previously available from RSPA are no longer available. DGAC recommended that color standards for labels and placards conform generally to the same standards prescribed in the Canadian Transport of Dangerous Goods (TDG) Regulations, which are colors conforming to the Pantone® Formula Guide published by Pantone Incorporated (Pantone®). DGAC suggested specific colors based on the Pantone® Formula Guide and proposed regulatory language. DGAC stated that these standards should apply to labels, placards, and identification number markings that are surfaced with printing inks. Where colors are applied as opaque coatings, such as paint, enamel, or plastic, or where labels are printed directly on the surface of a packaging, a spectrophotometer or other instrumentation would be required to ensure a proper match with the color standards suggested in the petition.

The use of the Pantone® Formula Guide was addressed in the NPRM under Docket HM–206 (59 FR 41848; 8/15/94). No changes were proposed in the NPRM to the present label and placard color code system because there was insufficient cost and safety information available to justify adopting a new color system. At that time, we asked for comments or information concerning color code systems that would allow for a range of color and estimates of the costs and benefits of adopting a new color tolerance system. The Pantone® Formula Guide uses specific colors and does not allow for deviations or tolerances as do the Munsell Notations. In the HM–206 NPRM, we also asked commenters to provide information on specific colors from the Pantone® Formula Guide that, in their view, constitute compliance with the label and placard color standards, including tolerances currently referenced in the HMR. However, commenters did not provide any new or additional safety or cost information on this issue.

Pantone sells samples for over 1,100 colors, along with printing ink formulas to achieve each color. All colors are mixed from a set of 14 standard base colors. Pantone's product line consists of loose-leaf books of color samples and instructions to enable graphic artists and printers to reproduce each color on various types of paper and other printing materials. In past discussions, Pantone said that any manufacturers' inks can be used to achieve Pantone's colors. This distinguishes its system from other color systems, which prescribe formulas for printers to use, but may require printers to use only its brand of inks. Dyes used for paints are different from printing dyes, but are expected to be longer lasting, more durable, and stand up against fading. Printing dyes are relatively inexpensive, but not designed to last for long periods of time.

We understand that the Munsell Notations present problems for persons making hazard warning labels and placards because the system is not

widely recognized or used, and many printers do not understand it. Therefore, based on DGAC's petition, in this NPRM we propose to reference certain Pantone® Formula Guide numbers as a convenience to users, not as a requirement. Sections 172.407 and 172.519 would be revised to voluntarily permit the use of certain Pantone® Formula Guide colors for identification number and other markings and hazard warning labels and placards as an alternative to the Munsell notations. These color standards conform generally to the same standards under the Canadian TDG Regulations.

For many years now, the set of Color Tolerance Charts, prescribed in §§ 172.407 and 172.519, which are used to compare and determine compliance with the colors for identification number markings and hazard warning labels and placards, have not generally been available. Recently, we have become aware of the availability of the Color Tolerance Charts from a commercial source, Hale Color Charts, Inc. The set of Color Tolerance Charts displays the desired color (central) with a series of tolerance limits and color matches. The availability of these charts will assists enforcement personnel in the field in determining compliance with colors for markings, labels and placards and assist persons who wish to produce their own labels and placards based on the range of colors set forth in these charts for comparison. Therefore, we have added this source to our ''Commercial Suppliers'' lists of hazardous materials regulatory and emergency response publications at our Hazmat Safety Web site at *http://hazmat.dot.gov*.

B. ASTM D4956–95 (Red and White) for Reflective Colors

Domestically, reflective or retroreflective placards are permitted, but not required, under the HMR. In accordance with the provisions in § 172.519(a)(3), reflective materials may be used on a placard if the prescribed colors, strengths, and durability are maintained. Place Quick, Inc. (Place Quick), filed an application for exemption (11972–N) from certain requirements in the HMR to use retroreflective material and colors that meet the Federal Highway Administration Standard FP–96 for highway safety colors. In support of its application, Place Quick submitted samples of placards and labels made from Scotchlite™ Reflective Sheeting Diamond Grade reflective materials. That material conforms to Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment specified in 49 CFR 571.108. Because the exemption application concerns a matter of general applicability and future effect, we advised Place Quick that, in accordance with 49 CFR 107.113(i), this matter would be addressed in this docket. We stated that the placard colors (including red) do not fall within prescribed color tolerances. More recently, Place Quick said that it is only concerned with the red and white reflective colors on placards, which would be used by its clients on ''dedicated'' trucks.

In this NPRM, we are proposing an alternate color standard for labels and placards constructed of retroreflective materials. Specifically, we are focusing on retroreflective red or white conforming to Type V sheeting in ASTM D 4956, Standard Specification for Retroreflective Sheeting for Traffic Control. This is the standard referenced in 49 CFR 571.108 for conspicuity systems as specified under paragraph (b) and defined in S5.7 of 49 CFR 571.108, applicable to certain truck tractors and trailers. We believe that the retroreflective red or white conforming to Type V sheet in ASTM D 4956, Standard Specification for Retroreflective Sheeting for Traffic Control may enhance nighttime visibility or conspicuity of hazard warning labels and placards in daylight and darkness. Accordingly, we propose to revise §§ 171.7, 172.407 and 172.519 to include provisions for use of red or white Type V sheeting for reflective materials for hazard warning labels and placards, as appropriate. Because other colors in ASTM D 4956 so poorly match the current and proposed color standards for placards and labels, we are not including them in this proposed rule. The Canadian TDG Regulations' ''Clear Language Edition'' no longer contains a provision that requires the use of a retroreflective placard, or a retroreflective ''yellow band'' for various hazard classes of hazardous materials in a large freight container or transport vehicle.

C. Organic Peroxide, Subsidiary FLAMMABLE LIQUID Label

There is an inconsistency between the subsidiary labeling requirements in the UN Recommendations and the HMR. Under the HMR, the additional labeling requirements in § 172.402 specify that each package containing a hazardous material must be labeled with both primary and subsidiary hazard warning labels. In accordance with § 172.402(a)(2), a package containing a Division 5.2 (organic peroxide) material that also meets the definition of Class 3 (flammable liquid) material must be labeled ORGANIC PEROXIDE and FLAMMABLE LIQUID, except for Class 3 material in Packing Group III (see exception in § 172.402(a)(2)). However, paragraph 5.2.2.1.9 of the UN Recommendations specifies that a subsidiary FLAMMABLE LIQUID label is not required on such a package because the ORGANIC PEROXIDE label is understood to convey the inherently flammable nature of organic peroxides. Therefore, for consistency with the UN Recommendations, and in order to clear up any misunderstanding regarding additional labeling of a Division 5.2 (organic peroxide) material that exhibits a Class 3 (flammable liquid) subsidiary hazard, we propose to adopt this exception in a new paragraph (h) in § 172.402.

D. Cylinder Markings in Accordance With CGA Pamphlet C–7

Currently, the HMR provide exceptions for labeling certain compressed gases (*i.e.*, Division 2.1 or Division 2.2) carried by private or contract motor carriers if certain conditions as prescribed in § 172.400a(a)(1) are met. In place of a hazard warning label, the markings specified in Compressed Gas Association (CGA) Pamphlet C–7, ''Guide to the Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A,'' may be used to satisfy the labeling requirements in the HMR. CGA petitioned RSPA (P–1285) to amend the HMR to allow common motor carriers to transport Division 2.1 or Division 2.2 gases in cylinders or Dewars marked in conformance with CGA Pamphlet C–7.

Appendix A of CGA Pamphlet C–7 sets forth the CGA marking system for compressed gas cylinders. CGA developed the basic marking to provide immediate identification of cylinder contents. The basic marking, illustrated in Figure 1, Pamphlet C–7, consists of a reduced size square-on-point hazard warning label, indicating the hazard class of the contained gas, combined with a panel containing the proper shipping name and the product identification number of the contained gas. The panel must be located to the left of the square-on-point. For certain gases with additional hazards, multiple labels may be required. For such gases, the basic marking must include an additional square-on-point denoting each secondary hazard. The square-on-point configurations must be adjacent to one another, but the adjoining points may overlap by not more than 10 mm (3⁄8 inch), as illustrated in Figure 2 of Pamphlet C–7.

CGA suggested several factors that it believes justify this proposal. For example, cylinder neck labels are less subject to abrasions than cylinder body labels and are less likely to loosen and fall off. Further, the smaller markings affixed to the shoulder of cylinders are more visible when cylinders are grouped together than when the information is on a label affixed to the cylinder wall. These markings have been used in Canada since 1985, and thus reciprocity with Canada would be maintained. Furthermore, CGA stated that the CGA Pamphlet C–7 marking enhances industry's ability to meet the Occupational Safety and Health Administration's requirement that precautionary labels not be removed from containers until containers have been emptied.

We believe that the CGA petition has merit. Experience shows that this alternative marking, currently authorized for cylinders carried by private and contract carriers, clearly communicates the degree of hazard associated with Division 2.1 or Division 2.2 gases in cylinders offered for transportation in commerce. The marking prescribed in the CGA Pamphlet C–7, Appendix A, will not detract from a common carrier's ability to segregate and stow cylinders since cylinders shipped individually must be moved individually by employees who are close enough to read the smaller marking and label. In addition, the proper shipping name and identification number of the hazardous material are marked adjacent to the smaller hazard warning label, which makes identification of the products easier. For consistency with international standards, we are proposing to permit the use of the markings specified in Pamphlet C–7 on cylinders containing compressed gases in Divisions 2.1, 2.2, or 2.3, which may be shipped in accordance with the exceptions from labeling prescribed in § 172.400a.

We believe such markings will be equally effective in communicating the hazard of the material being shipped. Safety would not be reduced because shipping papers and placards on the transport vehicles provide hazard warning information that can be used in the event of an emergency. Paragraph 5.2.2.2.1.2 of the UN Recommendations permits cylinders for Class 2 gases to bear labels representative of those specified. The Canadian and European regulations, which are based on the UN Recommendations, authorize labels which have been reduced in size, as appropriate, for display on the non-cylindrical part of the cylinders. Thus, this proposal would enhance international harmonization of standards. Therefore, in this NPRM, for consistency with provisions in the UN Recommendations and Canadian and European regulations, we are proposing to revise the requirement in § 172.400a(a)(1) to broaden the labeling exception to apply to all modes of transportation, by air, water, rail or highway.

E. Placarding Exception for Class 9 Materials (Domestic)

Mr. Tom Sever, Hazardous Materials Coordinator, Motor Vehicle Enforcement, Iowa Department of Transportation, requested we rescind an interpretation dated February 25, 1997 pertaining to domestic transportation of Class 9 (miscellaneous) material, change the definition of domestic transportation listed in § 171.8, or eliminate the Class 9 placarding requirements in § 172.504(f)(9) and the placard itself in § 172.560. Mr. Sever said that the requirement should have uniform intent; that is, require use of the CLASS 9 placard when the shipment is passing through the United States and destined for a foreign country.

Our February 25, 1997 letter addressed a highway shipment of 12,440 pounds of ''Environmentally hazardous substances, solid, n.o.s., 9, UN 3077, PG III, RQ (Lead)'' from Garland, Texas to Alberta, Canada. We stated that for those portions of transportation that occur within the borders of the United States, a shipment in international transportation is eligible for the same placarding exceptions that apply to transportation which is domestic only. For these purposes, the definition of ''domestic transportation'' includes not only transportation exclusively within the United States, but also that domestic portion of international transportation that occurs between places within the United States. Therefore, CLASS 9 placards are not required to be displayed on a shipment of Class 9 hazardous material while it is within the United States.

We do not agree that the placarding exception in § 172.504(f)(9) should be eliminated, but we do agree that the provision should be clarified to minimize misunderstanding. Therefore, we propose to revise the provision to clarify that the Class 9 placarding exception applies to international shipments of Class 9 material while moving in the United States.

F. Footnote to Table 1 (Placards)—Editorial Correction

We are proposing an editorial revision in § 172.504(e), Table 1, to correct citations in Footnote 1, pertaining to placarding for certain shipments of radioactive materials. The footnote would be corrected to read as follows: ''Radioactive placard also required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(3) or (c) of this subchapter.''

V. Training and Emergency Response Information

A. Emergency Response Telephone Number Requirements

The HMR require a person offering a hazardous material for transportation to provide an emergency response telephone number (including the area code or international access code) on the shipping paper for use in the event of an emergency involving the material. The emergency response telephone number must be that of a person who has comprehensive knowledge of emergency response and incident mitigation information about the hazardous material being shipped. As an alternative, the number may be of a person who has ''immediate access'' to a person who possesses such information. The emergency response telephone number must be monitored at all times for as long as the hazardous material is being transported, including during storage incidental to the movement of the hazardous material. Storage that is incidental to movement generally is storage that occurs between the time a hazardous material is offered for transportation and the time it reaches its destination and is delivered to the consignee.

We know that some shippers have misinterpreted ''immediate access'' as authorizing them to use a ''call back'' system that requires an emergency responder to wait for a return telephone call. To clarify the requirement for ''immediate access,'' we are proposing to revise § 172.604 to indicate that beeper numbers and call-back systems do not conform to the requirements in § 172.604 and are not acceptable under the HMR.

B. Residues of Class 9 (Miscellaneous) Hazardous Substances, When Less Than RQ Remains

An ''empty'' packaging is not subject to any other requirement of the HMR if any hazardous material shipping name and identification number markings, any hazard warning labels or placards, and any other markings indicating that the material is hazardous (*e.g.*, RQ) are removed, obliterated, or securely covered in transportation and: (1) The packaging is unused; (2) the packaging

is sufficiently cleaned of residue and purged of vapors to remove any potential hazard; (3) the packaging is refilled with a material that is not hazardous to such an extent that any residue remaining in the packaging no longer poses a hazard; or (4) the packaging contains the residue of certain materials listed in this section. Otherwise, an empty packaging containing the residue of a hazardous material must be offered for transportation and transported in the same manner as when it previously contained a greater quantity of the material.

Bayer Corporation (Bayer) petitioned RSPA (P–1416) to add new paragraphs 172.514(b)(3) and 173.29(h) for empty packagings or packagings that contain residues of hazardous substances that meet the definition of a Class 9 (miscellaneous) material, and do not meet any of the other hazard class definitions. Bayer said the proposed additions would address the residue remaining in a container after it had been unloaded to a quantity less than the reportable quantity (RQ). For example, a rail car loaded with 185,000 pounds of MDI (RQ, 5000 lbs.) would be shipped as a Class 9 (miscellaneous) material because the rail car contains more than the RQ. Once the car is unloaded by the consignee and ready for return to the original shipper, the rail car no longer contains the reportable quantity, would not be subject to the HMR, and would not be shipped as a regulated material. This requires the waybill to be changed and all placards and markings removed for the return shipment. Bayer said that this situation has created a compliance nightmare for shippers, its customers, and the various State and Federal enforcement agencies. The railroads are confused because a loaded car is moved into a facility under the HMR, but is offered for the return shipment as a non-regulated car.

On January 31, 1997, the Federal Railroad Administration (FRA) issued a memorandum (Ref. No. HM–97–4) to its Regional Administrators and Railroad Safety Specialists for hazardous materials. In the memorandum, FRA said a rail car that contains any material (or its mixture) listed in Appendix A to the § 172.101 Hazardous Materials Table in a quantity less than its RQ in one package, is not subject to the requirements of the HMR, provided the material does not meet the criteria for any other hazard class and is not a hazardous waste or a marine pollutant. FRA also said that the determination of whether the package contains an RQ of the hazardous substance is the responsibility of the shipper. Generally, the shipper is not expected to actually measure the amount remaining after unloading, but can, in good faith, estimate it by using its knowledge of the material, the packaging, and the unloading method. Bayer said that an enormous amount of time is spent in trying to explain to the railroads and various enforcement agencies why a MDI rail car must return as non-regulated when it was originally offered under the HMR.

We believe the petition has merit. Since a Class 9 hazardous substance is only subject to the HMR because of the RQ in one package, an empty packaging containing the residue of a Class 9 hazardous substance below its RQ is not subject to the HMR, including shipping paper requirements. In this rulemaking, we are clarifying that a tank car containing less than a reportable quantity of a Class 9 hazardous substance may be offered for transportation as a regulated material if the residue of this material is offered for transportation with all applicable hazard warning marks, placards and shipping papers. We propose to revise § 172.514(b) to allow the markings and placards, if any, to remain on a returning rail car that contains a residue of a hazardous substance that only meets the definition of a Class 9 material, and is not a hazardous waste or a marine pollutant.

C. Clarification of the Emergency Response Information and Training Requirements for Combustible Liquids

A combustible liquid that is in a bulk packaging or a combustible liquid that is a hazardous substance, hazardous waste, or a marine pollutant is not subject to the requirements of the HMR except those prescribed in § 173.150(f)(3) pertaining to: (1) Shipping papers, way bills, switching orders, and hazardous waste manifests; (2) marking of packages; (3) display of identification numbers on bulk packages; (4) placarding requirements of subpart F of part 172; (4) carriage aboard aircraft and vessels; (5) reporting incidents as specified in § 171.15 and § 171.16; (6) packaging requirements of subpart B of part 173 and, in addition, non-bulk packagings must conform with requirements of § 173.203; and (7) the requirements of §§ 173.1, 173.21, 173.24, 173.24a; 173.24b, 174.1, 177.804; 177.817, 177.834(j), and 177.837(d) of the HMR.

However, the emergency response information and training requirements prescribed in subparts G and H of part 172 of the HMR are currently not specified in the requirements in § 173.150(f)(3), although we did not intend to exempt such shipments from these requirements. To correct this oversight, we are proposing to revise § 173.150(f)(3) to clarify that the emergency response information and training requirements of subparts G and H of part 172, respectively, apply to a shipment of a combustible liquid in a bulk packaging or to a combustible liquid that is a hazardous substance, hazardous waste, or a marine pollutant.

VI. Security Plans

On March 25, 2003, we published a final rule under Docket HM–232 (68 FR 14510) that requires persons who offer for transportation and persons who transport in commerce certain hazardous materials to develop and implement security plans. Among the hazardous materials subject to the security plan requirement are infectious substances that are select agents and toxins regulated by the Centers for Disease Control and Prevention under 42 CFR part 73. Since publication of the HM–232 final rule, several carriers have suggested that carrier employees may not know that a package contains a select agent and, therefore, is subject to security plan requirements, unless that fact is communicated to the carrier. To address this potential problem, in this NPRM, we are proposing to add a new paragraph (p) to § 172.203 that would require each person who offers a select agent for transportation in commerce to include the words ''Select Agent'' in association with the basic shipping description on the shipping paper that accompanies the shipment. Commenters are invited to suggest alternative methods for addressing this issue; we may modify this proposal in the final rule based on comments received.

VII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This NPRM is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. A regulatory evaluation prepared for the August 15, 1994 NPRM and subsequently modified for the January 8, 1997 HM–206 final rule is available in the docket. The implementation of certain provisions of this proposal (*i.e.*, allowances for continued use of the previous PIH placards and labels) reduce or eliminate impacts from the proposed changes. Therefore, the costs and benefits associated with this proposed rule are considered to be so minimal as to not warrant changes to the regulatory evaluation.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subject items 1, 2, and 3 above and would preempt State, local, and Indian tribe requirements not meeting the ''substantively the same''standard. This proposed rule is necessary to improve the safety of emergency responders and the public, and of offerors and transporters of hazardous materials.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of a final rule and not later than two years after the date of issuance. RSPA proposes that the effective date of Federal preemption will be 90 days from publication of a final rule in this matter in the **Federal Register**.

C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. The proposals in this NPRM will impose only minimal new costs of compliance on the regulated industry and, in fact, should reduce overall costs of compliance. I hereby certify that while the proposals in this NPRM apply to a substantial number of small entities, there will not be a significant economic impact on those small entities.

Need for the NPRM. We are proposing changes to the hazard communication requirements in the HMR based on petitions for rulemaking, requests for clarification, and our own determination that clarifications and improvements may be appropriate. This action is being taken to improve safety and enhance emergency response to hazardous materials incidents.

Description of Actions. In this NPRM, we propose to amend the HMR to:

—Clarify that beeper numbers and call-back systems that require an emergency responder to wait for a return telephone call do not conform to the requirements for an emergency response telephone number on shipping papers.

—Revise certain package marking requirements to more accurately convey information about the material being transported to emergency responders, transport workers, and the general public.

—Revise the PIH labels and placards to increase the size of the skull-and-crossbones symbol.

—Permit more flexibility in color requirements for placards.

—Provide exceptions for the return transportation of rail cars that contain residues of hazardous substances so that placards and required markings need not be removed.

In addition, we are proposing several clarifications and editorial revisions to current hazard communication requirements.

Identification of potentially affected small entities. Businesses likely to be affected by the final rule are shippers and transporters of hazardous materials. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act. Since no such special definition has been established, we employ the thresholds published by SBA for industries subject to the HMR. Based on data for 1997 compiled by the U.S. Census Bureau, it appears that upwards of 95 percent of firms subject to this final rule are small businesses. For the most part, these entities will incur minimal costs to comply with the proposals in this NPRM.

Reporting and recordkeeping requirements. This NPRM does not propose new reporting or recordkeeping requirements.

Related Federal rules and regulations. With respect to hazard communication requirements for hazardous materials transported in commerce, there are no related rules or regulations issued by other departments or agencies of the Federal Government.

Alternate proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazard communication requirements for hazardous materials transported in commerce, it is not possible to establish exceptions or differing standards and still accomplish the objectives of Federal hazmat law.

This NPRM was developed under the assumption that small businesses make up the overwhelming majority of entities that will be subject to its provisions. Thus, we considered how to minimize expected compliance costs as we developed this NPRM. For example, the NPRM proposes to minimize the burden associated with the revised PIH labels and placards by providing a lengthy transition period. Other proposed changes provide clarification of certain provisions to eliminate confusion and enhance compliance. In addition, we are proposing several exceptions from current requirements to decrease compliance burdens.

Conclusion. We conclude that while this NPRM applies to a substantial number of small entities, there will not be a significant economic impact on

those small entities. The compliance costs associated with proposed requirements in this NPRM are minimal. Moreover, this NPRM should reduce compliance costs for most of the regulated industry by providing for increased flexibility and new exceptions from current regulatory requirements.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This proposed rule does not propose any new information collection requirements.

F. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The proposed improvements to the hazard communication system in this rule would have a net positive effect on the environment by improving response to and mitigation of incidents involving hazardous materials in transportation. We have determined that there would be no significant environmental impact associated with this proposed rule.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Shippers—general requirements for shipments and packagings.

In consideration of the foregoing, 49 CFR parts 171, 172 and 173 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.53.

2. In § 171.7, in paragraph (a)(3), a new entry would be added in numerical order under the entry for American Society for Testing and Materials; and in paragraph (b), a new entry would be added in alphabetical order to read as follows:

§ 171.7 Reference material.

(a) *Matter incorporated by reference.* * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Society for Testing and Materials	
* * * * * * *	
ASTM D 4956–95 Standard Specification for Retroreflective Sheeting for Traffic Control	172.407, 172.519
* * * * * *	

(b) *List of information materials not requiring incorporation by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
Pantone Incorporated, 590 Commerce Boulevard, Carlstadt, New Jersey, 07072–3098; PANTONE ® Formula Guide, 2000–2001	172.407, 172.519
* * * * * * *	

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3. In § 171.14, paragraphs (a) and (b) would be removed, and new paragraphs (a) and (b) would be added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

(a) *Continued use provisions and transition dates for PIH labels.* Notwithstanding §§ 172.416 and 172.429 of this subchapter, when labels are required by subpart E of part 172 of this subchapter to be affixed to the surface of a package containing a material poisonous by inhalation—

(1) A non-permanent label (adhesive, paper, etc.), that conforms to the requirements of this subchapter in effect on October 1, 2002, may continue to be used until stocks have been depleted, or until October 1, 2004, whichever comes first; and

(2) A permanent label that conforms to the specifications in effect on October 1, 2002, that was printed, embossed, stamped, or permanently-mounted on the surface of a package prior to October 1, 2003, may continue to be used for its useful life.

(b) *Continued use provisions and transition dates for PIH placards.* Notwithstanding §§ 172.540 and 172.555 of this subchapter, when placards are required by subpart F of part 172 of this subchapter to be affixed to a bulk packaging, rail car, transport vehicle or freight container containing a material poisonous by inhalation—

(1) A non-permanent placard (*e.g.*, adhesive, tagboard) that conforms to the requirements of this subchapter in effect on October 1, 2002, may continue to be used until stocks have been depleted, or until October 1, 2006, whichever comes first; and

(2) A permanent type placard (*e.g.*, metal) that conforms to the specifications in effect on October 1, 2002 and is installed prior to October 1, 2003, may continue to be used for its useful life.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION AND TRAINING REQUIREMENTS

4. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 172.203, paragraph (p) would be added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(p) *Infectious substances.* If an infectious substance is a select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73, the words ''Select Agent'' must be entered in association with the basic description.

6. In § 172.301, paragraph (f) would be added to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

* * * * *

(f) *NON-ODORIZED marking on cylinders containing LPG.* No person may offer for transportation or transport a specification cylinder, except a Specification 2P or 2Q container or a Specification 39 cylinder, that contains an unodorized liquefied petroleum gas (LPG) unless it is legibly marked NON-ODORIZED in letters not less than 6.3 mm (0.25 inches) in height near the marked proper shipping name required by paragraph (a) of this section.

7. In § 172.326, paragraph (d) would be added to read as follows:

§ 172.326 Portable tanks.

* * * * *

(d) *NON-ODORIZED marking on portable tanks containing LPG.* No person may offer for transportation or transport a portable tank containing liquefied petroleum gas (LPG) that is unodorized as authorized in § 173.315(b)(1) unless it is legibly marked NON-ODORIZED on two opposing sides near the marked proper shipping name required by paragraph (a) of this section.

8. In § 172.328, paragraph (d) would be added to read as follows:

§ 172.328 Cargo Tanks.

* * * * *

(d) *NON-ODORIZED marking on cargo tanks containing LPG.* No person may offer for transportation or transport a cargo tank containing liquefied petroleum gas (LPG) that is unodorized as authorized in § 173.315(b)(1) unless it is legibly marked NON-ODORIZED on two opposing sides near the marked proper shipping name required by paragraph (b)(1) of this section.

9. In § 172.330, paragraph (c) would be added to read as follows:

§ 172.330 Tank cars and multi-unit tank car tanks.

* * * * *

(c) No person may offer for transportation or transport a tank car or multi-unit tank car tank containing liquefied petroleum gas (LPG) that is unodorized unless it is legibly marked NON-ODORIZED on two opposing sides near the marked proper shipping name required by paragraphs (a)(1) and (a)(2) of this section.

10. In § 172.332, paragraphs (c)(5) and (c)(6) would be redesignated as paragraphs (c)(6) and (c)(7), and a new paragraph (c)(5) would be added to read as follows:

§ 172.332 Identification number markings.

* * * * *

(c) * * *

(5) For a POISON GAS or POISON-INHALATION HAZARD placard used to display an identification number, the lower point of the upper black square-on-point configuration above the horizontal center line may overlap, be clipped-off, or impinge on space authorized for display of an identification number on a placard, provided the identification number is legible and visible.

* * * * *

11. In § 172.336, new paragraph (b)(2) would be added to read as follows:

§ 172.336 Identification numbers, special provisions.

* * * * *

(b) * * *

(2) For any quantity of an organic peroxide, temperature controlled material required to be placarded in accordance with the requirements in § 172.504(e), Table 1, the identification number specified for the material in the § 172.101 table must be marked on each side and each end of a bulk packaging, unit load device, transport vehicle, freight container, or rail car, as specified in § 172.332.

* * * * *

12. In § 172.400, in the table in paragraph (b), the entries for ''6.1'' would be revised to read as follows:

§ 172.400 General labeling requirements.

* * * * *

(b) * * *

Hazard class or division	Label name	Label design section reference
* * *	* * *	*
6.1 (material poisonous by inhalation (see § 171.8 of this subchapter)).	POISON INHALATION HAZARD	172.429
6.1 (other than material poisonous by inhalation)	POISON	172.430
* * *	* * *	*

13. In § 172.400a, paragraph (a)(1) would be revised to read as follows:

§ 172.400a Exceptions from labeling.

(a) * * *

(i) A cylinder or Dewar flask conforming to § 173.320 of this subchapter containing a compressed gas (Divisions 2.1, 2.2, or 2.3) that is—

(i) Carried by highway, rail, aircraft or vessel;

(ii) Not overpacked; and

(iii) Durably and legibly marked in accordance with CGA Pamphlet C–7, Appendix A (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

14. In § 172.402, paragraph (h) would be added to read as follows:

§ 172.402 Additional labeling requirements.

* * * * *

(h) *Division 5.2 (organic peroxide) Materials.* Unless otherwise specified in this subchapter, a Flammable Liquid subsidiary hazard label is not required on a package containing a Division 5.2 material.

15. In § 172.407, paragraph (d)(5) would be revised and paragraphs (d)(6), (d)(7) and (d)(8) would be added to read as follows:

§ 172.407 Label specifications.

* * * * *

(d) * * *

(5) The following color standards in the Pantone® Formula Guide, as incorporated by reference in § 171.7 of this subchapter, may be used to achieve the required colors on markings and hazard warning labels and placards:

(i) Red—Pantone Color No. 186U

(ii) Orange—Pantone Color No. 151U

(iii) Yellow—Pantone Color No. 109U

(iv) Green—Pantone Color No. 335U

(v) Blue—Pantone Color No. 285U

(vi) Purple—Pantone Color No. 513U

(6) Where specific colors from the Pantone® Matching System, as incorporated by reference in § 171.7 of this subchapter, are applied as opaque coatings, such as paint, enamel, or plastic, or where labels are printed directly on the surface of a packaging, a spectrophotometer or other instrumentation must be used to ensure a proper match with the color standards in the Pantone® Color Formula Guide for colors prescribed in paragraph (d)(5) of this section.

(7) The specified label color must extend to the edge of the label in the area designated on each label, except for the CORROSIVE, RADIOACTIVE YELLOW-II, and RADIOACTIVE YELLOW-III labels on which the color must extend only to the inner border.

(8) Reflective or retroreflective materials may be used on a label if the prescribed colors, strength and durability are maintained. Retroreflective white and red Type V sheeting conforming to ASTM D 4956–95, Standard Specification for Retroreflective Sheeting for Traffic Control (incorporated by reference; *see* § 171.7 of this subchapter) may be used, as appropriate, for red and white colors on a label.

* * * * *

16. Section 172.416 would be revised to read as follows:

§ 172.416 POISON GAS label.

(a) Except for size and color, the POISON GAS label must be as follows:

(b) In addition to complying with § 172.407, the background on the Poison Gas label and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 6.3 mm (0.25 inches) above the horizontal center line.

17. Section 172.429 would be revised to read as follows:

§ 172.429 Poison Inhalation Hazard label.

(a) Except for size and color, the POISON INHALATION HAZARD label must be as follows:

(b) In addition to complying with § 172.407, the background on the POISON INHALATION HAZARD label and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 6.3 mm (0.25 inches) above the horizontal center line.

18. In § 172.504, in paragraph (e), the entry ''6.1'' in tables 1 and 2, footnote 1 to table 1, and paragraph (f)(9) would be revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(e) * * *

TABLE 1

Category of material (Hazard class of division number and additional description, as appropriate)	Placard name	Placard design section reference
* * * * * * *		
6.1 (material poisonous by inhalation (see § 171.8 of this subchapter))	POISON INHALATION HAZARD	172.555
* * * * * * *		

[1] RADIOACTIVE placard also required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(3) or (c) of this subchapter.

TABLE 2

Category of material (Hazard class of division number and additional description, as appropriate)	Placard name	Placard design section reference
* * *	* * *	*
6.1 (other than material poisonous by inhalation	POISON	172.554
* * *	* * *	*

(f) * * *

(9) For Class 9, a CLASS 9 placard is not required for domestic transportation, including that portion of international transportation, defined in § 171.8 of this subchapter, which occurs within the United States. However, a bulk packaging must be marked with the appropriate identification number on a CLASS 9 placard, an orange panel, or a white square-on-point display configuration as required by subpart D of this part.

* * * * *

19. In § 172.514, paragraph (b) would be revised to read as follows:

§ 172.514 Bulk packagings.

* * * * *

(b) Each bulk packaging that is required to be placarded when it contains a hazardous material, must remain placarded when it is emptied, unless it—

(1) Is sufficiently cleaned of residue and purged of vapors to remove any potential hazard;

(2) Is refilled, with a material requiring different placards or no placards, to such an extent that any residue remaining in the packaging is no longer hazardous; or

(3) Contains the residue of a hazardous substance in Class 9 in a quantity less than the reportable quantity, and conforms to § 173.29(b)(1) of this subchapter.

* * * * *

20. In § 172.519, paragraphs (a)(3) and (d)(3) would be revised to read as follows:

§ 172.519 General specification for placards.

(a) * * *

(3) Reflective or retroreflective materials may be used on a placard if the prescribed colors, strength and durability are maintained. Retroreflective white and red Type V sheeting conforming to ASTM D 4956–95, Standard Specification for Retroreflective Sheeting for Traffic Control (incorporated by reference; see § 171.7 of this subchapter) may be used, as appropriate, for red and white colors on a placard.

* * * * *

(d) * * *

(3) Upon visual examination, a color on a placard must fall within the—

(i) Color tolerances displayed on the appropriate Hazardous Materials Label and Placard Color Tolerance Chart (see § 172.407(d)(4)); or

(ii) The Pantone® Color Formula Guide, as incorporated by reference in § 171.7 of this subchapter, as specified for colors in § 172.407(d)(5).

* * * * *

21. Section 172.540 would be revised to read as follows:

§ 172.540 Poison GAS placard.

(a) Except for size and color, the POISON GAS placard must be as follows:

(b) In addition to complying with § 172.519, the background on the Poison Gas placard and the symbol must be white. The background of the upper diamond must be black and at least 100 mm (3.9 inches) on each side. The lower point of the upper diamond must be 30 mm (1.2 inches) above the horizontal center line. The text, class number, and inner border must be black.

22. Section 172.555 would be revised to read as follows:

§ 172.555 POISON INHALATION HAZARD placard.

(a) Except for size and color, the POISON INHALATION HAZARD placarst be as follows:

(b) In addition to complying with § 172.519, the background on the POISON INHALATION HAZARD placard and the symbol must be white. The background of the upper diamond must be black and at least 100 mm (3.9 inches) on each side. The lower point of the upper diamond must be 30 mm (1.2 inches) above the horizontal center line. The text, class number, and inner border must be black.

23. In § 172.604, paragraph (a)(2) would be revised to read as follows:

§ 172.604 Emergency response telephone number.

(a) * * *

(2) The number of a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of paragraph (a) of this section; and

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

24. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 44701; 49 CFR 1.45, 1.53.

25. In § 173.9, paragraph (e)(1) would be revised to read as follows:

§ 173.9 Transport vehicles or freight containers containing lading which has been fumigated.

* * * * *

(e) * * *

(1) The fumigated lading is unloaded; or

* * * * *

26. In § 173.29, the introductory text at paragraph (c) would be revised and paragraph (h) would be added to read as follows:

§ 173.29 Empty packagings.

* * * * *

(c) A non-bulk packaging containing only the residue of a hazardous material covered by Table 2 of § 172.504 of this subchapter that is not a material poisonous by inhalation or its residue shipped under the subsidiary placarding provisions of § 172.505—

* * * * *

(h) A package that contains a residue of a hazardous substance, Class 9, listed in the § 172.101 Table, Appendix A, Table I, that does not meet the definition of another hazard class and is not a hazardous waste or marine pollutant, may remain marked, labeled, and/or placarded in the same manner as when it contained a greater quantity of the material even though it no longer meets the definition in § 171.8 of this subchapter for a hazardous substance.

27. In § 173.150, in paragraph (f)(3), the title of the section and paragraphs (vii) and (viii) would be revised and paragraphs (ix) and (x) would be added to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(f) * * *

(3) * * *

(vii) Packaging requirements of subpart B of this part and, in addition, non-bulk packagings must conform with requirements of § 173.203;

(viii) The requirements of §§ 173.1, 173.21, 173.24, 173.24a, 173.24b, 174.1, 177.804, 177.817, 177.834(j), and 177.837(d) of this subchapter;

(ix) Emergency response information requirements of subpart G of part 172, and

(x) Training requirements of subpart H of part 172 of this subchapter.

* * * * *

Issued in Washington, DC, on June 4, 2003, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–14583 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 68, No. 112

Wednesday, June 11, 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

Animal and Plant Health Inspection Service

[Docket No. 98–035–4]

Importation of *Phalaenopsis spp.* From Taiwan in Growing Media; Availability of Environmental Assessment and Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for an environmental assessment for a proposal to allow orchids of the genus *Phalaenopsis* to be imported from Taiwan in approved growing media. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before July 9, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98–035–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–035–3. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 98–035–3'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1998, we published in the **Federal Register** (63 FR 46403–46406, Docket No. 98–035–1) a proposal to amend the regulations in 7 CFR 319.37–8 to add orchids of the genus *Phalaenopsis* to the list of plants that may be imported from all areas of the world in an approved growing medium subject to specified growing, inspection, and certification requirements. We accepted comments on our proposal for a total of 90 days, ending December 1, 1998.[1]

In response to comments received on the proposed rule, APHIS narrowed the application of the rule to *Phalaenopsis* spp. from Taiwan only and entered into informal section 7 consultation with the U.S. Fish and Wildlife Service (FWS) to assess the potential effects of the proposed action on endangered or threatened species, as required under the Endangered Species Act. On April 7, 2003, FWS concluded the section 7 consultation process by concurring with APHIS's determination that the importation of *Phalaenopsis* spp. from Taiwan in growing media will not adversely affect federally listed or proposed endangered or threatened species or their habitats.

Upon receiving concurrence from FWS, APHIS prepared an environmental assessment in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS'' NEPA Implementing Procedures (7 CFR part 372).

On May 9, 2003, we published in the **Federal Register** (68 FR 24915, Docket No. 98–035–3) a notice announcing the availability of the environmental assessment. In that notice, we requested public comments on the environmental assessment, which is titled ''Proposed Rule for the Importation of Moth Orchids (*Phalaenopsis* spp.) in Growing Media From the Republic of China (Taiwan)'' and dated April 2003.

Comments on the environmental assessment were required to be received on or before June 9, 2003. We are reopening and extending the comment period on Docket No. 98–035–3 until July 9, 2003. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between June 9, 2003 (the day after the close of the original comment period) and the date of this notice.

Please note that on June 4, 2003, we made a correction to the version of the environmental assessment that had been posted on our website since May 9, 2003. This correction involved removing references to a specific document (U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Policy Analysis and Development. 2002. *PAD Response to Public Comments on NPR in Docket 98–035–1,* 8 pp.) and replacing them with references to a personal communication. This correction has no substantive bearing on the environmental assessment, and is reflected in the version currently posted on APHIS's website.

The environmental assessment may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppqdocs.html.* You may request paper copies of the environmental assessment from the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also

[1] The comment period on the proposed rule was extended from 60 to 90 days in a notice published in the **Federal Register** on October 29, 1998 (63 FR 57932).

available for review in our reading room (the location and hours of the reading room are listed under the heading **ADDRESSES** at the beginning of this notice).

Done in Washington, DC, this 5th day of June 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–14722 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance To Conduct Formative Research for Development of Nutrition Education Materials and Related Tools for Food and Nutrition Service Population Groups

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other interested parties to comment on a proposed information collection. This information collection will conduct research in support of FNS' goal of delivering science-based nutrition education to targeted audiences. From development through testing of materials and tools with the target audience, FNS plans to conduct data collections that involve formative research including focus groups, interviews (dyad, triad, telephone, etc.), surveys and web-based collection tools.

DATES: Written comments must be received on or before August 11, 2003.

ADDRESSES: 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 has practical utility; (b) 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; (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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Judy F. Wilson, Director, Nutrition Services Staff, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1012, Alexandria, VA 22302. Comments may also be faxed to the attention of Judy F. Wilson at (703) 305–2576.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1012.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Judy F. Wilson, (703) 305–2585 or Marion Hinners, (703) 305–2116.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance to Conduct Formative Research for Development of Nutrition Education Materials and Related Tools for FNS Population Groups.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection.

Abstract: This information collection is based on the Child Nutrition Act of 1966, as amended, the National School Lunch Act of 1966, as amended, the Food Stamp Act of 1977, as amended, the Agriculture and Consumer Protection Act of 1973, as amended, and the Emergency Food Assistance Act of 1983, as amended. This request for approval of information collection is necessary to obtain input into the development of nutrition education interventions for population groups served by the U.S. Department of Agriculture—Food and Nutrition Service (USDA–FNS).

Diet has a significant impact on the health of citizens and is linked to four leading causes of disease, which can reduce the quality of life and cause premature death. While these diet-related problems affect all Americans, they have a greater impact on the disadvantaged populations reached by many of the FNS programs. One of FNS' goals includes improving the nutrition of children and low-income families by providing access to program benefits and nutrition education. The FNS programs include Child Nutrition, Food Distribution, Food Stamp and Supplemental Foods Programs.

The basis of our approach rests on the philosophies that all health communications and social marketing activities must be science-based, theoretically grounded, audience-driven, and results-oriented. Secondly, consumer-based health communications require a focus on specific target audiences, encouraging positive behaviors in culturally relevant ways, unique benefits and supports for adopting the new behavior, insights into the most appropriate time and place to deliver messages, and striking the right tone to enhance attention and action to the message. Interventions need to be crafted in such a way that they can be delivered through different types of media and in an array of formats for diverse audiences.

FNS initiated a nutrition education and promotion campaign, entitled Eat Smart. Play Hard.™ (the Campaign) in FY 2000 (OMB number 0584–0502). The Campaign is designed to convey science-based, behavior-focused nutrition messages about healthy eating and physical activity to children eligible to participate in FNS nutrition assistance programs and their caregivers. The messages are based on the 2000 Dietary Guidelines for Americans (DGAs) and the Food Guide Pyramid. A most recent approval was granted for information collection (OMB number 0584–0517) for four projects: Phase II of Eat Smart. Play Hard.™, Campaign Web Site Development, Cultural Adaptation of Campaign Materials for Hispanic Audiences and Dietary Guidelines Low-Literacy Materials Development. Future projects will support the Eat Smart. Play Hard.™ Campaign, which has been designated as a specific administration action in the President's Healthier US initiative.

Fundamental to FNS' success in delivering science-based nutrition messages and reaching diverse and low literacy segments of the population is obtaining qualitative feedback from key components of the target audience on the communication strategies and interventions that will be developed. This formative research is essential to advancing Eat Smart. Play Hard.™ as well as other FNS nutrition education efforts. Formative input and testing activities described will help in the development of more effective tools and communication strategies. Collection of this information will increase FNS' ability to formulate nutrition education interventions that resonate with the target population of low-income American families, who have the highest need and can derive the most benefit.

Formative research methods and information collection will include focus groups, interviews (dyad, triad,

telephone, *etc.*), surveys and web-based information gathering tools. The data obtained will provide input regarding the potential use of materials and products during both the developmental and testing stages. In order to determine future nutrition education needs, tools and dissemination strategies, key informant interviews will be conducted. This task involves collecting a diverse array of information from a variety of groups including: Perspectives from people familiar with the target audiences; the objectives of nutrition education interventions and projects; program constraints at State and local levels; and related issues. Expert opinions from program constituencies, researchers, and practitioners will be collected through interviews, surveys and other methods. FNS will also collect information regarding effective nutrition education initiatives being implemented by State agencies that administer nutrition assistance programs to address critical nutrition issues.

Findings from all data collection will be included in summary reports submitted to USDA–FNS. The reports will describe the data collection methods, findings, conclusions, implications, and recommendations for the development and effective dissemination of nutrition education materials and related tools for FNS population groups. There will be no specific quantitative analysis of data. No attempt will be made to generalize the findings to be nationally representative or statistically valid.

Respondents: Recipients and those persons eligible for FNS nutrition assistance programs, State and local staff administering FNS programs, FNS stakeholders and consumers, and other interested parties.

Estimated Number of Respondents: 14,500.

Focus Group Screeners—2800
Interview Screeners/Surveys—1000
Focus Groups—1100
Intercept Interviews—500
Dyad/Triad Interviews—100
Telephone Interviews—1000
Confidentiality Agreement—7000
Survey Instruments—500
Web-based Collections—500

Number of Responses per Respondent: One.

Estimated Time per Response:

Focus Group Screeners—10 minutes
Interview Screeners/Surveys—10 minutes
Focus Groups—120 minutes
Intercept Interviews—30 minutes
Dyad/Triad Interviews—60 minutes
Telephone Interviews—15 minutes
Confidentiality Agreement—10 minutes
Survey Instruments—30 minutes
Web-based Collections—30 minutes

Estimated Total Annual Burden on Respondents:

Focus Group Screeners—28,000 minutes
Interview Screeners/Surveys—10,000 minutes
Focus Groups—132,000 minutes
Intercept Interviews—15,000 minutes
Dyad/Triad Interviews—6,000 minutes
Telephone Interviews—15,000 minutes
Confidentiality Agreement—70,000 minutes
Survey Instruments—15,000 minutes
Web-based Collections—15,000 minutes

Public reporting burden for this collection of information is estimated to average 14,500 respondents with a total estimated burden of 306,000 minutes or 5,100 hours.

Dated: June 2, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–14692 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–021N]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on June 23–24, 2003, to review and discuss the following issues: Impact of Bio-security Issues on Industry; Delivery of Training; and State Review Methods. Three subcommittees of the full committee will also meet on June 23, 2003, to work on the issues discussed during the full Committee session.

DATES: The full Committee will hold a public meeting on Monday, June 23 and Tuesday, June 24, 2003, from 8:30 a.m. to 5 p.m. Subcommittees will hold open meetings on Monday, June 23, 2003, from 7 p.m. to 9 p.m.

ADDRESSES: All Committee meetings will take place at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA; telephone (703) 837–0440. The full Committee will meet on June 23–24, 2003. A meeting agenda is available on the Internet at *http://www.fsis.usda.gov/OPPDE/nacmpi,* which is a sub-web page of the FSIS home page at *http://www.fsis.usda.gov.* Submit one original and two copies of written comments to the FSIS Docket Room, reference docket 03–021N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. Comments may also be sent by facsimile (202) 205–0381. The comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided above. All comments received in response to this notice will be considered part of the public record and will be available for reviewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Tynan for technical information at (202) 720–2982 or e-mail *robert.tynan@fsis.usda.gov* and Sonya L. West for meeting information at (202) 720–2561, FAX (202) 205–0157, or e-mail *sonya.west@fsis.usda.gov.* Persons requiring a sign language interpreter or other special accommodations should notify Ms. West no later than June 13, 2003, at the above numbers or by e-mail. Information is also available on the Internet at *http://www.fsis.usda.gov/OPPDE/nacmpi.*

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2003, the Secretary of Agriculture renewed the charter for the NACMPI. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the Federal and State meat and poultry inspection programs pursuant to sections 301 (a)(4), 7(c), 24, 205, 301(a)(3), and 301(c) of the Federal Meat Inspection Act and sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act. The Administrator of FSIS is the chairperson of the Committee. Membership of the Committee is drawn from representatives of consumer groups; producers, processors, and marketers from the meat and poultry industry; State government officials; and academia. The current members of the NACMPI are: Ms. Deanna Baldwin, Maryland Department of Agriculture; Dr. Gladys Bayse, Spelman College; Dr. David Carpenter, Southern Illinois University; Ms. Charlotte Christin, Center for Science in the Public Interest; Dr. James Denton, University of Arkansas; Dr. Kevin Elfering, Minnesota Department of Agriculture; Ms. Sandra Eskin, American Association of Retired Persons; Mr. Michael Govro, Oregon Department of Agriculture; Dr. Joseph

Harris, Southwest Meat Association; Dr. Jill Hollingsworth, Food Health; Dr. Alice Johnson, National Turkey Federation; Mr. Michael Kowalcyk, Safe Tables Our Priority; Dr. Irene Leech, Virginia Citizens Consumer Council; Mr. Charles Link, Cargill Meat Solutions; Dr. Catherine Logue, North Dakota State University; and Mr. Mark Schad, Schad Meats.

The Committee has three subcommittees to deliberate on specific issues and make recommendations to the whole Committee.

All interested parties are welcome to attend the meetings and to submit written comments and suggestions concerning issues the Committee will review and discuss.

Members of the public will be required to register before entering the meeting.

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 make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail Subscription service. In addition, 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 in Washington, DC, on: June 6, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–14724 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal, without change, of a previously approved information collection. This information collection will provide the Forest Service with the necessary information needed to complete an Agreement to Initiate and an Exchange Agreement. The Agreement to Initiate is a written, nonbinding statement, by both the non-Federal party and the Forest Service, of their present intent to initiate and pursue a land exchange. The legally binding Exchange Agreement documents the conditions that must be met to complete the land exchange. Forest Service personnel collect the information from non-Federal land exchange parties to complete the Agreement to Initiate and the Exchange Agreement.

DATES: Comments must be received in writing on or before August 11, 2003.

ADDRESSES: All comments should be addressed to Jack L. Craven, Director, Lands Staff, Mail Stop 1124, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–1124 or e-mail: *landexchange@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Cynthia Swanson, Lands Specialist, at (202) 205–1248 or Kathleen L. Dolge, Realty Specialist, at (202) 205–1248.

SUPPLEMENTARY INFORMATION:

Background

Land exchanges are discretionary, voluntary, real estate transactions between the Secretary of Agriculture, acting by and through the Forest Service, and a non-Federal exchange party. Land exchanges can be initiated by any non-Federal party including a landowner, an agent of a landowner, a third party, or a non-Federal public agency.

Each land exchange requires preparation of an Agreement to Initiate in accordance with Title 36, Code of Federal Regulations (CFR), section 254.4. This document specifies the preliminary and non-binding intentions of the non-Federal land exchange party and of the Forest Service in pursuing a land exchange. The Agreement to Initiate can contain such information as the description of properties being considered in the land exchange, an implementation schedule of action items, identification of the party responsible for each action item, as well as target dates for completion of each action item.

As the exchange proposal develops, the Forest Service and the non-Federal land exchange party may enter into a binding Exchange Agreement pursuant to 36 CFR 254.14. The Exchange Agreement documents the conditions, which must be met to complete the exchange and can contain such information as identification of the parties, description of the lands and interests to be exchanged, identification of all reserved and outstanding interests, and all other terms and conditions necessary to complete an exchange.

The Forest Service collects the information from the non-Federal party in order to complete the Agreement to Initiate and the Exchange Agreement. Data from this information collection can be unique to each land exchange and is not available from other sources.

Description of Information Collection

1. *Title:* Agreement to Initiate.

OMB Number: 0596–0105.

Expiration Date of Approval: June 30, 2003.

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

Abstract: The Agreement to Initiate contains such information as the description of the properties being considered in the land exchange, an implementation schedule of action items, identification of the party responsible for each action item, as well as target dates for completion of each action item. The information is collected by Forest Service personnel by phone or meeting with the exchange party and is used to complete the Agreement to Initiate.

Estimate of Burden: 1 hour.

Type of Respondents: Non-Federal land exchange party.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100 hours.

Data from this information collection is used to facilitate a mutually beneficial land exchange between the Forest Service and a non-Federal party and is not available from other sources.

Description of Information Collection

2. *Title:* Exchange Agreement.

OMB Number: 0596–0105.

Expiration Date of Approval: June 30, 2003.

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

Abstract: The Exchange Agreement contains such information as the identification of the parties, description of the lands and interests to be exchanged, identification of all reserved and outstanding interests. This information is collected by Forest Service personnel by phone or meeting with the exchange party and used to complete the Exchange Agreement.

Estimate of Burden: 1 hour.

Type of Respondents: non-Federal land exchange partners.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100 hours.

Data from this information collection is used to facilitate a mutually beneficial land exchange between the Forest Service and a non-Federal party and is not available from other sources.

Comment Is Invited

The agency invites comments on the following: (a) The necessity of the proposed collection of information for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments received in response to this notice, including name and address when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 3, 2003.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 03–14627 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Medicine Bow-Routt National Forests and Thunder Basin National Grassland Carbon County, WY, Blackhall-McAnulty Timber Sale, Prescribed Burn and Travel Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare and Environmental Impact Statement (EIS) to analyze and disclose the environmental effects of a site-specific proposal to reduce the spread of dwarf mistletoe and mountain pine beetle in area lodgepole pine stands, increase patch size of forested areas that have had past harvest, improve resiliency and reduce susceptibility to future disease and insect attack, salvage fire damaged trees, and promote and maintain area aspen and ponderosa pine stands within the Blackhall-McAnulty Analysis Area of the Brush Creek/Hayden Ranger District of the Medicine Bow-Routt National Forests within Carbon County, Wyoming, using a combination of clearcutting and partial harvest treatments.

The proposal also includes: prescribed fire to improve forage for big game and livestock, boundary treatments to reduce hazardous fuels on National Forest adjacent to private land, watershed restoration projects, improvement of the Big Creek Trailhead, and travel management within this portion of the Sierra Madre Range.

DATES: The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review during August 2003. At that time, the EPA will publish a Notice of Availability (NOA) of the draft EIA in the **Federal Register**. The comment period on the draft EIS will be for a period of not less than 45 days from the date the EPA publishes the NOA in the **Federal Register**. It is important that those interested in the management of this area comment at that time.

The final EIS is expected to be available in November 2003. In the final EIS, the Forest Service will respond to any comments received during the public comment period that pertain to the environmental analysis. Those comments and the Forest Service responses will be disclosed and discussed in the final EIS and will be considered when the final decision about this proposal is made.

ADDRESSES: Send written comments to Terry DeLay, Brush Creek/Hayden Ranger District, PO Box 249, Saratoga, WY 82331. Electronic Mail (e-mail) may be sent to *tdelay@fs.fed.us* and FAX may be sent to (307) 326–5250. Telephone: (307) 326–2518.

FOR FURTHER INFORMATION CONTACT: Mail correspondence to Terry DeLay, Brush Creek/Hayden Ranger District, PO Box 249, Saratoga, WY 82331, (telephone (307) 326–2518), or Scott Armentrout, District Ranger, Brush Creek-Hayden Ranger District, PO Box 249, Saratoga, WY 82331, (telephone (307) 326–5250). Electronic mail (e-mail) may be sent to *tdelay@fs.fed.us* and FAX may be sent to (307) 326–5250.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this project is to improve the health and resiliency of area forests to reduce the current outbreak of mountain pine beetle and to decrease their susceptibility to insects and disease, maintain and restore aspen and ponderosa pine to its historic prominence, improve wildlife habitat capability, minimize human-caused soil erosion, reduce non-native cheatgrass in the area, and treat vegetation along portions of the Forest boundary to reduce the wildfire hazard to adjacent private land and structures.

Proposed Action

The proposed action includes commercial timber sales, mountain pine beetle treatments, prescribed fire, hazardous fuels reduction adjacent to private land, precommercial thinning, travel management, trailhead improvement, and watershed restoration.

Possible Alternatives

1. No action
2. Proposed Action with less road decommissioning
3. No clearcutting
4. Watershed restoration only

Background Information

The Blackhall-McAnulty Analysis combines projects that were previously identified on the Schedule of Proposed Actions: The Blackhall Timber Sale, the McAnulty/Beaver Creek Timber Sale, the McAnulty 2 Fuels Management project, and the Sierra Madre Travel Management Analysis. Comments submitted in response to any of these projects previously will be considered as part of this analysis.

Responsible Official

Mary Peterson, Forest Supervisor, USDA Forest Service, Medicine Bow-

Routt National Forest, 2468 Jackson Street, Laramie, Wyoming 82070, is the official responsible for making the decision on this action. She will document her decision and rationale in a Record of Decision.

Nature of Decision To Be Made

The Responsible Official will consider the results of the analysis and its findings and then document the final decision in a Record of Decision (ROD). The decision will include a determination whether or not to implement the proposed action or another alternative.

Scoping Process

The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action.

The Forest Service is soliciting comments during the scoping phase of the environmental analysis process from Federal, State and local agencies, Indian Tribes, and organizations and individuals who may be interested or affected by the decision. The analysis process will include:

1. Identification of the issues to be addressed.
2. Identification of the issues to be analyzed in detail.
3. Elimination of non-significant issues, issues addressed by previous environmental analyses, and issues not within the scope of this decision.

Public Involvement

Public scoping describing the Blackhall-McAnulty Timber Sale, Prescribed Burn and Travel Management was initiated on April 10, 2003. Comments from scoping efforts will be reviewed to identify potential issues from this analysis. While comments are welcome at any time, comments received within 30 days of the publication of this notice in the **Federal Register** will be most useful for the identification of issues and the analysis of alternatives. As previously mentioned, comments may be sent by electronic mail (e-mail) to *tdelay@fs.fed.us.*

Written comments may be mailed to the Brush Creek/Hayden Ranger District, P.O. Box 249, Saratoga, WY 82331, Attention: Terry DeLay. Please reference the *Blackhall-McAnulty Timber Sale, Prescribed Burn and Travel Management* on the subject line. The name and mailing address of the commenter should be provided with their comments so that future documents pertaining to this environmental analysis and the decision can be provided to interested parties.

Preliminary Issues

The following potential issues and concerns were identified through previous internal and external scoping: (1) Clearcutting, (2) cumulative effects/habitat and wildlife diversity/fragmentation, (3) forest insects and diseases, and (4) watershed restoration/travel management.

Release of Names

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within ten (10) days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Action publishes the notices 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 during the draft environmental impact statement stage, but are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns related to 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 document. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives displayed in the document. Reviewers should refer to the Council on Environmental Quality Regulations at 40 CFR 1503.3 for implementing the procedural provisions of the National Environmental Policy Act for addressing these points.

Dated: June 4, 2003.

Mary H. Peterson.

Forest Supervisor.

[FR Doc. 03–14672 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on July 10, 2003, from 3 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger district, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361: e-mail *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review and Approval of the Minutes of the March 20, 2003 Meeting; (3) Finalize business for 2002; (4) Wrap up Discussion on Lake/Mendocino RAC; (5) Soda Creek Stream Condition Improvement Discussion; (6) Title II funds available for Projects for 2003; (7) Recommend Projects for 2003; (8) Discuss Project Cost Accounting USFS/County of Lake; and (9) Pubic Comment period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 4, 2003.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 03–14783 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

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

DATES: Comments on this notice must be received by August 11, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed 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: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

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

Abstract: This program is necessary in order for the Rural Utilities Service (RUS) to determine an applicant's eligibility to borrow from RUS under the terms of the RE Act. This information is also used by RUS to determine that the Government's security for loans made by RUS is reasonable, adequate and that the loans will be repaid within the time agreed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9.17 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 8.12.

Estimated Total Annual Burden on Respondents: 3,721.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–4120.

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: June 5, 2003.

Roberta D. Purcell,

Acting Administrator, Rural Utilities Service.

[FR Doc. 03–14720 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Lawrence County Generation Plant; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and 7 CFR Part 1794, Environmental Policies and Procedures, has made a finding of no significant impact (FONSI) with respect to a project proposed by Hoosier Energy Rural Electric Cooperative, Inc., (Hoosier Energy) located in Bloomington, Indiana, and Wabash Valley Power Association, Inc. (Wabash Valley), located in Indianapolis, Indiana. The proposed project will have six units of natural gas fired simple-cycle combustion turbines of 43 megawatts (MW) each for a total of 258 MW. The proposed plant will be located in Lawrence County, Indiana. Wabash Valley applied for assistance from RUS to finance the construction of the proposed project.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1414, or e-mail: *nislam@rus.usda.gov.* Information is also available from Ms. Sheila M. Wheeler, Burns & McDonnell Engineering Company, Inc., 9400 Ward Parkway, Kansas City, Missouri 64114, telephone: (816) 822–3250, or e-mail: *swheele@burnsmcd.com.*

SUPPLEMENTARY INFORMATION: Rural Utilities Service, in accordance 7 CFR 1794.42, published a notice of availability of the environmental assessment (EA) for the proposed project and solicited public comments. Hoosier Energy and Wabash Valley also published notices of availability of the EA in local newspapers seeking comments on the proposed project. Notices were published twice in the Bedford Times Mail and Mitchell

Tribune, a daily and weekly newspaper, respectively.

Agencies that reviewed and provided comments on the EA are (1) Indiana Department of Environmental Management (IDEM); (2) U.S. Environmental Protection Agency (EPA); (3) Hoosier National Forest (National Forest), U.S. Department of Agriculture; (4) U.S. Army Corps of Engineers (COE), Louisville District, and (5) Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology. Appropriate responses to the above agency comments are presented in the FONSI statement prepared for the project. Environmental coordination will continue with IDEM and other agencies as appropriate on various environmental issues during planning and construction of the project. Hoosier Energy and Wabash Valley have already secured or will secure the following approval or permits prior to initiation of construction of the project as needed: (1) A storm water permit; (2) a wastewater treatment facility construction permit; (3) a permit to construct in a floodway, and (4) a National Pollution Discharge Elimination System permit.

Hoosier Energy and Wabash Valley agreed to follow all agency recommendations and mitigation measures discussed in the EA. Based on the EA, RUS has concluded that the proposed action will not have a significant effect to various resources, including important farmland, floodplains, wetlands, cultural resources, threatened and endangered species and their critical habitat, air and water quality, and noise. RUS has also determined that there would be no disproportionately high and adverse human health or environmental effects on minority populations and low-income populations as a result of construction of the project. RUS has concluded that the impacts of the proposed project would not be significant and the proposed action is not a major federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

Copies of the EA and FONSI can be reviewed at RUS at the address provided in this notice, at the headquarters of Hoosier Energy, 7398 North State Road 37, Bloomington, Indiana 47402, telephone: (812) 876–0374, and Wabash Valley, 722 North High School Road, Indianapolis, Indiana 46214, telephone: (317) 481–2842, and also at Bedford Public Library, 1323 K Street, Bedford, Indiana 47421, telephone: (812) 275–4471, and Mitchell Community Public Library, 804 Main Street, Mitchell, Indiana 47446, telephone: (812) 849–2412.

Any final action by RUS related to this proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR Part 1794, Environmental Policies and Procedures.

Dated: June 5, 2003.

Alfred Rodgers,

Acting Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 03–14721 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Public Telecommunications Facilities Program (PTFP) Grant Monitoring.

Form Number(s): None.

OMB Approval Number: 0660–0001.

Type of Review: Regular submission.

Burden Hours: 6,779.

Number of Respondents: 1,950.

Average Hours Per Response: 28 hours for online responses and 39 hours for paper responses.

Needs and Uses: The Public Broadcasting Act authorizes grants to be awarded for the planning and construction of public telecommunications facilities. NTIA/PTFP must collect construction schedules/planning timetables that gives NTIA/PTFP the ability to monitor a project. Quarterly performance reports are required to alert NTIA/PTFP if the project is falling behind in its completion. The close-out reports ensure that Federal funds were expended in accordance with the grant award. Annual reports help maintain and protect the Federal interest for the statutorily-specified 10-year period.

Affected Public: Not-for-profit institutions; State, Local, or Tribal government.

Frequency: Quarterly, annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 6, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–14794 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

[I.D. 060603A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: American Fisheries Act: Vessel and Processor Permit Applications.

Form Number(s): None.

OMB Approval Number: 0648–0393.

Type of Request: Regular submission.

Burden Hours: 42.

Number of Respondents: 20.

Average Hours Per Response: 2 hours for an application for an AFA catcher vessel permit; 30 minutes for application for an AFA Permit for Replacement Vessel; 2.5 hours for an application for an AFA Inshore Catcher Vessel Cooperative Permit; 2 hours for an application for an AFA mothership permit; and 2 hours for an application for an AFA inshore processor permit.

Needs and Uses: The American Fisheries Act (AFA) established an allocation program for the pollock fishery of the Bering Sea and Aleutian Islands Management Area (BSAI). Under the AFA, only vessels and processors that meet specific qualifying criteria are eligible to fish for and process pollock

in the BSAI. The BSAI pollock quota is suballocated to groups of vessel owners who form fishing vessel cooperatives under the AFA. All AFA vessel and processor permits have no expiration date and will remain valid indefinitely unless revoked by NOAA. Inshore catcher vessel cooperatives wishing to receive an allocation of the BSAI inshore pollock total allocated catch (TAC) are required to submit an application for an inshore cooperative fishing permit on an annual basis by December 1 of the year prior to the year in which the cooperative fishing permit will be in effect. The information must be collected once a year because NOAA must identify the universe of participating vessels and processors prior to the start of each fishing year in order to assign allocations of pollock TAC to eligible groups of vessels that form cooperatives.

Affected Public: Business or other for-profit organizations.

Frequency: Annually or on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–14795 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 060603C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Estuary Restoration Act Database Projects.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 3,000.

Number of Respondents: 1,000.

Average Hours Per Response: 4 hours for a new project; and 2 hours for updating an existing project.

Needs and Uses: Collection of estuary habitat restoration project information (e.g., location, habitat type, goals, status, monitoring information) will be undertaken in order to populate a restoration project database mandated by the Estuary Restoration Act of 2000. The database is intended to provide information to improve restoration methods, provide the basis for required reports to Congress, and track estuary habitat acreage restored. Estuary habitat restoration project information will be submitted by habitat restoration project managers through an interactive Web site, and will be accessible to the public via Internet for data queries and project reports.

Affected Public: Not-for-profit institutions; business or other for-profit organizations; State, Local, or Tribal Government; and Federal Government.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–14797 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

[I.D. 060603D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Paperwork Submissions Under the Coastal Zone Management Act Federal Consistency Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0411.

Type of Request: Regular submission.

Burden Hours: 20,535.

Number of Respondents: 4,111.

Average Hours Per Response: 8 hours for a State objection or concurrence letter for a consistency certification or determination; 4 hours for a State request for review of unlisted activities; 1 hour for public notice requirements for a project; 4 hours for a request for remedial action of a supplemental review; 1 hour for coordination of a listing notice; 2 hours for a request for Secretarial mediation; and 202 hours for an appeal. These are average estimates and burden can significantly vary based on the individual situation.

Needs and Uses: A number of paperwork submissions are required by the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456, and by NOAA to provide a reasonable, efficient and predictable means of complying with the CZMA requirements. The requirements are detailed in 15 CFR Part 930. The information will be used by coastal States with Federally-approved Coastal Zone Management Programs to determine if Federal agency activities, Federal license or permit activities, and Federal assistance activities that affect a State's coastal zone are consistent with the States' programs.

Affected Public: State, Local, or Tribal Government; individuals or households; and business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk

Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–14798 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–001]

Potassium Permanganate from the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 11, 2003.

FOR FURTHER INFORMATION CONTACT: John Conniff or Drew Jackson, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1009 or (202) 482–4406, respectively.

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On February 26, 2002, the Department published a notice of initiation for the administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China, covering the period January 1, 2001, through December 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 8780. On February 18, 2003, the Department published the preliminary results of its review. *See Potassium Permanganate from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 7768. In our notice of preliminary results, we stated our intention to issue the final results of this review no later than 120 days after publication of the preliminary results. The final results are currently due on June 18, 2003.

Extension of Time Limit for Final Results of Review

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results until no later than August 17, 2003. *See* Decision Memorandum from Thomas F. Futtner to Holly A. Kuga, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the Department's main building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: June 5, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 03–14780 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–023.

Applicant: University of Missouri—Kansas City, Kansas City, MO 64110.

Instrument: OptoTOP HE 3–D Digitizing System.

Manufacturer: Breuckmann GmbH, Germany.

Intended Use: The instrument is intended to be used to digitally image and measure the skeletal remains and teeth of extant and fossil mammals. Research is aimed to learn more about the patterns and processes of mammalian evolution by studying the three-dimensional form of the skeletal and dental anatomy. The specimens studied will be preserved specimens housed in the collections of various natural history museums. Three-dimensional, digital images will be collected and stored in a digital archive. Using a computer graphics workstation, the images will be subjected to morphometric analyses of variation in size and shape.

Application accepted by Commissioner of Customs: May 20, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–14777 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Berkeley; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–019.

Applicant: University of California—Berkeley, Berkeley, CA 94720–2020.

Instrument: Fiber Optical Coherence Tomography Apparatus.

Manufacturer: Institute of Applied Physics RAS, Russia.

Intended Use: See notice at 68 FR 23979, May 6, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides suitability for studying the smaller eyes of animal rather than human subjects by allowing (1) use of a stereotaxic apparatus for head stabilization, (2) higher in-depth and transverse resolutions and (3) the option of sequential sampling. The National Institutes of Health advises in its memorandum of April 28, 2003 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–14778 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, San Diego; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–017.

Applicant: University of California, San Diego, La Jolla, CA 92093–0658.

Instrument: Laser Capture Microdissection System.

Manufacturer: Molecular Machines & Industries AG, Switzerland.

Intended Use: See notice at 68 FR 23978, May 6, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) Minimal damage to cellular structures during laser microdissection of small tissue samples and (2) superior optics due to the optical geometry of the operating arrangement. The National Institutes of Health advises in its memorandum of April 28, 2003 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–14779 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060603B]

Proposed Information Collection; Comment Request; Gulf of Mexico Shrimp Economic Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 11, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Travis at 727–570–5335 or at *Mike.Travis@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA proposes to collect information on fishing vessel expenses and earnings on a voluntary and continuous basis in the Gulf of Mexico offshore shrimp fishery. The information will be used to conduct socioeconomic analyses that will improve fishery management in that fishery. It will be used in conjunction with catch and effort data already being collected in this fishery as part of federal and state dealer reporting programs, as well as Coast Guard and federal and state fishing permit data on vessel characteristics, to assess how fishermen will be impacted by and respond to any regulation likely to be considered by fishery managers. In addition, this data will be used to determine how fishing communities will be impacted by proposed fishing regulations.

II. Method of Collection

The information will be collected through interviews.

III. Data

OMB Number: 0648–0476.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; and individuals or households.

Estimated Number of Respondents: 500.

Estimated Time Per Response: 67 minutes.

Estimated Total Annual Burden Hours: 558.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–14796 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the Technology and Privacy Advisory Committee (TAPAC)

AGENCY: DoD.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a forthcoming open meeting of the Technology and Privacy Advisory Committee. The purpose of the meeting is for presentations of interest and discussion concerning the legal and policy considerations implicated by the application of advanced information technologies to counter-terrorism and counter-intelligence missions. Due to administrative error, this notice is given less than 15 days before the meeting date.

DATES: Thursday, June 19, 2003, 9 a.m. to 5 p.m.

ADDRESSES: Hyatt Arlington, 1325 Wilson Blvd., Arlington, VA, 22209.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Davis, TAPAC Executive Driector, The Pentagon, Room 3E1045, Washington, DC 20301–3330, Telephone 703–695–0903.

Dated: June 4, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–14811 Filed 6–6–03; 3:24 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Transformational Communications Advanced Technology Study. The purpose of the meeting is to conduct a review of the study. This meeting will be closed to the public.

DATES: June 5–6, 2003.

ADDRESSES: Bldg 201, Kirtland AFB NM 87117.

FOR FURTHER INFORMATION CONTACT: Lt Col. John J. Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–14633 Filed 6–10–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for the Transfer of Honey Lake at Sierra Army Depot (SIAD), Herlong, CA

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the EA and FNSI for the proposed action to transfer Honey Lake (property made available by the realignment of SIAD) in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended.

DATES: Submit comments on or before July 11, 2003.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained by writing to Mr. David Bauman, U.S. Army Corps of Engineers, Sacramento District, ATTN: CESPK–PD–R, 1325 J Street, Sacramento, CA 95814 or via email at *David.J.Bauman@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. David Bauman at (916) 557–5256.

SUPPLEMENTARY INFORMATION: The proposed action evaluated in the EA is the transfer of property not required by the Army for its mission at Sierra Army Depot, Herlong, California. The 62,090.5 acres of Honey Lake comprise the excess property addressed in the EA.

The proposed transfer of Honey Lake to a non-Federal entity is the latest in a series of BRAC actions at SIAD. The installation has disposed of, or is in the process of disposing of, four other parcels located on the Main Depot. These include Herlong, Southeast Corner, East Shore, and the Airfield. These disposal actions at SIAD are described in the EA for the disposal and reuse of the BRAC parcels at Sierra Army Depot, California (February 1998).

Alternatives evaluated in the EA for the transfer of Honey Lake include: (1) No action, (2) transfer to the State of California or its designee, and (3) conveyance to a non-profit natural resources conservation organization. Based on the analysis in the EA, it has been determined that the transfer of Honey Lake would have no significant direct, indirect, or cumulative effects on the quality of the natural or human environment. Because no significant environmental effects would result from the transfer of Honey Lake, an Environmental Impact Statement will not be prepared.

The Army will not initiate the transfer action for 30 days following the completion of the EA and FNSI, and publication of a public notice in a local newspaper. This EA will be distributed for public review and comment, and will be available for public review at the following locations: Sierra Army Depot, Building 1, Herlong, California 96113, (530) 827–5353; Susanville Public Library, 1618 Main Street, Susanville, CA 96130, (530) 251–8127; Reno Public Library, 301 Center Street, Reno, NV 89501, (775) 327–8300; Division of Toxic Substance Control (DTSC), 8800 Cal Center Drive, Sacramento, CA 95826, (916) 255–6684.

Dated: June 6, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 03–14810 Filed 6–10–03; 8:45 am]

BILLING CODE 3710–08–M

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 11, 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: June 5, 2003.

Angela C. Arrington,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: National Assessment of Educational Progress, 2003–2004 Long Term Trend.

Frequency: One-time.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 85,000. *Burden Hours:* 21,250.

Abstract: This clearance request is for the background questions for the National Assessment of Educational Progress Long-Term Trend. These are a series of surveys that have been conducted since 1986. This assessment will be conducted in 2003/2004. Since bridging studies will be required to relate the existing format to the newly adopted format, some questionnaires will still consist of all the existing questions, thus all are being submitted for clearance. In these assessments, students 9, 13 and 17 years of age are assessed.

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 2250. 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 Katrina Ingalls at her e-mail address *Katrina Ingalls@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. 03–14725 Filed 6–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 11, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 5, 2003.

Angela C. Arrington,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: State and Local Implementation of IDEA '97.

Frequency: Annually; Biennially.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 5,219. *Burden Hours:* 14,879.

Abstract: The Office of Special Education Programs (OSEP) is conducting a five-year study to evaluate the state and local impact and implementation of the Individuals with Disabilities Education Act (IDEA) of 1997. The evaluation will provide information on the types and impacts of policies and practices engaged in by states, school districts, and schools to implement the provisions of IDEA '97, particularly with regard to nine key issues identified by the law. OSEP is engaging in this evaluation to report to Congress, in accordance with the provisions of IDEA '97 (Sec. 674). Clearance is sought for multiple instruments. Respondents will be state special education directors, district special education directors, and school principals.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2272. 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

vivian_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 *Sheila Carey at her e-mail address Sheila.Carey@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. 03–14726 Filed 6–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Migrant Education Formula Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of interpretation.

SUMMARY: The Department announces interpretations of section 1303(a) and (b) of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, under which the Department establishes rules for allocating Migrant Education Program funds to States, the District of Columbia, and the Commonwealth of Puerto Rico for Fiscal Year (FY) 2003.

DATES: Effective date: June 11, 2003.

FOR FURTHER INFORMATION CONTACT: James English, Office of Migrant Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E315, FOB–6, Washington, DC 20202–6135. Telephone: (202) 260–1394, or via Internet: *james.english@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background

The Migrant Education Program (MEP), authorized in Title I, Part C, of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), is a State-operated and State-administered formula grant program. It provides assistance to State educational agencies (SEAs) to support high-quality and comprehensive educational programs that provide migratory children appropriate educational and supportive services that address their special needs in a coordinated and efficient manner, and give migratory children the opportunity to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet.

Through this notice, we clarify our interpretations of the formula for awarding FY 2003 MEP funds to States, including the District of Columbia and the Commonwealth of Puerto Rico (Puerto Rico). Under these interpretations, because the overall amount of MEP funds available for allocation to States (including the District of Columbia and Puerto Rico) in FY 2003 will be equal to the amount allocated in FY 2002, the MEP formula amounts to be awarded to each State (including the District of Columbia and Puerto Rico) for FY 2003 will be equal to the amounts awarded to each in FY 2002.

The State Formula. Section 1303(a) and (b) of the ESEA provides the statutory formula under which the Department awards MEP funds to States, including the District of Columbia and Puerto Rico. Section 1303(a)(1) provides a formula for the distribution of FY 2002 MEP funds to all States ''other than the Commonwealth of Puerto Rico.'' This formula relies upon an estimate of the full-time-equivalent (FTE) number of migrant children in each State multiplied by ''40 percent of the average per-pupil expenditure in the State, except that the amount determined under this paragraph shall not be less than 32 percent, nor more than 48 percent, of the average per-pupil expenditure in the United States.''

Section 1303(a)(2) also stipulates that, except as provided under sections 1303(a)(2)(ii) and (b), the amount that each State ''other than the Commonwealth of Puerto Rico'' is entitled to receive in FY 2003 and subsequent years is the sum of—

1. The amount of MEP funds the State received for FY 2002, and

2. The amount (of those funds, if any, that may be appropriated for any subsequent fiscal year in excess of the FY 2002 appropriation level) determined by multiplying the sum of (i) the number of identified eligible migratory children, aged 3 through 21, who during the prior year resided in the State, and (ii) the number of such children who received MEP services in a State summer or intersession program, by 40 percent of the average per-pupil expenditure in the State, except that the amount so determined may not be less than 32 percent, or more than 48 percent, of the average per-pupil expenditure in the United States.

For Puerto Rico, section 1303(b)(1) provides that each year the Commonwealth is entitled to receive an award in the amount ''determined by multiplying the number of children who would be counted under subsection (a)(1)(A) if such subsection applied to the Commonwealth of Puerto Rico by the product of—

(A) the percentage that the average per-pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per-pupil expenditure of any of the 50 States; and

(B) 32 percent of the average per-pupil expenditure in the United States.''

In addition, section 1303(b)(2) provides an increasing minimum percentage to be used in paragraph (b)(1)(A) for FYs 2002 through 2005 and succeeding years. This amount is 77.5 percent for FY 2002, 80 percent for FY 2003, 82.5 percent for FY 2004, and 85 percent for FYs 2005 and beyond.

Section 1303(b)(3) provides that, if application of paragraph (b)(2) for any fiscal year would cause any State to receive less than it received for the preceding fiscal year, the percentage described in paragraph (b)(1)(A) used for Puerto Rico's allocation for that fiscal year is to be the greater of the actual percentage in paragraph (b)(1)(A) for that fiscal year or the percentage used for the preceding fiscal year.

Finally, section 1303(c) of the ESEA requires the Department to ratably reduce MEP grant awards made to all States (including Puerto Rico) if ''the amount appropriated for these grants is insufficient to pay in full the amounts for which all States are eligible.''

FY 2002 MEP Awards. The amended ESEA established very clear procedures for determining the amount of FY 2002 MEP funds the Department provided to each State, including Puerto Rico. It required the Department to provide to all States (section 1303(b)(1)(A)) and to Puerto Rico (section 1303(b)(1)) an FY 2002 award derived by multiplying the total of the State's FTE count of migratory children by the appropriate per-pupil-expenditure amount identified in section 1303(a)(1)(B) and 1303(b)(1)(A) and (2), respectively. As the FY 2002 appropriation was insufficient to make awards to all States and Puerto Rico in these amounts, the Department then applied the ratable reduction provision in section

1303(c)(1) to determine the actual size of the FY 2002 MEP grant awards.

FY 2003 MEP Awards. Section 1303 is far less clear about how the Department is to determine the size of FY 2003 MEP allocations for all States (including Puerto Rico). Because the amount available for FY 2003 awards is no greater than the amount that was available for FY 2002 MEP awards, section 1303(a)(2)(A)(i)(I) provides that, except as is required by section 1303(b) to allocate funds to Puerto Rico, each State other than Puerto Rico is generally entitled to receive the amount of MEP funds that the State received for FY 2002.

At the same time, section 1303(b) fails to establish a clear and consistent method to calculate Puerto Rico's allocation for FY 2003. Section 1303(b)(1) and (b)(2) seems to establish an entitlement for Puerto Rico based on multiplying an FTE count described in section 1303(a)(1)(A) and an adjusted State per-pupil expenditure (SPPE) amount determined by sections (b)(1)–(3). However, the law is unclear as to whether the FTE data and/or the SPPE data in question should be frozen at the FY 2002 level or adjusted annually. In addition, it is unclear as to whether any of these options make sense in light of the fact that NCLB changed the funding formula for all other States starting in FY 2003, specifically to move toward use of more accurate and less burdensome actual counts of migrant children and away from the outdated FTE counts. [**Note:** The FTE counts are outdated because they are calculated using adjustment factors that are based on State data collected in 1994.]

Regardless of how Puerto Rico's entitlement is calculated, it is also unclear how to apply the ratable reduction in section 1303(c)(2) consistently across all States and Puerto Rico when, as in FY 2003, the appropriation falls short of the entitlements for all States and Puerto Rico. Section 1303(a)(2) provides that, in general, the entitlement for all States but Puerto Rico is their actual FY 2002 award amounts, which already went through a ratable reduction in FY 2002. However, under section 1303(b), Puerto Rico's FY 2003 entitlement is not tied to its actual FY 2002 award amount and, thus, never went through an initial ratable reduction in FY 2002. The process of calculating Puerto Rico's FY 2003 entitlement amount, therefore, is inconsistent with the process for calculating the entitlements for all the other States. If the ratable reduction in section 1303(c) is then applied to all States and Puerto Rico in the same manner, the amount Puerto Rico would be entitled to receive for FY 2003 would be the amount it would have been entitled to receive in FY 2002 had there been *no* ratable reduction, *increased* by a 2.5 percent reduction in the gap between its SPPE and the lowest SPPE of any of the 50 States. This would mean that the FY 2003 allocations for all States but Puerto Rico would be affected by two ratable reductions from the amount of FY 2002 MEP funds to which they otherwise would have been entitled—one for FY 2002 and another for FY 2003—while Puerto Rico's FY 2003 allocation would be affected by a ratable reduction only for FY 2003. However, interpreting the statute this way would result in a substantial increase in the amount of FY 2003 MEP funds that Puerto Rico would receive, at the expense of the other States.

These kinds of anomalies, however, are not necessary. In particular, one also can interpret sections 1303(b)(1) and 1303(a)(2) to mean that, for FY 2003 and subsequent years, the amount of MEP funds for which Puerto Rico and every other State may apply is to be based on the same State migrant FTE counts—and hence the same ratable-reduction factor—that the Department applied when it calculated the FY 2002 MEP awards. Such an interpretation of the MEP statutory formula seems to make the most sense programmatically, and to comport best with what we believe is Congress' intent.

There is no legislative history to suggest that Congress intended that the Department adopt an interpretation of the MEP formula under which Puerto Rico would receive a substantial increase of MEP funds from FY 2002 to FY 2003—an increase that, because the MEP is funded for FY 2003 at a level that would not permit the maximum formula-based allocations to States, would have the effect of reducing every other State's award proportionately. Rather, Congress appears to have intended that Puerto Rico instead benefit from the gradual narrowing of the per-pupil expenditure gap, as provided in section 1303(b)(2). Narrowing of this gap would result in increases in the size of Puerto Rico's MEP allocation commensurate with increases in appropriations for the MEP.

We, therefore, interpret sections 1303(b)(1), which requires using ''the number of children counted under subsection (a)(1)(A),'' to mean that the FY 2003 MEP award to Puerto Rico, like the FY 2003 award to all other States, will be based on the FTE number of migratory children counted for purposes of the FY 2002 award under section 1303(a)(1). This reading of section 1303(b)(1) is consistent with section 1303(a)(2), which, by providing that each State's base amount of MEP funds in FY 2003 and subsequent years is the amount that the State received for FY 2002, in effect incorporates into the base amount for FY 2003 the FTE number of that State's migratory children used for the FY 2002 allocation under section 1303(a)(1). Any adjustment in FY 2003 MEP funds for Puerto Rico would be due solely to the increase in the minimum per-pupil expenditure adjustment factor authorized in section 1303(b)(2) and (b)(3). However, paragraph (b)(3) specifically provides that this increase will not occur if it decreases any State's MEP award below the amount it received during the previous fiscal year. Therefore, because the amount available for FY 2003 MEP awards is the same as the amount available for FY 2002 MEP awards, the Department will continue to apply for FY 2003 the minimum per-pupil expenditure adjustment factor for Puerto Rico of 77.5 percent that paragraph (b)(2) required to be used for FY 2002.

In short, based on the above interpretations, and because the overall amount of MEP funds available for award to States in FY 2003 is equal to the amount awarded for FY 2002, the Department will make available to all States, including Puerto Rico, FY 2003 MEP awards that are identical in size to what was awarded to them in FY 2002.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, under 5 U.S.C. 553(b)(A) the Secretary is not required to offer the public an opportunity to comment on an interpretative rule. These rules advise the public of our interpretation of sections 1303(a) and (b) of ESEA, as amended. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required. For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(2).

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

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(Catalog of Federal Domestic Assistance Number 84.011: Title I, Education of Migrant Children)

Dated: June 5, 2003.

Eugene W. Hickok,

Under Secretary of Education.

[FR Doc. 03–14717 Filed 6–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133B–1, 84.133B–5, 84.133B–7]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers (RRTC) Program; Notice Inviting Applications for Fiscal Year (FY) 2003; Correction

SUMMARY: On May 29, 2003 a notice inviting applications for new awards for Rehabilitation Research and Training Centers (RRTCs) for fiscal year (FY) 2003 was published in the **Federal Register** (68 FR 32023).

On page 32023, in the table, for 84.133B–5 Community Integration Outcomes, the ''Estimated available funds'' figure reads ''2,400,000'' and the ''Maximum award amount (per year)'' figure reads ''600,000''. These figures, respectively, are corrected to read ''3,000,000'' and ''750,000''.

On page 32023, in the table, for 84.133B–7 Health and Function, the ''Estimated available funds'' figure reads ''200,000'' and the ''Maximum award amount (per year)'' figure reads ''$600,000''. These figures, respectively, are corrected to read ''5,600,000'' and ''800,000''.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

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Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: June 6, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–14784 Filed 6–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.341]

Community Technology Centers Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003; correction.

SUMMARY: On June 3, 2003 a notice inviting applications for new awards for the Community Technology Centers Program for FY 2003 was published in the **Federal Register** (68 FR 33321).

On page 33323, in column one, the ''Deadline for Transmittal of Applications'' date reads ''June 30, 2003'' and the ''Deadline for Intergovernmental Review'' date reads ''August 29, 2003''. These dates, respectively, are corrected to read ''July 7, 2003'' and ''September 5, 2003''.

FOR FURTHER INFORMATION CONTACT: If you need further assistance and need to speak with someone in the CTC program, you may contact Gisela Harkin by phone at (202) 205–4238, by mail at 330 C Street, SW., Room 4324, Washington, DC 20202, or via e-mail at *commtech.center@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Program Authority: 20 U.S.C. 7263–7263b.

Dated: June 6, 2003.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 03–14718 Filed 6–10–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Written Findings and Compliance Agreement With the District of Columbia Public Schools

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of written findings and compliance agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA) authorizes the U.S. Department of Education to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements and that a compliance agreement is a viable means of bringing about compliance. On March 29, 2002, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) entered a compliance agreement with the District of Columbia Public Schools (DCPS). According to section 457(b)(2) of GEPA, the written findings and compliance agreement must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Sue Rigney, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., Room 3C139, Washington, DC 20202–6132. Telephone: (202 260–0931).

If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **SUPPLEMENTARY INFORMATION.**

Under Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Each State also was required to develop or adopt performance standards, aligned with its content standards, that describe three levels of proficiency to determine how well students are mastering the content standards. Finally, by the 2000–2001 school year, each State was required to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools in enabling students to meet the State's performance standards.

DCPS submitted, and the Department approved, evidence that it has content standards and performance descriptors in at least reading/language arts and mathematics. In October 2000, DCPS submitted evidence of its final assessment system and performance standards. The Department submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Acting Deputy Assistant Secretary for Elementary and Secondary Education (Acting Deputy Assistant Secretary) concluded that DCPS' proposed final assessment system and performance standards did not meet a number of the Title I requirements.

Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient ''is failing to comply substantially with any requirement of law'' applicable to Federal program funds the Department administers. Specifically, the Department is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law.

20 U.S.C. 1234c(a)(1) through (4)

In a letter dated June 20, 2001, to Dr. Paul L. Vance Superintendent of Schools for the District of Columbia, the 3 Acting Deputy Assistant Secretary notified DCPS that, in order to remain eligible to receive Title I funds, it must enter into a compliance agreement with the Department. The purpose of a compliance agreement is ''to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements.'' 20 U.S.C. 1234f(a). In order to enter into a compliance agreement with a recipient, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements and that a compliance agreement is a viable means for bringing about such compliance.

On March 29, 2002, the Assistant Secretary issued written findings, holding that compliance by DCPS with the Title I standards and assessment requirements is genuinely not feasible until a future date. Having submitted its assessment system for peer review in October 2000, DCPS was not able to make the significant changes to its system that the Department's review required in time to meet the spring 2001 statutory deadline to have approved assessments in place. As a result, DCPS administered its unapproved assessment system in 2001. The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps DCPS has already taken to comply, its commitment of resources, and the plan it has developed for further action agreement sets out the action plan that DCPS must meet to come into compliance with the Title I requirements. This plan, coupled with specific reporting requirements, will allow the Assistant Secretary to monitor closely DCPS' progress in meeting terms of the compliance agreement. The Superintendent of DCPS, Dr. Paul L. Vance, signed the Agreement on March 28, 2002 and the Assistant Secretary signed it on March 29, 2002.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2) the text of the Assistant Secretary's written 2002 findings is set forth as appendix A and the compliance agreement is set forth as appendix B of this notice.

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Dated: June 5, 2003.

Eugene W. Hickok,

Under Secretary of Education.

Appendix A—Text of the Written Findings of the Assistant Secretary for Elementary and Secondary Education

I. Introduction

The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of

the U.S. Department of Education (Department) has determined, pursuant to 20 U.S.C. 1234c and 1234f, that the District of Columbia Public Schools (DCPS) has failed to comply substantially with certain requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.,* and that it is not feasible for DCPS to achieve full compliance immediately. Specifically, the Assistant Secretary has determined that DCPS failed to meet a number of the Title I requirements concerning the development of performance standards and an aligned assessment system within the statutory time frame.

For the following reasons, the Assistant Secretary has concluded that it would be appropriate to enter into a compliance agreement with DCPS to bring it into full compliance as soon as feasible. During the effective period of the compliance agreement, which ends three years from the date of these findings, DCPS will be eligible to receive Title I funds as long as it complies with the terms and conditions of the agreement as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements.

II. Relevant Statutory and Regulatory Provisions

A. Title I, Part A of the Elementary and Secondary Education Act of 1965

Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, provides financial assistance, through State educational agencies, to local educational agencies to provide services in high-poverty schools to students who are failing or at risk of failing to meet the State's student performance standards. Under Title I each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do and performance standards aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standard. By the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards. These assessments must meet the following requirements:

- The assessments must be aligned to a State's content and performance standards.
- They must be administered annually to students in at least one grade in each of three grade ranges: Grades 3 through 5, grades 6 through 9, and grades 10 through 12.
- They must be valid and reliable for the purpose for which they are used and of high technical quality.
- They must involve multiple measures, including measures that assess higher-order thinking skills.
- They must provide for the inclusion of all students in the grades assessed, including students with disabilities and limited English proficient students.
- They must provide individual reports.
- Results from the assessments must be disaggregated and reported by major racial and ethnic groups and other categories.

20 U.S.C. 6311(b)(3) [1]

B. The General Education Provisions Act

The General Education Provisions Act (GEPA) provides a number of options when the Assistant Secretary determines a recipient of Department funds is ''failing to comply substantially with any requirement of law applicable to such funds.'' 20 U.S.C. 1234c. In such case, the Assistant Secretary is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law. 20 U.S.C. 1234c(a)(1) through (4).

Under section 457 of GEPA, the Assistant Secretary may enter into a compliance agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. The purpose of a compliance agreement is ''to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements.'' 20 U.S.C. 1234f(a). Before entering into a compliance agreement with a recipient, the Assistant Secretary must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. At that hearing, the recipient has the burden of persuading the Assistant Secretary that full compliance with the applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance. 20 U.S.C. 1234f(b)(1). If, on the basis of all the available evidence, the Assistant Secretary determines that compliance is genuinely not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance, the Assistant Secretary must make written findings to that effect and publish those findings together with the substance of any compliance agreement, in the **Federal Register**. (20 U.S.C. 1234f(b)(2)).

A compliance agreement must set forth an expiration date later than three years from the date of these written findings, by which time the recipient must be in full compliance with all program requirements (20 U.S.C. 1234f(c)(1)). In addition, a compliance agreement must contain the terms and conditions with which the recipient must comply during the period that agreement is in effect (20 U.S.C. 1234f(c)(2)). If the recipient fails to comply with any of the terms and conditions of the compliance agreement, the Assistant Secretary may consider the agreement no longer in effect and may take any of the compliance actions described previously (20 U.S.C.1234f(d)).

III. Analysis

A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement is Appropriate

In deciding whether a compliance agreement between the Assistant Secretary and DCPS is appropriate, the Assistant Secretary must first determine whether compliance by DCPS with the Title I standards and assessment requirements is genuinely not feasible until a future date (20 U.S.C. 1234f(b)). The second issue that the Assistant Secretary must resolve is whether DCPS will be able, within a period of up to three years to come into compliance with the Title I requirements. Not only must DCPS come into full compliance by the end of the effective period of the compliance agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome is not possible then a compliance agreement between the Assistant Secretary and DCPS would not be appropriate.

B. DCPS Has Failed To Comply Substantially With Title I Standards and Assessment Requirements.

In October 2000, DCPS submitted evidence of its final assessment system. The Assistant Secretary submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Acting Deputy Assistant Secretary for Elementary and Secondary Education (Acting Deputy Assistant Secretary) concluded that DCPS' proposed final assessment system did not meet a number of the Title I requirements Specifically the Acting Deputy Assistant Secretary determined that DCPS must do the following:

- Develop or select an assessment system that represents the full range of the DCPS content standards in at least reading/language arts and mathematics at the benchmark grades.
- In addition, DCPS must document the alignment of the assessments with DCPS' content and performance standards.
- Complete the creation of DCPS' performance standards by identifying the scores on the assessments that define each of DCPS' performance levels.
- Provide data showing that all assessments used for Title I accountability meet commonly accepted professional standards for technical quality consistent with DCPS' use of the results.

[1] On January 8, 2002, the No Child Left Behind Act of 2001 reauthorized Title I of the Elementary and Secondary Education Act (NCLB) (Pub. L. 107–110). The NCLB made several significant changes to the Title I standards and assessment requirements. First, it requires that each State develop academic content and student achievement standards in science by the 2005–06 school year. Second, by the 2005–06 school year, it requires a system of aligned assessments in each of grades 3 through 8 and once during grades 10 through 12. Third, it requires science assessments in at least three grade spans by the 2007–08 school year. Fourth, the NCLB significantly changes the definition of adequate yearly progress each State must establish to hold schools and school districts accountable, based on data from the 2001–02 test administration. Finally, by the 2002–03 school year, the NCLB requires State and school district report cards that include, among other things, assessment results disaggregated by various subgroups, two-year trend data, and percent of students tested.

• Establish assessment procedures and reports that include all students with disabilities in DCPS' assessment system, including completion of an alternate assessment; include the test results for these students in DCPS' school accountability measures.

• Establish assessment procedures to maximize participation of limited English proficient (LEP) students in the assessment system and include test results for these students in DCPS' school accountability measures and determine the practicability of administering a native language version of DCPS' assessments and include the results in the accountability system.

• Monitor school-level decisions regarding participation in the alternate assessment or exemptions based on limited English proficiency to ensure consistency across schools and over time.

• Provide to the Department accurate enrollment, participation, and exclusion data; report school-level results for all students tested; and base school accountability measures on all students.

• Develop and disseminate annual school reports that display results for all students, disaggregated by gender, major racial and ethnic groups, LEP status, migrant status students with disabilities compared to non-disabled students, and economically disadvantaged students compared to non-disadvantaged students.

• Modify individual student reports to reflect DCPS' performance standards when the standards are completed.

C. DCPS Cannot Correct Immediately Its Noncompliance With the Title I Standards and Assessment Requirements

Under the Title I statute, DCPS was required to implement a final assessment system no later than the 2000–2001 school year (20 U.S.C. 6311(b)(6)). DCPS submitted evidence of its assessment system in October 2000, but the Acting Deputy Assistant Secretary determined, on the basis of that evidence, DCPS' system did not fully meet the Title I requirements. Due to the enormity and complexity of developing a new assessment system that addressed the Acting Deputy Assistant Secretary's concerns, DCPS was not able to complete that task between the time it submitted its system for review and the spring 2001 assessment window. Thus, in April 2001, DCPS administered the assessment that the Acting Deputy Assistant Secretary had determined did not meet the Title I requirements. As a result, the Assistant Secretary finds that it is not genuinely feasible for DCPS to come into compliance until a future date.

D. DCPS Can Meet the Terms and Conditions of a Compliance Agreement and Come Into Full Compliance With the Requirements of Title I Within Three Years

At the public hearing, DCPS presented evidence of its commitment and capability to come into compliance with the Title I standards and assessment requirements within three years.

For example, in one year, DCPS developed, for pre-kindergarten through grade 12, a set of approved content standards in language arts and mathematics as well as standards in a number of other areas such as science. DCPS also developed approved performance descriptors in reading and mathematics. DCPS has also developed and piloted alternate assessments for students with disabilities and limited English proficient students including a portfolio assessment for English language learners. It must modify these alternate assessments, however, to ensure full alignment and inclusion of all students. Moreover, DCPS has committed resources and personnel to continue the work of developing, aligning, implementing, and evaluating assessment system.

Finally, DCPS has developed a comprehensive action plan, incorporated into the compliance agreement, that sets out a very specific schedule that DCPS has agreed to meet during the next three years for attaining compliance with the Title I standards and assessment requirements. As a result, DCPS is committed not only to coming into full compliance within three years, but to meeting a stringent, but reasonable, schedule for doing so. The action plan also demonstrates that DCPS will be well on its way to meeting the new standards and assessment requirements of the No Child Left Behind Act of 2001. The compliance agreement also sets out documentation and reporting procedures that DCPS must follow. These provisions will allow the Assistant Secretary to ascertain promptly whether DCPS is meeting each of the commitments under the compliance agreement and is on schedule to achieve full compliance within the effective period of the agreement.

The task of developing an assessment system that meets the Title I requirements is not a quick or easy one. However the Assistant Secretary has determined that, given the commitment of DCPS to comply with the terms and conditions of the compliance agreement, it is possible for DCPS to come into full compliance with the Title I standards and assessment requirements within three years.

IV. Conclusion

For the foregoing reasons, the Assistant Secretary finds the following: (1) That full compliance by DCPS with the standards and assessment requirements of Title I is not feasible until a future date; and (2) that DCPS can meet the terms and conditions of the attached compliance agreement and come into full compliance with the Title I standards and assessment requirements within three years of the date of these findings. Therefore, the Assistant Secretary has determined that it is appropriate to enter into a compliance agreement with DCPS. Under the terms of 20 U.S.C. 1234f, that compliance agreement becomes effective on the date of these findings.

Dated: March 29, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

Compliance Agreement Under Title I of the Elementary and Secondary Education Act Between the United States Department of Education and the District of Columbia Public Schools

Introduction

Title I of the Elementary and Secondary Education Act of 1965 (Title I) required each State, including the District of Columbia and Puerto Rico, to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Title I also required each State to develop or adopt performance standards, aligned with its content standards, that describe three levels of proficiency to determine how well students are mastering the content standards. Finally, by the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools in enabling students to meet the State's performance standards.

The District of Columbia Public Schools (DCPS) was not able to meet these requirements by the statutory deadlines. In order to be eligible to continue to receive Title I funds while working to comply with the statutory requirements, Dr. Paul L. Vance, Superintendent of DCPS, indicated DCPS' interest in entering into a compliance agreement with the Office of Elementary and Secondary education (OESE) of the United States Department of Education. On November 13, 2001, OESE conducted a public hearing regarding DCPS' ability to come into compliance with the Title I standards and assessment requirements within three years. Based on testimony at that hearing, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) determined that compliance by DCPS with the Title I standards and assessment requirements was genuinely not feasible until a future date because of the ''magnitude and complexity of meeting those requirements.'' The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps DCPS has already taken to address its noncompliance, its commitment of resources and the plans it has developed for further action. These plans are summarized in the Commitments and Timetable below.

Pursuant to this Compliance Agreement under 20 U.S.C. § 1234r, DCPS must be in full compliance with the requirements of Title I no later than three years from the date of the Assistant Secretary's written findings, a copy of which is attached to, and incorporated by reference into, this Agreement. Specifically, DCPS must ensure and document that it will have met the following requirements:

1. Develop or select an assessment that represents the full range of the DCPS content standards at the benchmark grades in at least reading language arts and mathematics and is consistent with Title I requirements for use of multiple measures of student performance, including measures that assess higher order

thinking and understanding. Document the alignment of the assessment(s) with DCPS content and performance standards, and provide data showing that all assessments used for Title I accountability meet commonly accepted professional standards for technical quality consistent with the District's uses of the results. Reliability of both student and school classifications should be reported.

2. Complete the definition of DCPS performance standards by identifying the scores on the assessment(s) that define each of the DCPS performance levels. DCPS teachers or other persons who are thoroughly familiar with the DCPS standards must be included in this activity.

3. Establish assessment procedures to maximize participation of limited English proficient students (LEP) in the assessment and include test results for these students in the school accountability measures. Any students exempted from the regular assessment on the basis of language proficiency must be included in the accountability system in some manner. DCPS is also responsible for determining the practicability of administering a native language version of the DCPS assessment(s), and including the results in the accountability system.

4. Monitor school-level decisions regarding participation in the alternate assessment or exemption based on limited English proficiency to ensure consistency across schools and over time.

5. Develop and disseminate annual school reports that display results for all students, disaggregated by gender, major racial/ethnic groups, LEP status, migrant status, students with disabilities as compared to non-disabled, and economically disadvantaged students compared to non-disadvantaged. These school profiles must be shared with teachers and other educators, parents and the community.

During the period that this Compliance Agreement is in effect, DCPS is eligible to receive Title I, Part A funds if it complies with the terms and conditions of this Agreement, as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements. Specifically, the Compliance Agreement sets forth above the action steps DCPS must take to come into compliance with its Title I obligations.

The action steps incorporated into this Compliance Agreement may be amended by joint agreement of the parties, provided full compliance can still be accomplished by the expiration date of the Agreement.

If DCPS fails to comply with any of the terms and conditions of this Compliance Agreement, including the action steps below, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including the withholding of funds or the issuance of a cease and desist order.

For the District of Columbia Public Schools:

Dated: March 28, 2002.

Dr. Paul L. Vance,

Superintendent.

For the United States Department of Education:

Dated: March 29, 2002.

Susan B. Neuman, *Assistant Secretary, Office of Elementary and Secondary Education.*

Date this Compliance Agreement becomes effective: March 29, 2002.

Expiration Date of this Agreement: March 29, 2005.

BILLING CODE 4000–01–P

ACTION STEPS		COMPLETION DATE	DOCUMENTATION
REQUIREMENT 1			
Develop or select an assessment that represents the full range of the DCPS content standards at the benchmark grades in at least reading/language arts and mathematics and is consistent with Title I requirements for use of multiple measures of student performance, including measures that assess higher order thinking and understanding. Document the alignment of the assessment(s) with DCPS content and performance standards, and provide data showing that all assessments used for Title I accountability meet commonly accepted professional standards for technical quality consistent with the District's uses of the results. Reliability of both student and school classifications should be reported.			
1A: Establish technical committee to inform assessment development process:			
1A.1:	Convene the *Assessment Advisory Committee* (AAC) to provide recommendations for completing the comprehensive assessment system that meets Title I requirements.	Mar 31, 2002	AAC membership roster
1A.2:	Schedule quarterly meeting to address technical issues and district options related to standards setting, alignment, documentation of technical quality, reports and accommodations.	Apr 30, 2002 Jul 31, 2002 Oct 31, 2002	Agendas, Meeting Notes, and Recommendations
1A.3:	DPS will add qualified staff to supervise implementation of the compliance agreement.	June 30, 2002	Job description. Name of new hire
1A.4:	Empanel technical subcommittee to advise DCPS staff by clarifying decision options, examining the cost/benefits of alternative choices, summarizing best practices and emerging technical knowledge, or outlining appropriate technical documentation required for assessment and accountability practices consistent with current professional standards.	Apr 30, 2002 Jul 31, 2002 Oct 31, 2002 And periodically thereafter as needed	Meeting notes, recommendations.
1B: Development of Aligned, Standards-Based Assessment System:			
1B.1:	In collaboration with the AAC, create an assessment ***"Blueprint"*** that describes characteristics of assessments required for valid representation of DC standards, such as **(1)** standards to be addressed by instruments,	Jun 30, 2002	Written ***"Blueprint"*** for assessment system, and evidence that *"Blueprint"* has

ACTION STEPS		COMPLETION DATE	DOCUMENTATION
	(2) item formats, **(3)** measurement objectives, **(4)** details for the content match, **(5)** cognitive emphasis and **(6)** levels of item complexity.		been reviewed and approved by superintendent and board.
1B.2:	Commence assessment development consistent with the *"Blueprint"* by issuing an RFP for a customized instrument. **[OR]** Conduct an alignment study of existing assessment component and revise the assessment package (e.g., multiple choice, open-ended item, and writing component) as needed to ensure its appropriateness for measuring student learning outcomes.	Aug 31, 2002	Report on study results and recommendations
1B.3:	Select contractor to develop additional assessment components or items, as needed, to ensure appropriate alignment.	Sep 30, 2002	Signed contract or other signed procurement letter.
1B.4:	Develop and field test items or forms.	May 31, 2003	Agendas, manuals, rosters and notes.
	1C: Continued development and move to full implementation of PASS/ALT (Alternate Portfolio Package for Special Education students).		
1C.1:	Continue work with current contractor, the University of Kentucky, to refine and continue the implementation of portfolios for special education students. A new contract is being negotiated as the training continues.	Mar 31, 2002	Memorandum of Agreement, agendas, rosters, and revised PASS/ALT manual.
1C.2:	Prepare and disseminate alternate portfolio design document that includes **(1)** Links to academic standards, **(2)** required contents and **(3)** guidelines for participation.	Mar 31, 2002	Revised PASS/ALT manual.
1C.3:	Revise manual and protocol based on results from pilot; prepare and disseminate revised materials for June 2002 portfolio collection.	Mar 31, 2002	Revised materials
1C.4:	Full implementation of the Alternative Portfolio for special education students, including the following **steps:** **(1)** Training; **(2)** Portfolio Collection;	Sep 30, 2002 May 31, 2002 May 31, 2002 Jul 31, 2002	Materials for training sessions, agendas, memoranda and reports.

ACTION STEPS	COMPLETION DATE	DOCUMENTATION
(3) Portfolio Scoring; **(4)** Preparation of data for reporting.	Sep 30, 2002	

REQUIREMENT 2

Complete the creation of DCPS performance standards by identifying the scores on the assessment(s) that define each of the DCPS performance levels. DCPS teachers or other persons who are thoroughly familiar with the DCPS standards must be included in this activity.

2A: Implement final assessment(s) and complete definitions of DC Performance Standards:

2A.1:	Pilot test the revised assessments at the benchmark grades. This procedure will be required: **(1)** if new components have been added to the assessment system that have been previously piloted; and/or **(2)** if assessment design has changed; and/or **(3)** if new items have been added.	May 31, 2003	Assessment specifications, memoranda, and administrative guidelines
2A.2:	Design assessment reports that are consistent with ESEA requirements.	Apr 31, 2004	Sample report and instructions to contractors.
2A.3:	Administer the revised assessments with accommodations, as appropriate, for students with disabilities and students with limited English proficiency..	May 31, 2004	Administrative guidelines and assessment data.
2A.4:	After assessments have been scored, conduct standards setting sessions, using the procedures recommended by the AAC. Define cut scores, generate final descriptions for performance levels of "*below basic*," "*basic*," "*proficient*" and "*advanced.*"	Aug 31, 2004	●Notes from AAC meeting with recommendation for preferred standards-setting procedures. ●Written documentation of procedures and results. ●List of participants, including teachers and other personnel familiar with special populations.

District of Columbia Schools – *ACTION PLAN FOR TITLE I COMPLIANCE AGREEMENT*

ACTION STEPS		COMPLETION DATE	DOCUMENTATION
2A.5:	Make recommendations to the Superintendent for final performance levels, including data on actual performance. When performance levels have been adopted by the superintendent and/or the board, submit description of process and results to the U.S. Dept. of Education (USDE) for review and approval.	Nov 30, 2004	Evidence of approval by the superintendent and/or the board.
2A.6:	Revise standard for adequate yearly progress measures to match requirements of "***No Child Left Behind***" legislation.	Nov 30, 2004	Definition of starting point, intermediate goals and annual measurable objectives for adequate yearly progress.
2A.7:	Implement the revised standard for adequate yearly progress.	Aug 31, 2004	Transmittal memorandum and report to superintendent, board and USDE.
2A.8:	Submit ***"Blueprint"*** for the final assessment system for printing.	Dec 31, 2004	Transmittal memorandum, notes and comments.
2A.9:	Submit documentation on DCPS comprehensive assessment system to USDE for peer review.	Jan 31, 2005	Transmittal memorandum, notes and comments.

REQUIREMENT 3
Establish assessment procedures to maximize participation of limited English proficient students (LEP) in the assessment and includes test results for these students in the school accountability measures. Any students exempted from the regular assessment on the basis of language proficiency must be included in the accountability system in some manner. DCPS is also responsible for determining the practicability of administering a native language version of the DCPS assessment(s), and including the results in the accountability system.

3A: Inclusion of English Language Learners:

3A.1:	Reconvene the core team to revise criteria for exclusion from system- wide assessment to meet ESEA requirements.	Mar 31, 2002	Agendas, minutes from meetings and documentation of comments.
3A.2:	Review and refine, as needed, procedures to collect accurate data on the number of English Language Learners (ELL) enrolled.	Apr 31, 2002 Apr 31, 2003	Submit annual report as required by ESEA.
3A.3:	Refine accommodations policy to ensure maximum accessibility for ELL students as assessment system is developed.	Jan 31, 2003 Jan 31, 2004 Jan 31, 2005	Meeting agendas, memoranda and suggestions.
3A.4:	Inform principals and administrators of revised policies and responsibilities regarding the ELL student participation in the large-scale system and the alternate assessments.	Mar 31, 2002 Mar 31, 2003 Mar 31, 2004	Written procedures, report of discrepancies, actions taken to correct inappropriate practices.
3A.5:	Monitor all decisions to exempt individuals. Keep up-to-date records of language proficiency test results.	Jul 31, 2002 Jul 31, 2003 Jul 31, 2004	Meeting agendas, memoranda, training schedule and handouts.
3A.6:	Investigate use of the preschool Language and Pre-Language Assessment Scales (LAS and PLAS) to capture literacy assessment information about ELL and their participation in the large-scale state assessment.	Sep 30, 2002	Written review and findings.
3A.7:	Investigate use of the Spanish version of the SAT9 for students who	Sep 30, 2002	Written summary.

receive instruction in Spanish -- if the decision is made to augment the SAT9.		
3B: Complete Implementation of Alternative Portfolio Package for English Language Learners:		
3B.1: Review the *existing* portfolio system for ELL students to determine its appropriateness for measuring student leaning outcomes in a manner consistent with Title I requirements. **Specify:** **(1).** How portfolio is aligned with DCPS content and performance standards; **(2).** Required contents; **(3).** Criteria for participation; **(4).** How results will be reported and incorporated in accountability system.	Oct 31, 2002	Proposed requirements from ILSSA.
3B.2: Augment the existing portfolio system for ELL students, as needed, to ensure its completeness for measuring the same student learning outcomes as those established for all students.	Oct 31, 2002	Refine procedures and manual.
3B.3: Conduct training sessions for administrators, bilingual coordinators and teachers.	Nov 31, 2002	Rosters, agendas, sample materials and handouts.
3B.4: Conduct pilot portfolio system for ELL students.	Jun 30, 2003	Data from Pilot Process.
3B.5: Review process and results for verification of data quality.	Aug 31, 2003	Data from Pilot Process and recommendations.
3B.6: Full implementation of the alternate portfolio system for ELL students, **including:** **(1).** Training required for local educators; **(2).** Portfolio collection; **(3).** Portfolio scoring; **(4).** Preparation and distribution of reports.	Oct 31, 2003	Proposed requirements from ILSSA.
REQUIREMENT 4		

Monitor school-level decisions regarding participation in the alternate assessment or exemption based on limited English proficiency to ensure consistency across schools and over time.

4A: Monitoring School-Level Decisions Regarding Inclusion of All Students in Assessments:

4A.1:	Determine if the current data systems will provide accurate enrollment information, with consultation from the Assessment Advisory Committee. Refine procedures, where needed, to ensure that data are accurate and complete.	Nov 31, 2002 and ongoing	Report of finding.
4A2:	Review current data collection procedures for participation and exclusion data. Refine procedures, where needed, to ensure that data are accurate and complete.	Nov 31, 2002 and ongoing	Meeting notes and refined procedures.
4A3:	Revise policy and procedures regarding inclusion of special education students in a manner consistent with Title I requirements.	Nov 31, 2002 and ongoing	Policy statement and evidence of adoption by board.
4A2:	Monitor inclusion to assure that all special education students participate in either the regular or alternate assessment.	Jul 31, 2002 and ongoing	Annual documentation of participation and corrective actions.

REQUIREMENT 5			
Develop and disseminate annual school reports that display results for all students, disaggregated by gender, major racial/ethnic groups, LEP status, migrant status, students with disabilities as compared to non-disabled, and economically disadvantaged students compared to non-disadvantaged. These school profiles must be shared with teachers and other educators, parents, and the community.			
5A: Develop and disseminate annual school *"report cards"* and profiles:			
5A1:	Review coding system for students to ensure that requirements for disaggregation and comparison of scores can be met. Implement quality control procedures as needed to ensure accurate data collection and reports.	Mar 31, 2002	Findings of review, quality control procedures and sample reports in manual.
5A2:	Investigate ways to obtain poverty information for high school students. Data on poverty/non-poverty students for DC will be available in school year 2001-2002. For charter schools, data will be available in school year 2002-2003.	Jun 30, 2002	Summary of recommendations and adopted procedures.
5A3:	Describe dissemination strategies consistent with Title I requirements, including information on how results can be interpreted and understood by parents, including use of native language forms or explanation.	Nov 30, 2004	Agendas, written plan and recommendations.
5A4:	Review and revise the school performance profiles and performance indices to be consistent with Title I requirements.	Oct 31, 2002	Revised performance profiles and indices.

REQUIREMENT 6		

All States must meet the requirements of ***No Child Left Behind Act of 2001***, insofar as the completion of the assessment system permits.

The following action steps are goals to be accomplished by the date shown. DCPS will have until 6 months from the date of the agreement or 30 days after publication of final regulations (whichever comes first) to determine the specific intermediate tasks and dates required to satisfy each goal.

6A: Requirements related to *No Child Left Behind Act of 2001*.

Draft content standards in science Distributed for stakeholder review and comment Completed and adopted by Board of Education	Aug 31, 2004 Aug 31, 2005	Draft standards
Develop standards-based assessments in remaining grades 3-8 Complete test blueprint Draft and field test items Pilot assessments in the non-benchmark grades	 Fall 2003 Spring 2004 Spring 2005	 Test blueprint Field test data Pilot administration manual
6A1: Dissemination of disaggregation data at the school and district levels from the assessments currently in use (addressed by DCPS in Section 8). Disaggregation is required **(1)** by gender, **(2)** by each major racial and ethnic group, **(3)** by English proficiency status, **(4)** by migrant status, **(5)** by student with disabilities compared with non-disabled students, and **(6)** by economically disadvantaged students compared with students who are not economically disadvantaged.	Aug 31, 2003	Sample reports based on test administered in 2001-2002.
6A2: Distribution of an itemized score analysis to support instructional improvement.	Aug 31, 2003	Sample reports based on test administered in 2001-2002.
6A3: Implementation of the English language proficiency testing required under Title I and Title III, incliding **(1).** Identification of instrument; **(2).** Administration to all LEP students; **(3).** Development of measurable objectives for gains in English proficiency, as required in Sse. 3122;	Aug 31, 2003 and ongoing	Instructions to schools, test administration manuals, and sample reports.

	(4). Reporting of results required by NCLB.		
6A4:	Participation in the ***National Assessment of Education Progress*** (NAEP) in 2003 and 2005; and, if selected, participate in the field tests in "off" years.	Aug 31, 2003 and ongoing	Documentation in Consolidated Application.
6A5:	Distribution of a state report card, as required under section 1111 of Title I. State report card must include the following assessment components by date: **(1)** Data disaggregated for academic assessment results by performance level; **(2)** Disaggregated summaries of percentages of students tested; and **(3)** Comparisons must be made between annual objectives and actual performance levels for each student groups . (Note: report card requirements must be met as quickly as possible.)	Sep 30, 2002 Sep 30, 2003 Sep 30, 2004	Copy of state report card. Copy of state report card. Copy of state report card.
6A6:	Continued identification of schools in need of improvement, based on data for all children in grades assessed and, where possible: **(1)** for subgroups; **(2)** for other indicators required by NCLB legislation; and **(3)** based on application of the 95 percent participation rule.	Aug 31, 2002 Aug 31, 2003 Aug 31, 2004	Transitional rules under NCLB Rules appropriate for assessment(s) in use.
6A7:	Annual report to the Secretary as described in Section 1111(h)(4), including: **(1)** Information on State progress in developing all required academic assessments (2002-2003); **(2)** Disaggregated student achievement data (2002-2003); **(3)** Data on acquisition of English proficiency by (2002-2003); **(4)** Number and names of schools identified for school improvement, the reason for identification, and measures taken to address achievement problems (2002-2003); **(5)** Number of students and schools that participated in public school choice and supplemental services (2002-2003); and **(6)** Information on quality of teachers and percent of classes taught by highly qualified teachers (2002-2003).	Aug 31, 2002	Data will be reported as part of the Annual Title Performance Report.
6A8:	All other requirements of NCLB legislation pertaining to schools identified	Aug 31, 2003	Implementation and

for improvement, corrective action, or restructuring during the period of the compliance agreement.		documentation of choice, supplemental services, corrective actions, as appropriate.

[FR Doc. 03–14719 Filed 6–10–03; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–502–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective June 1, 2003:

Fifty-Sixth Revised Sheet No. 8
Fifty-Sixth Revised Sheet No. 9
Fifty-Fifth Revised Sheet No. 13
Sixty-Eighth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.2 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its part 284 firm transportation customers to collect ninety percent of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent. ANR advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $3,091,394 to $2,228,076.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14762 Filed 6–10–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–504–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to become effective April 1, 2003:

Second Revised Volume No. 1
Second Revised Sheet No. 2G
Original Volume No. 2
Tenth Revised Sheet No. 6
Twelfth Revised Sheet No. 7
First Revised Sheet No. 1334
First Revised Sheet No. 1359

ANR states that the above-referenced tariff sheets are being filed to cancel ANR's Rate Schedules X–115 and X–116 as approved by Commission order issued on January 30, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or

TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14764 Filed 6–10–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–508–000]

ANR Storage Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, ANR Storage Company (ANR Storage) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to become effective April 1, 2003:

Original Volume No. 1
First Revised Sheet No. 1A
Original Volume No. 2
Fourth Revised Sheet No. 1
Second Revised Sheet No. 177
Second Revised Sheet No. 203

ANR Storage states that the above-referenced tariff sheets are being filed to cancel ANR Storage's Rate Schedules X–9 and X–10 as approved by Commission order issued on January 30, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14768 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–103]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

June 5, 2003.

Take notice that on May 30, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective June 1, 2003:

Second Revised Sheet No. 861
Original Sheet No. 893
Sheet Nos. 894–1999

CEGT states that the purpose of this filing is to reflect implementation of a new negotiated rate transaction and an amendment to an existing negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14773 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–295–000]

Clear Fork Pipeline Company; Notice of Petition for Declaratory Order

June 4, 2003.

Take notice that on May 9, 2003, Clear Fork Pipeline Company (Clear Fork) filed with the Federal Energy Regulatory Commission (Commission) pursuant to rule 207(a)(2) of the Commission's rules of practice and procedure, 18 CFR 385.207(a)(2), a Petition for Declaratory Order in Docket No. CP03–295–000, requesting that the Commission declare that the acquisition by Clear Fork of Colorado Interstate Gas Company's (CIG) Silver Tip Lateral in Park County, Wyoming, and the subsequent ownership and operation of these facilities, will have the primary function of gathering of natural gas and thereby be exempt from the Commission's jurisdiction pursuant to section 1(b) of the Natural Gas Act (NGA).

Clear Fork states that the Silver Tip Lateral is a 5.3 mile lateral consisting of 4 pipeline, terminating at the Elk Basin Plant in Park County, Wyoming. Clear Fork states that it purchased all of CIG's rights, title and interests in the Silver Tip Lateral and related facilities pursuant to a Purchase and Sale Agreement dated July 1, 2002 and that the line currently is idle.

Following Commission action on the instant petition, Clear Fork states that it intends to incorporate the Silver Tip Lateral and related facilities into the preexisting non-jurisdictional gathering system and intends to operate such facilities as an integral part of the gathering and production facilities needed to gather natural gas and transport it to the Elk Basin Plant for processing.

Clear Fork states that CIG has abandoned the Silver Tip Lateral and related facilities under its blanket authorization in Docket No. CP83–21. Clear Fork states that because it is not otherwise engaged in the ownership and operation of facilities in interstate commerce that are subject to the NGA and the Commission's jurisdiction, a declaratory order is requested disclaiming jurisdiction over Clear Fork's ownership and operation of the facilities purchased from CIG.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: June 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14609 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–505–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Filing

June 5, 2003.

Take notice that on May 30, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1,

Twenty-Eighth Revised Sheet No. 11A, to become effective July 1, 2003.

CIG states the tariff sheet is being filed to revise the quarterly Fuel Reimbursement Percentage applicable to Lost, Unaccounted-For and Other Fuel Gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14765 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–512–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of July 1, 2003:

Sixth Revised Sheet No. 144
Second Revised Sheet No. 144A
Fourth Revised Sheet No. 318

Columbia Gulf states that it is submitting this filing to include in its Tariff new provisions permitting Columbia Gulf to agree with its shippers, on a not unduly discriminatory basis, to a contractual right of first refusal (''ROFR''), equivalent to the ROFR right set forth from time to time in Section 4 of the General Terms and Conditions of its Tariff, for service agreements that have a term of 12 or more consecutive months of service but bear a rate that is either discounted or negotiated.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14772 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–346–002 and RP01–16–002]

Dauphin Island Gathering Partners; Notice of Compliance Filing

June 5, 2003.

Take notice that on May 30, 2003, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets included in Appendix A to the filing, with an effective date July 1, 2003.

Dauphin Island states that the revised tariff sheets are being filed in anticipation of implementing the Order 637 tariff sheets on July 1, 2003. The tariff sheets incorporate the tariff changes from Dauphin Island's Order No. 587-O compliance filing which were submitted after Dauphin Island's last Order No. 637 filing.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14757 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–511–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 181, to become effective July 1, 2003.

Dauphin Island states that this tariff sheet is being filed to clarify how prior period adjustments are handled for imbalances.

Dauphin Island states that copies of the filing are being served contemporaneously on its firm and interruptible customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14771 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–503–000]

Discovery Gas Transmission LLC; Notice of Tariff Filing

June 5, 2003.

Take notice that on May 30, 2003, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, with an effective date of July 1, 2003:

Fifth Revised Sheet No. 20
Third Revised Sheet No. 33
Third Revised Sheet No. 44
Third Revised Sheet No. 53

Discovery states that the tariff sheets are being filed to update its Lost and Unaccounted For Gas percentage.

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14763 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–497–000]

Enbridge Offshore Pipelines (UTOS) LLC; Notice of Compliance Filing

June 4, 2003.

Take notice that on May 30, 2003, Enbridge Offshore Pipelines (UTOS) LLC (Enbridge UTOS) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No.1, the tariff sheets listed in appendix A of the filing, effective July 1, 2003.

Enbridge UTOS states that it is making this filing pursuant to the directives in Order No. 587–R, Final Rule, issued on March 12, 2003, in Docket No. RM96–1–024. The revised tariff sheets included in Enbridge UTOS's filing reflect the Version 1.6 standards and the partial day recall standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board, as adopted by the Federal Energy Regulatory Commission (Commission) and incorporated by reference in the Commission's regulations.

Enbridge UTOS states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14614 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–498–000]

Enbridge Pipelines (KPC); Notice of Compliance Filing

June 4, 2003.

Take notice that on May 30, 2003, Enbridge Pipelines (KPC) (Enbridge KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in appendix A of the filing, to be effective July 1, 2003.

Enbridge KPC states that it is making this filing pursuant to the directives in Order No. 587–R, Final Rule, issued on March 12, 2003, in Docket No. RM96–1–024. The revised tariff sheets included in Enbridge KPC's filing reflect the Version 1.6 standards and the partial day recall standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board, as adopted by the Federal Energy Regulatory Commission (Commission) and incorporated by reference in the Commission's regulations.

Enbridge KPC states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14615 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–499–000]

Enbridge Pipelines (Midla) L.L.C.; Notice of Compliance Filing

June 4, 2003.

Take notice that on May 30, 2003, Enbridge Pipelines (Midla) L.L.C. (Enbridge Midla) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in appendix A of the filing, to be effective July 1, 2003.

Enbridge Midla states that it is making this filing pursuant to the directives in Order No. 587–R, Final Rule, issued on March 12, 2003, in Docket No. RM96–1–024. The revised tariff sheets included in Enbridge Midla's filing reflect the Version 1.6 standards and the partial day recall standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board, as adopted by the Federal Energy Regulatory Commission (Commission) and incorporated by reference in the Commission's regulations.

Enbridge Midla states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14616 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–500–000]

Enbridge Pipelines (AlaTenn) L.L.C.; Notice of Compliance Filing

June 4, 2003.

Take notice that on May 30, 2003, Enbridge Pipelines (AlaTenn) L.L.C. (Enbridge AlaTenn) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in appendix A of the filing, to be effective July 1, 2003.

Enbridge AlaTenn states that it is making this filing pursuant to the directives in Order No. 587–R, Final Rule, issued on March 12, 2003, in Docket No. RM96–1–024. The revised tariff sheets included in Enbridge AlaTenn's filing reflect the Version 1.6 standards and the partial day recall standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board, as adopted by the Federal Energy Regulatory Commission (Commission) and incorporated by reference in the Commission's regulations.

Enbridge AlaTenn states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered

by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14617 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–78–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Technical Conference

June 5, 2003.

On June 19, 2003, the Staff of the Commission will hold a technical conference concerning the status of the pipeline expansion proposal made by Maritimes & Northeast Pipeline, L.L.C. in the above referenced proceeding.

The conference will be held at 2 p.m. at the Commission's offices at 888 First Street NE., Washington, DC.

Any parties to this proceeding with questions about the technical conference should call Richard Foley at (202) 502–8955.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14750 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–087]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

June 5, 2003.

Take notice that on June 2, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective June 1, 2003.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction with Wisconsin Electric-Commodity Resources under Natural's Rate Schedule IBS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14774 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–403–004 and RP01–388–004]

Northern Border Pipeline Company; Notice of Compliance Filing

June 5, 2003.

Take notice that on June 2, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing the FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets identified at Appendices A and B to the filing.

Northern Border states that the revised tariff sheets are being filed in order to comply with the Commission's May 6, 2003 Order in the referenced proceedings, and that the revised tariff sheets relate to compliance with Order Nos. 637, 637–A, and 637–B and the Commission's Remand Order at Docket No. RM98–10–011.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted Shippers, interested state regulatory commissions, and all parties of record in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14758 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–507–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 2003:

Seventh Revised Sheet No. 119
Fifth Revised Sheet No. 272
Original Sheet No. 272A
Original Sheet No. 272B

Northern Border states that it is proposing to add a new Subsection 26.5 to the General Terms and Conditions of its tariff to establish a provision regarding the reservation of capacity for future expansion/extension projects and to clarify contract term extension rights for interim shippers under Section 5 of Rate Schedule T–1 for capacity reserved under Subsection 26.5.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14767 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–297–000]

Northwest Natural Gas Company; Notice of Compliance Filing

June 4, 2003.

Take notice that on May 15, 2003, Northwest Natural Gas Company (Northwest Natural), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 7 of the Natural Gas Act (NGA) and § 284.224 of the Commission's regulations to amend its limited jurisdiction blanket certificate of public convenience and necessity to allow it to use its capacity on the Kelso Beaver (KB) pipeline system, now or hereafter acquired, to transport gas which it does not own and to receive natural gas from, and deliver natural gas to, Northwest Pipeline Corporation at its interconnections with KB for its FERC jurisdictional customers. Northwest Natural also requests related waivers of the shipper must have title and capacity brokering rules so that it can use its KB capacity without restriction for its FERC jurisdictional customers, that the Commission confirm that granting the certificate amendment and the waivers will not affect Northwest Natural's exemptions under section 1(c) and other sections of the NGA, and that the Commission grant other approvals which may be appropriate, consistent with the application.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14610 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–501–000]

PG&E Gas Transmission, Northwest Corporation; Notice Compliance Filing

June 4, 2003.

Take notice that on May 30, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing workpapers supporting the restatement of its fuel and line loss surcharge in compliance with Paragraph 37 of the General Terms and Conditions of its Tariff.

GTN states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the intervention and 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public

Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14618 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–045]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

June 5, 2003.

Take notice that on June 2, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Fourteenth Revised Sheet No. 15, with an effective date of June 1, 2003.

GTN states that this sheet is being filed to reflect the implementation of one new negotiated rate agreement and the removal of four negotiated rate agreements that have expired.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14775 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–510–000]

Questar Southern Trails Pipeline Company; Notice of Annual Fuel Gas Reimbursement Report

June 5, 2003.

Take notice that on June 2, 2003, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing its annual Fuel Gas Reimbursement Percentage (FGRP) report and proposed a -0.25% variance adjustment to be effective July 1, 2003.

Southern Trails stated that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona and California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the intervention and protest date as indicated 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14770 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–430–001 and CP02–430–002]

Saltville Gas Storage Company, L.L.C.; Notice of Technical Conference

June 4, 2003.

Take notice that a technical conference will be held on June 17, 2003, at 1 p.m., in a room to be determined, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This conference is being held in accordance with the Commission's May 16, 2003 Order Directing Compliance Filing, Convening Technical Conference and Deferring Action on Requests for Rehearing,[1] in which the Commission directed staff to convene a technical conference to address issues relating to Saltville Gas Storage Company's (Saltville) assertion of Hinshaw status.

Attendance at the conference is limited to Commission staff and existing parties as of the issuance of the Commission's May 16 order.

There will be no transcript of the conference, and there will be no telephone link communications. For more information about the conference, please contact Marcia Lurensky at (202) 502–8504 or *jack.kendall@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14608 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Saltville Gas Storage Company, 103 FERC ¶ 61,187 (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–509–000]

Tennessee Gas Pipeline Company; Notice of Filing and Request for Waiver

June 5, 2003.

Take notice that on May 30, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a current accounting of Tennessee's take-or-pay transition costs and a request for waiver of the requirement that Tennessee restate its take-or-pay transition surcharges.

Tennessee states that this filing of the current accounting is in compliance with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any significant recoverable take-or-pay costs since its last filing on November 27, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the intervention and protest date as indicated 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14769 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–495–005, RP01–97–004, and RP03–211–001]

Texas Gas Transmission, LLC formerly Texas Gas Transmission Corporation; Notice of Compliance

June 5, 2003.

Take notice that on June 2, 2003, Texas Gas Transmission, LLC (Texas Gas), formerly Texas Gas Transmission Corporation, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below:

Effective June 1, 2003 First Revised Sheet No. 12B

Effective July 1, 2003

Second Revised Sheet No. 55
Second Revised Sheet No. 56
Third Revised Sheet No. 57
Third Revised Sheet No. 71
Third Revised Sheet No. 72
Second Revised Sheet No. 80C
Second Revised Sheet No. 80D
Second Revised Sheet No. 91
Third Revised Sheet No. 92
Second Revised Sheet No. 99H
Second Revised Sheet No. 99I
First Revised Sheet No. 99J
First Revised Sheet No. 99W
First Revised Sheet No. 99X
Second Revised Sheet No. 107
Second Revised Sheet No. 237
First Revised Sheet No. 238
Sheet No. 239

Texas Gas states that the tariff sheets are being filed in compliance with the Commission's May 22, 2003, Order on Compliance Filings (103 FERC ¶ 61,218), which conditionally accepted Texas Gas's previously filed tariff sheets and directed Texas Gas to file revised tariff sheets within 10 days of that Order to address issues discussed within the Order itself.

Texas Gas states that copies of the tariff sheets are being mailed to all parties in this docket, on Texas Gas's official service list, and to Texas Gas's jurisdictional customers and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14759 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP03–484–000 and RP01–208–000 (not consolidated)]

The Toca Producers, Complainant, v. Southern Natural Gas Company, Amoco Production Company, et al., Respondents; Notice of Complaint

June 5, 2003.

Take notice that on May 28, 2003, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, BP America Production Company, Chevron U.S.A. Inc., ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, and Shell Offshore Inc. (jointly the Toca Producers) filed a complaint under Sections 4 and 5 of the Natural Gas Act, against Southern Natural Gas Company (Southern) and a request for an evidentiary hearing. The Toca Producers also move to hold the related and pending case, Amoco Production Company, *et al.*, Docket No. RP01–208–000, in abeyance during the litigation of this complaint.

The Toca Producers allege that the lack of objective and nondiscriminatory liquefiable hydrocarbon gas quality standards in Southern's tariff is inconsistent with the public interest and permits Southern to discriminate unduly among parties delivering natural gas into Southern's system. The Toca Producers request an evidentiary hearing before an ALJ to develop a

record upon which the contested issues of material fact can be resolved.

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 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14761 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–360–001]

Transwestern Pipeline Company; Notice of Compliance Filing

June 5, 2003.

Take notice that on June 2, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective July 1, 2003:

Substitute 7th Revised Sheet No. 50
10th Revised Sheet No. 95B.01
Substitute 9th Revised Sheet No. 95C
Original Sheet No. 95C.01
8th Revised Sheet No. 95D
Substitute 9th Revised Sheet No. 95E
10th Revised Sheet No. 95F

Transwestern states that on March 12, 2003, in Docket No. RM96–1–024, the Commission issued Order No. 587–R (Order 587–R), amending its open access regulations governing standards for conducting business with interstate pipelines. Transwestern states that Order 587–R required pipelines to make tariff filings by May 1, 2003 to implement provisions of that order to become effective on July 1, 2003. Transwestern explains that it submitted its compliance filing on April 30, 2003, and that on May 21, 2003, the Commission issued an Order accepting Transwestern's April 30, 2003 filing, subject to Transwestern filing revisions to the above tariff sheets within ten days of the May 21 Order. Transwestern states the instant filing reflects the revisions as directed by the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14760 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–506–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets to become effective June 29, 2003.

Third Revised Sheet No. 87
Fourth Revised Sheet No. 88
Third Revised Sheet No. 89
Second Revised Sheet No. 90
Fourth Revised Sheet No. 91

WIC states that the tariff sheets revise its Form of Service Agreement applicable to service under WIC's firm rate schedule to include additional contracting practices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14766 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2069–007 Arizona]

Arizona Public Service Company; Notice of Availability of Draft Environmental Assessment

June 4, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for surrender of license for the major, constructed Childs Irving Hydroelectric Project. The project is located on Fossil Creek, in Yavapai and Gila counties, Arizona. The project is located entirely on lands of the National Forest System: it occupies 326.8 acres within the Coconino National Forest and 17.2 acres within the Tonto National Forest. The Commission staff has prepared a Draft Environmental Assessment (DEA) on the license surrender.

The DEA contains the staff's analysis of the potential environmental impacts of the retirement of the project and the removal of most of the project facilities, and has concluded that surrendering the license, with appropriate environmental protection measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2069–007 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

For further information, contact Dianne Rodman, Environmental Coordinator, at (202) 502–6077.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14612 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12379–000—AK]

Lake Dorothy Hydro, Inc.; Notice of Availability of Draft Environmental Assessment

June 4, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), Office of Energy Projects staff have reviewed the application for Lake Dorothy Hydro, Inc.'s proposed Lake Dorothy Hydroelectric Project and has prepared a Draft Environmental Assessment (DEA). The proposed project would be located at Lake Dorothy on Dorothy Creek, near Juneau, Alaska, and would occupy approximately 1,790 acres of land within the Tongass National Forest administered by the U.S. Forest Service. This DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Comments on the DEA should be filed by July 3, 2003. Comments should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Documents may also be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Copies of the DEA can be viewed at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14613 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–455]

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

June 5, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2232–455.

c. *Date Filed:* April 21, 2003.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Catawba-Wateree.

f. *Location:* The project is located in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg Counties, North Carolina and Chester, Fairfield, Kershaw, Lancaster, and York Counties, South Carolina. This project does not occupy any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Power, a division of Duke Energy Corp., P.O. Box 1006, Charlotte, North Carolina 28201–1006, (704) 382–8576.

i. FERC Contacts: Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov*.

j. *Deadline for filing comments and or motions:* July 7, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2232–455) on any comments or motions filed. 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 *http://www.ferc.gov* the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensee proposes to grant a lease for a Commercial Residential Marina to Lake James Properties, LLC for the Arbor on Lake James Subdivision. The proposal includes two parcels of project land containing a total of 1.918 acres for a proposed commercial residential marina facilities. Nine cluster boat-docks having 110 boat slips would provide access to the reservoir by residents of The Arbor on Lake James Subdivision, located in McDowell County, North Carolina.

l. *Location of the Application:* The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, 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 call the Helpline at (866) 208–3676 or contact *FERCONLINESUPPORT@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14751 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

June 5, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2392–021.

c. *Date Filed:* April 22, 2003.

d. *Applicants:* American Paper Mills of Vermont, Inc. (Transferor) and Dalton Hydro, LLC (Transferee).

e. *Name of Project:* Gilman Project.

f. *Location:* On the Connecticut River in Essex County, Vermont and Coos County, New Hampshire. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contacts:* Douglas J. Wolinsky, Esq., Eggleston & Cramer, Ltd., P.O. Box 1489, Burlington, Vermont 05402–1489, (802) 864–0880 (Transferor); Steve Harmsen, Dalton Hydro, LLC, 26 North State Street, Salt Lake City, Utah 84103 and David John Mullett, Esq., P.O. Box 127, Montpelier, Vermont 05601–0127, (802) 223–3080 (Transferee).

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* July 7, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (2392–021) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer:* The applicants seek after-the-fact Commission approval to transfer the license for the Gilman Project from American Paper Mills of Vermont, Inc., who is in Chapter 11 Bankruptcy proceedings, to Dalton Hydro, LLC, who purchased the project at an auction related to the bankruptcy proceedings.

l. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each

representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14752 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2716–041]

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 5, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Increase its Authorized Generating Capacity.

b. *Project No:* 2716–041.

c. *Date Filed:* December 13, 2002.

d. *Applicant:* Virginia Electric Power Company.

e. *Name of Project:* Bath County Pumped Storage Project.

f. *Location:* The project is located on the Back Creek and Little Back Creek in Bath County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Martin L. Bowling, Jr., Dominion Virginia Power, 5000 Dominion Boulevard, Glen Allen, VA 23060, (804) 273–3034.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 502–8757, or e-mail address: *hong.tung@ferc.gov*.

j. *Deadline for filing comments and or motions:* July 7, 2003.

k. *Description of Request:* The licensee proposes to overhaul all six turbine-generators for the project over the next seven years, starting on October 6, 2003, and continuing at the pace of one unit per year. The overhaul includes replacement of the runners which will result in increases in turbine hydraulic capacity and generating capacity. The licensee states that the proposed capacity increase: (1) Would not affect the upper or lower minimum or maximum reservoir levels, (2) would increase the rate of flow between the reservoirs, and (3) would not affect the releases from both the upper reservoir into Little Back Creek and the lower reservoir into Back Creek.

l. *Location of the Application:* The filing is available for review at the Commission in the Public Reference Room , located at 888 First Street, NE., Room 2A, Washington, DC 20426, 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 call the Helpline at (866) 208–3676 or contact FERCONLINESUPPORT@ferc.gov. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:*Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14753 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

June 5, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2984–042.

c. *Date filed:* March 29, 2002.

d. *Applicant:* S.D. Warren Company.

e. *Name of Project:* Eel Weir Hydroelectric Project.

f. *Location:* The existing project is located on the Presumpscot River at the outlet of Sebago Lake, in Cumberland County, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Thomas P. Howard, S.D. Warren Company, 89 Cumberland Street, P.O. Box 5000, Westbrook, ME 04098–1597; Telephone (207) 856–4286.

i. *FERC Contact:* Allan Creamer, (202) 502–8365 or *allan.creamer@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance of this notice. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions 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 (*http://www.ferc.gov*) under the ''e-Filing'' link. The Commission strongly encourages electronic filing.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Eel Weir Project operates in a store-and-release mode. The project consists of the following features: (1) A 115-foot-long, 22-foot-high stone masonry spillway dam; (2) a 900-foot-long stone and earth-fill east abutment section that varies in height from a few inches to a maximum of 20 feet; (3) a 260-foot-long stone and earth-fill west abutment section with variable height; (4) five 6.5-foot-high by 4.75-foot-wide discharge gates; (5) four 8.8-foot-high by 7-foot-wide canal intake gates; (6) a 12-mile-long, 28,771-acre impoundment, Sebago Lake, at elevation 266.65 msl; (7) a 6,700-mile-long bypassed reach; (8) a 90-foot-long fish screen, located upstream of the canal gates; (9) a 4,826-foot-long, 15-foot-deep earthen power canal; (10) three canal waste gates that discharge to the upper bypassed reach, each with an integral minimum flow gate, and two canal sluice gates, located along the canal wall integral to the powerhouse intake structure wall, which discharge to the lower bypassed reach; (11) a powerhouse containing three Hercules turbines and generating units, having an installed capacity of 1,800 kilowatts; (12) a 3.5-mile-long, 11-kilovolt transmission line; and (13) appurtenant facilities. The average annual generation is estimated to be about 12,300 megawatt-hours. All power generated by the project is utilized by the applicant's paper mill in Westbrook, Maine.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number, excluding the last three digits in the docket number field (P–2984), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/*esubscribenow.htm to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Notice of availability of the draft NEPA document.	October 2003.
Initiate 10(j) process	October 2003.
Notice of availability of the final NEPA document.	February 2004.
Ready for Commission decision on the application.	May 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14754 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Compliance Filing and Soliciting Comments, Motions To Intervene, and Protests

June 5, 2003.

Take notice that the following compliance report has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Usage Report.

b. *Project No:* 9690–071.

c. *Date Filed:* April 29, 2003.

d. *Applicant:* Mirant, NY-Gen. LLC.

e. *Name of Project:* Rio Project.

f. *Location:* The project is located on the Mongaup River in Orange County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* William McLaughlin, Engineering Group Leader, Mirant NY-Gen LLC, Four Executive Boulevard, Suite 100, Suffern, NY 10901, (845) 357–5266.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for filing comments and or motions:* July 7, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–9690–071) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov*. under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Filing:* Mirant filed its Recreation Usage Report for 2002 required by article 408, as amended. This report provides an evaluation of the recreation facilities downstream of the Rio Dam and the effectiveness of the whitewater releases in meeting the needs of the public.

l. *Location of the Filing:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described filing. A copy of the filing may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14755 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12228–001]

Hulah Hydro, LLC; Notice of Surrender of Preliminary Permit

June 5, 2003.

Take notice that Hulah Hydro, LLC, permittee for the proposed Hulah Dam Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on November 5, 2002, and would have expired on October 31, 2005. The project would have been located on the Caney River in Osage County, Oklahoma.

The permittee filed the request on April 30, 2003. The preliminary permit for Project No. 12228 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14756 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–000]

Electric Quarterly Reports; Revised Public Utility Filing Requirements; Notice of Extension of Time

June 4, 2003.

On April 25, 2002, the Commission issued Order No. 2001,[1] a final rule which requires public utilities to file Electric Quarterly Reports (EQR). Order 2001–C, issued December 18, 2002, instructs all public utilities to file these reports using Electric Quarterly Report Submission Software, beginning with the report due on or before January 31, 2003 (extended to February 21, 2003). On March 28, 2003, the Commission issued Order 2001–D, requiring public utilities to review their fourth quarter 2002 EQR submissions to ensure that the data filed was correct. Utilities were directed to re-submit their corrected data by April 11, 2003, which was extended to April 18, 2003.

Despite the extended due dates, several companies requested further extensions to the filing deadlines to resolve problems they experienced with compiling and formatting their data. Notice is hereby given that the deadlines for filing EQR data are extended to the dates listed for each company identified in the attachment to this notice.

Magalie R. Salas,

Secretary.

ATTACHMENT

Utility	Quarters requested	Date of requested extension
ACN Energy, Inc.	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 24, 2003.
Dominion Resources Services[2]	1st Q 2003	June 16, 2003.
Enron Energy Services, Inc. and Enron Energy Marketing Corp.	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 30, 2003.
PPM Energy	1st Q 2003	June 6, 2003.
Sprague Energy Corp	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 6, 2003.
Western Energy Marketers	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 23, 2003.
The Boralex Companies[3]	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 19, 2003.
California Independent System Operator Corp	4th Q 2002; 1st Q 2003	June 20, 2003.

[2] Includes affiliates of Virginia Electric and Power Company and Dominion Energy Marketing, Inc.

[1] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002); reh'g denied, Order No. 2001–A, 100 FERC ¶ 61,074, reconsideration and clarification denied, Order No.2001–B, 100 FERC ¶ 61,342 (2002).

[3] Includes Boralex Stratton Energy, Inc., Boralex Fort Fairfield, Inc., Boralex Ashland, Inc., Boralex Livermore Falls, Inc., Boralex Athens Energy, Inc., Boralex Chateaugay, Inc.

[FR Doc. 03–14611 Filed 6–10–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7510–7]

State Innovation Grant Program, Preliminary Notice and Request for Input on the Development of a Solicitation for Proposals for 2003/2004 Awards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency, Office of Policy, Economics and Innovation (OPEI) is giving a preliminary notice of its intention to solicit proposals for a 2003/2004 grant program to support innovation by state environmental regulatory agencies—the ''State Innovation Grant Program.'' The Agency is also seeking input from State Environmental Regulatory Agencies on the topic areas for the solicitation. In addition, EPA is asking each State Environmental Regulatory Agency to designate a point of contact at the management level (in addition to the Commissioner or Cabinet Secretary level) who should receive further communication about the upcoming solicitation. EPA anticipates publication of a **Federal Register** notice to announce the availability of the next solicitation within 60 days.

DATES: State Environmental Regulatory Agencies will have 30 days from the date of publication until [insert date 30 days after publication of this notice in the FR] of this pre-announcement notice in the **Federal Register** to respond with: (1) Suggestions for broad topic areas (*e.g.,* a subject area and 1–2 paragraphs of description) for the next solicitation; and (2) point of contact information (name, title, mailing address, telephone and fax numbers, and e-mail address) for the person within the State Environmental Regulatory Agency (in addition to Commissioner or Cabinet Secretaries) who should receive future notices about the State Innovation Grants.

ADDRESSES: Information should be sent to: State Innovation Grant Program; Office of Policy, Economics and Innovation; U.S. Environmental Protection Agency (1807T); 1200 Pennsylvania Ave., NW., Washington, DC 20460. Responses may also be sent by fax to (202–566–2220), addressed to the ''State Innovation Grant Program,'' or by e-mail to: *Innovation_State_Grants@EPA.gov.* We encourage e-mail responses. If you have questions about responding to this notice, please contact EPA at this e-mail address or fax number, or you may call Gerald Filbin at 202–566–2182. EPA will acknowledge all responses it receives to this notice.

SUPPLEMENTARY INFORMATION:

Background

EPA pilot tested the State Innovation Grant Program with a solicitation in June, 2002 and subsequent awards starting in the fall of 2002. The 2002 Program solicitation focused on ''innovation in environmental permitting programs'' as they addressed the goals identified in EPA's plan for future innovation, Innovating for Better Environmental Results: A Strategy to Guide the Next Generation of Innovation at EPA (EPA 100–R–02–002; *http://www.epa.gov/opei/strategy*). The Agency's Innovation Strategy, which will remain key to this year's Solicitation, presents a framework for innovation consisting of four major elements:

(1) Strengthen EPA's innovation partnerships with States and Tribes;

(2) Focus on priority environmental areas:

—Reduce greenhouse gases
—Reduce smog
—Restore and maintain water quality
—Reduce the cost of water and wastewater infrastructure;

(3) Diversify our environmental protection tools and approaches, including:

—Information resources and technology
—Environmental technology
—Incentives
—Environmental Management Systems
—Results-based goals and measures;

(4) Foster ''innovation-friendly'' systems and organizational.

The 2002 program focused on innovation in permitting, including the use of incentives and the development of Environmental Results Programs (ERPs) such as the one initially developed by Massachusetts and now being adopted by other States. For more information on last year's solicitation, the proposals received, and the 2002 award decisions, please see the Web site at: *http://www.epa.gov/innovation/stategrants.*

Request for State Input on Solicitation Themes and Priorities

The 2003/2004 State Innovation Grant Program, building on the 2002 pilot program, will seek to strengthen EPA's innovation partnership with States by providing a source of funding to facilitate State efforts to test new models for ''next generation'' environmental protection that will provide better environmental results, consistent with the goals of EPA's *Innovation Strategy.*

EPA plans to retain the focus area of ''innovation in permitting'' (including support for development of Environmental Results Programs) for the upcoming solicitation, but will add other topic areas of mutual interest to this year's solicitation, as well. (These grants will not be applied to the development or demonstration of new environmental technologies.) EPA is including additional focus areas in response to feedback received from States that found ''innovation in permitting'' to be too narrow a topic to capture their State priorities. Additional areas of competition in the solicitation will provide for development and implementation of other innovative approaches to solving priority environmental problems.

EPA is asking for State environmental regulatory agencies to provide brief (about 1 paragraph) suggestions about additional innovation themes that might be included as subject areas in this solicitation. Specifically, EPA is interested in hearing what activities in addition to permitting States believe are ripe for innovation. EPA will continue to encourage project proposals that address the four priority environmental areas identified above (*i.e.,* reduce greenhouse gases; reduce smog; restore and maintain water quality; reduce the cost of water and wastewater infrastructure) and use tools (*i.e.,* incentives, information, performance measurement, etc.) highlighted in the Innovation Strategy. State Environmental Regulatory Agency respondents should send their suggestions to EPA by mail, e-mail, or fax as described in the ''Addresses'' section above.

Competition Limited to the State Environmental Regulatory Agency

The competition will be limited to the principal Environmental Regulatory Agency within each State, although these agencies are encouraged to partner with other agencies within the State that have environmental mandates (*e.g.,*

natural resources management, transportation, public health, energy). EPA will accept only one proposal from each State and it must be submitted by the principal Environmental Regulatory Agency from that State. States are also encouraged to partner with neighboring States to address cross-boundary issues and to consider partnering with Tribal governments in developing projects and proposals. Multi-state or State-Tribal proposals will be accepted in addition to an individual State proposal, but a State may appear in no more than one multi-State or State-Tribal proposal in addition to their individual State proposal.

EPA is currently working through its American Indian Environmental Office and other Program Offices within the Agency to explore ways to make similar grants available to American Indian Tribes through a parallel process.

Request for State To Designate a Primary Point of Contact

EPA asks that each State Environmental Regulatory Agency designate as a primary point-of-contact, a manager who we will add to the EPA notification list for further announcements about the State Innovation Grant Program. We are asking that this name be submitted with the approval of the highest levels of management within an Agency (Secretary, Commissioner, or their deputies) within 30 days after publication of this notice in the FR July 11, 2003. Please submit this information to EPA as described in the ''Addresses'' section above.

Dated: June 4, 2003.

Elizabeth Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 03–14745 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7510–8]

Clean Air Scientific Advisory Committee Science Advisory Board; National Ambient Air Monitoring Strategy (NAAMS) Subcommittee Notification of Public Advisory Committee Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB), announces a public meeting and two publicly-accessible teleconferences of the Clean Air Scientific Advisory Committee (CASAC) to review the Agency's National Ambient Air Monitoring Strategy (NAAMS).

DATES: There are three CASAC NAAMS Subcommittee meetings or teleconferences:

(a) *July 1, 2003:* A publicly accessible teleconference will take place from 1 to 3 pm (Eastern Time) to address any outstanding questions that subcommittee members and others might have concerning the proposed charge to the NAAMS Subcommittee, the NAAMS review materials, and the logistics for the face-to-face meeting on July 8–9, 2003.

(b) *July 8–9, 2003:* A public meeting will take place July 8, from 9 a.m. to 5 p.m. (Eastern Time), and on July 9, from 9 a.m. to 3 p.m. (Eastern Time), at the EPA campus, Building C, Room C111–C, Research Triangle Park (RTP) North Carolina. A publicly-accessible teleconference line is available for the entire meeting.

(c) *August 6, 2003:* A publicly-accessible contingency conference call from 1 to 3 p.m. (Eastern Time), in the event that the NAAMS Subcommittee feels that it is necessary to discuss some remaining issues before completing its report.

Contact: Members of the public who wish to obtain the call-in numbers and access codes to participate in the aforementioned publicly-accessible teleconferences must contact Ms. Delores Darden, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2282, or via e-mail at: *darden.delores@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the meeting or either teleconference, or who wishes to submit brief oral comments (10 minutes or less) must contact Mr. Fred Butterfield, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4561; FAX (202) 501–0582; or via e-mail at *butterfield.fred@epa.gov.* Request for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Butterfield no later than noon Eastern Time five business days prior to the meeting or teleconferences in order to reserve time on the meeting agenda. Written comments (preferably via e-mail) should be sent to Mr. Butterfield by the same deadline so that the comments can be provided to the NAAMS Subcommittee prior to the meeting or teleconferences. General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Summary

The Clean Air Scientific Advisory Committee was established by 42 U.S.C. 7409 to provide advice, information and recommendations on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The NAAMS Subcommittee will report to the Administrator of EPA through the CASAC, which is administratively located under the EPA Science Advisory Board. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. Both the CASAC and the SAB are Federal advisory committees chartered under the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.). The CASAC NAAMS Subcommittee will comply with the provisions of FACA and all appropriate SAB procedural policies.

Background

States, local agencies and Tribes establish and operate the Nation's regulatory-based ambient air monitoring networks. These networks are funded in part with Federal grants and are managed nationally by the EPA. The network data are used to support:

(a) Designation of attainment and non-attainment areas with respect to the National Ambient Air Quality Standards (NAAQS);

(b) Dissemination of air quality information to the public;

(c) Development (and tracking progress of) emission reduction strategies;

(d) Characterization of long-term air quality trends; and

(e) Studies in health and atmospheric science disciplines.

The associated monitoring network, instrumentation and quality assurance requirements are included in 40 CFR parts 50, 53 and 58.

EPA has recently completed development of the final draft of the National Ambient Air Monitoring Strategy document under the direction of the National Monitoring Strategy Committee (NMSC), an intergovernmental partnership

comprising representatives from EPA (*i.e.*, the Office of Air Quality Planning and Standards (OAQPS), the Office of Research and Development (ORD) and Regional Offices), and State and local agencies and Tribes, *i.e.*, the principal Federal grantee organizations that operate the majority of the monitoring networks. The NAAMS document contains technical information underlying planned revisions of the National Ambient Air Monitoring program. The Strategy proposes a restructuring of the national regulatory-based air monitoring networks—commonly referred to as National Air Monitoring Stations (NAMS), State or Local Air Monitoring Stations (SLAMS), and Photochemical Assessment Monitoring Stations (PAMS)—to accommodate emerging priorities of air programs, the public and the scientific community. Specifically, the NAAMS provides a series of proposed changes for network design and improvements, assessments of existing networks, incorporation of new measurement and information transfer technologies, and revisions both to the current quality assurance program and the monitoring regulations. The principal proposed changes include:

(a) A shift toward collocated multiple pollutant monitoring stations under a new national monitoring network design referred to as ''NCore.''

(b) Incorporation of new continuous particle monitoring instruments, additional air toxics measurements and information transfer technologies to enhance the scope of near-real-time data delivered to the public.

(c) Adoption of new network design recommendations and the introduction of advanced monitoring technologies through performance-based standards.

(d) Reductions in existing monitoring stations that provide limited value for public protection or air quality planning needs, with attendant resource savings redirected to meeting new measurement needs.

EPA intends to propose revisions to the monitoring regulations that have emerged from this strategy during 2003. A public comment period on the proposed regulations will be announced at a later date by EPA's Office of Air and Radiation. The NAAMS document is available through EPA's Ambient Monitoring Technology Information Center (AMTIC) Web site at the following URL address: *http://www.epa.gov/ttn/amtic/stratmem.html.* Any questions concerning the NAAMS should be directed to Dr. Richard Scheffe, EPA's OAQPS Monitoring and Quality Assurance Group Leader, at phone: (919) 541–4650; or e-mail: *Scheffe.Rich@epamail.epa.gov.*

Request for and Proposed Charge to the NAAMS Subcommittee

EPA's Office of Air and Radiation (OAR) has requested that the Clean Air Act Scientific Advisory Committee form a subcommittee to review the NAAMS document. The ''Widecast'' notice requesting nominations to this new NAAMS Subcommittee of the CASAC appeared in the **Federal Register** on November 5, 2002 (67 FR 67403), and noted that nominees should be recognized, national-level experts in one or more of the following disciplines: (a) Atmospheric sciences and air quality simulation modeling; (b) health effects and exposure; (c) air quality measurement science; or (d) State or local agency experience. This new CASAC subcommittee is charged with providing consultation to EPA on the technical bases and design aspects of the National Ambient Air Monitoring Strategy. In particular, the Subcommittee is asked to provide a formal consultation on the following elements of the strategy:

(a) The NCore proposal, including conceptual approach to tiered monitoring levels, recommended measurements and numbers and locations of Level 2 sites. Consideration to phasing of measurements included in Level 2 sites should be addressed based on currently available and expected emerging monitoring technologies. The Subcommittee is also requested to advise on the scope and breadth of research-grade Level 1 sites.

(b) The use of spatial analysis approaches for network design and other air program planning needs. The monitoring strategy has utilized various spatial design approaches on National and Regional scales to identify areas of redundant monitoring as well as gaps requiring additional monitoring.

(c) The use of performance-based approaches for standardizing monitoring method requirements for particulate matter measurements. Performance-based approaches rely on applying data quality objectives to determine the allowable statistical uncertainties for instrument performance. This third subject area has evolved from discussions with the existing CASAC Subcommittee on Particulate Monitoring, and plays an important role in facilitating accommodation of new technologies into air monitoring networks.

Availability of Additional Meeting Materials

Copies of the draft agendas for the meetings that are described in this notice will be posted on the SAB Web site (*www.epa.gov/sab*) (under the ''Agendas'' subheading) approximately 10 days before each NAAMS Subcommittee public meeting or teleconference. Other materials that may be available will also be posted on the SAB Web site during this time-frame.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to Mr. Butterfield at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format)). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Butterfield at the phone number or e-mail address noted above at least five

business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 4, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–14746 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0195; FRL–7310–5]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0195, must be received on or before July 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: miller.joanne@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0195. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0195. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0195. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0195.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0195. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active Ingredient Not Included in Any Previously Registered Products

1. *File Symbol:* 7969–ENL. *Applicant:* BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. *Product Name:* BAS 670 336SC Herbicide. *Type of product*: Herbicide. *Active ingredient*: [3-(4,5-dihydro-isoxazol-3-yl)-4-methanesulfonyl-2-methylphenyl]-(5-hydroxyl-1-methyl-1*H*-pyrazol-4-yl)methanone at 29.7%. *Proposed classification/Use*: None. For weed control on corn.

2. *File Symbol*: 7969–ENU. *Applicant*: BASF Corporation. *Product Name*: BAS 670 H Technical Herbicide. *Type of product*: Herbicide. *Active ingredient:* [3-(4,5-dihydro-isoxazol-3-yl)-4-methanesulfonyl-2-methylphenyl]-(5-hydroxyl-1-methyl-1*H*-pyrazol-4-yl)methanone at 99.2%. *Proposed classification/Use*: None. For the formulation of herbicides.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 28, 2003.

Debra Edwards,

Director, Registration Division Division, Office of Pesticide Programs.

[FR Doc. 03–14329 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0100; FRL–7298–8]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0100, must be received on or before July 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the

comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0100. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0100. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0100.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0100. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received an application as follows to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient Not Included in Any Previously Registered Product

1. *File Symbol:* 67979–U. *Applicant*: Syngenta Seeds, 3054 Cornwallis Road, Research Triangle Park, NC 27709. *Product name*: VIP3A. *Type of product:* Plant-incorporated protect. *Active ingredient*: *Bacillus thuringiensis* VIP3A control protein as expressed in Event COT102 cotton plants. *Proposed classification/Use*: None. For insect control on plants.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 29, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Division, Office of Pesticide Programs.

[FR Doc. 03–14326 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0194; FRL–7310–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0194, must be received on or before July 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division

(7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–6224; and e-mail address: miller.joanne@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *EPA Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0194. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0194. The system is an ''anonymous access'' system, which means EPA will not

know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0194. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0194.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0194. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

May 28, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by BASF Corporation and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP 3F6568

EPA has received a pesticide petition (PP 3F6568) from BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of (3-(4,5-dihydro-isoxazol-3-yl)-4-methanesulfonyl-2-methylphenyl)-(5-hydroxyl-1-methyl-1H-pyrazol-4-yl)methanone in or on the raw agricultural commodities: Corn, field, forage; corn, field, grain; corn, field, stover; corn, pop, grain; corn, pop, stover; corn, sweet, forage; corn, sweet, kernal plus cob with husks removed; corn, sweet, stover; cattle, kidney; cattle, liver; goat, kidney; goat, liver; hog, kidney; hog, liver; horse, kidney; horse, liver; sheep, kidney; and sheep, liver at 0.05; 0.01; 0.05; 0.01; 0.05; 0.05; 0.01; 0.05; 0.02; 0.70; 0.20; 0.70; 0.20; 0.70; 0.20; 0.70; 0.20; and 0.70 parts per million (ppm), respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of BAS 670 H (3-(4,5-dihydro-isoxazol-3-yl)-4-methanesulfonyl-2-methylphenyl)-(5-hydroxyl-1-methyl-1H-pyrazol-4-yl)methanone) was determined in corn forage, stover and grain using 14_C labeled materials applied to young corn plants at an exaggerated application rate of 0.134 lb active ingredient/acre. BAS 670 H and

one significant metabolite, M670H05, were found in low levels in the plant matrices with the majority of the radioactive residues incorporated into natural products. M670H05 resulted from oxidation of the carbonyl bridge to a carboxylic acid with concomitant loss and breakdown of the pyrazole ring. The significant metabolite M670H05 was found in the rat metabolism study.

2. *Analytical method*. Suitable independently validated analytical methods (for crop and animal matrices) are submitted for detecting and measuring BAS 670 H levels in or on food with a limit of detection that is satisfactory for enforcing the requested tolerances. Residues are first extracted from the matrices by aqueous solvent then cleaned up by acid partitioning into organic solvent, then base partitioned, and quantified with application to high performance liquid chromatography with dual mass selective detectors (LC/MS/MS).

3. *Magnitude of residues*. Field studies were conducted at 30 sites over 2 years with sites selected to fulfill both EPA and Canadian Pest Management Regulatory Agency (PMRA) requirements. The end product, BAS 670 00H, was applied broadcast over corn plants in two applications at 25 g active ingredient/ha (0.022 lb a.i./acre) + 75 g a.i./ha (0.067 lb a.i./acre) for a total of 100 g a.i./ha (0.089 lb a.i./acre) with the final application targeted for 45 days before milk stage. Samples of field corn were harvested at the milk stage to cover sweet corn harvest timing. All matrices were analyzed for parent and M670H05 with the limit of quantitation (LOQ) setting the proposed tolerances. No residues were detected above the LOQ in any of the corn RAC samples analyzed (fresh corn, forage, grain, and stover). To determine the fate of any BAS 670 residues in processed grain, the field study incorporated an exaggerated 5x application rate. No residues above LOQ were detected in the 5x treated grain samples; therefore, the analyses of the grain processed fractions was not required. The cow feeding study at three dosing levels show that food tolerances for parent in only kidney and liver matrices are necessary (and not for any other matrices such as meat, fat, and milk).

B. Toxicological Profile

1. *Acute toxicity—i.* Oral (rat): $(LD)_{50}$ = >2,000 milligrams/kilogram body weight (mg/kg bwt) (male/female) = Category III.

ii. Dermal (rat): $(LD)_{50}$ = >2,000 mg/kg bwt (male/female) = Category III.

iii. Inhalation (rat): $(LC)_{50}$ = >5.8 milligrams/per liter (mg/L) (male/female) = Category IV.

iv. Primary eye irritation (rabbit): Slightly irritating = Category III.

v. Primary dermal irritation (rabbit): Slightly irritating = Category III.

vi. Dermal sensitization (guinea pig): Not a sensitizer.

vii. Oral neurotoxicity (rat): NOAEL = 2,000 mg/kg bwt (male/female).

2. *Genotoxicty*. BAS 670 H was tested for its genotoxic potential in a battery of five *in vitro* or *in vivo* studies covering all required end-points (gene mutations, chromosomal and chromosome aberrations, and DNA damage and repair). Several batches of BAS 670 H have been tested over the time, from early laboratory produced material to current manufacturing process material. BAS 670 H did not demonstrate any genotoxic effects *in vivo*. *In vitro*, either batches tested for chromosomal aberrations caused a slight, significant clastogenic effect in the presence of S-9 mix, but the *in vivo* test for the equivalent end-point was negative. Three of the four batches tested in the bacterial reverse mutation assay were not mutagenic, but, the batch with the least purity displayed a weak mutagenic effect at the highest dose in *Salmonella typhimurium* TA98 in the absence of S-9 mix, most likely caused by impurities, which are not present in the current production batch. Overall, the weight of the evidence is that BAS 670 H is not genotoxic.

3. *Reproductive and developmental toxicity*. The reproductive and developmental toxicity of BAS 670 H was investigated in a 2-generation rat reproduction study as well as in rat, mouse and several rabbit teratology studies (with different batches of BAS 670 H) and a rat developmental neurotoxicity study.

There were no adverse effects on fertility of both genders and no effect on the reproductive performance of males in the two-generation study at any dose tested. There was, however, a high litter loss in F_0 and F_1 associated with insufficient maternal care at higher dose levels with clear maternal toxicity. General parental toxicity included eye and kidney effects, caused by elevated tyrosine levels due to hydroxyphenylpyruvate dioxygenase (HPPD) inhibition. The same organs were affected in subchronic and chronic feeding studies with rats. Pup effects were observed in the F_1 and F_2 generation including perinatal pup mortality and impaired body weight gain, the lower body weight effects were considered to lead to brain and spleen weight changes and delays in preputial separation. As observed in the parental animals, effects on eyes and kidneys were observed in the pups. Renal pelvis dilation was observed at lower doses, although, there was no overt maternal toxicity, significantly elevated tyrosine levels were observed in the dams and pups. The no observed adverse effect level (NOAEL) for fertility (F_0 and F_1, both genders) was 4,000 ppm (about 450 mg/kg bwt/day); the NOAEL for reproductive performance was 40 ppm (about 4 mg/kg body weight/day) for the F_1 females. The NOAEL for general toxicity was 4 ppm (about 0.4 mg/kg bwt/day). The NOAEL for developmental toxicity (growth and development of the offspring) was 4 ppm (about 0.4 mg/kg body weight/day) for the F_1 pups, but was lower than 4 ppm for the F_2 pups due to renal pelvis dilations at all dose levels.

Developmental neurotoxicity was not observed at any dose in the developmental neurotoxicity study. At all dose levels, eye effects due to elevated tyrosine levels were found in dams and pups. Additionally, there were decreased body weights in the dams at the high and mid dose, but there were no indications of adverse effects on reproductive performance of the parental females. In pups of both genders, decreased preweaning and postweaning body weight gains and body weights were observed at the low dose level and above. This is an indicator of a retardation of the general physical development, which is considered to be responsible for a slight delay of maturation. The NOAEL for developmental neurotoxicity was 800 mg/kg bwt/day (highest dose tested). There is no NOAEL for the eye lesions and reduced body weight gain of the pups. NOAELs for these effects were determined in prenatal development studies in rats, rabbits and mice.

No developmental toxicity was noted in the mouse prenatal development study. In the prenatal development study in rats no teratogenic effect was observed, but there was maternal toxicity together with skeletal variations in the pups. The same skeletal variation (i.e. supernumerary ribs) was also found in rabbit prenatal development studies. This effect is associated with the family of HPPD inhibiting substances. In addition, several rabbits had pups with a soft tissue malformation: unilateral kidney agenesis. The NOAEL for the skeletal variations and the kidney agenesis was 0.5 mg/kg bwt/day, the NOAEL for overt maternal toxicity was 50 mg/kg bwt/day. The developmental effects in rabbits occurred at dose-levels below overt maternal toxicity; however, measured tyrosine blood levels in the

dams were substantially elevated at these dose levels. Elevated tyrosine levels are known to cause kidney toxicity.

4. *Subchronic toxicity.* The subchronic toxicity of BAS 670 H was investigated in 90–day feeding studies in rats, mice and dogs, and in a 28–day dermal administration study in rats. Several supplemental short-term mechanistic studies in rats and mice were performed to elucidate the mode of action. Generally, very mild toxicity was observed in mice and dogs at high doses. In a combined neurotoxicity 90–day feeding study in rats, no signs of neurotoxicity were observed. Effects were seen in the pancreas, eye, kidney, liver, and thyroid gland. The target organs are identical with those in the chronic feeding studies with rats.

Two modes of action have been elucidated for BAS 670 H by short-term mechanistic studies, one leading to effects on eyes, kidney and liver, and a second leading to effects at the thyroid: BAS 670 H causes elevated tyrosine levels by HPPD inhibition accounting for effects on eye, liver and kidney. The mouse is the accepted model for this tyrosine level elevations, and a NOAEL of 1.2 mg/kg bwt/day was established for tyrosine elevation in mice. Other mechanistic studies demonstrated an impairment of pituitary-thyroid hormone levels by enhancing the hepatic clearance of thyroid hormones. The NOAEL for interference with thyroid hormones was 0.4 mg/kg bwt/day. The NOAEL for effects on the exocrine pancreas in rats was 1.1 mg/kg/bwt/day. Similar effects were seen in the 28–day dermal study with rats; the NOAEL was 100 mg/kg bwt/day.

5. *Chronic toxicity.* The chronic toxicity and oncogenicity studies with BAS 670 H include two 12–month feeding studies with dogs, an 18–month mouse feeding study, a 12–month rat chronic feeding study and a 24–month rat oncogenicity study. In the chronic dog study, mild reductions of the body weight were observed at high doses. The NOAEL was 100 ppm (2.9 and 3.1 mg/kg bwt/day in males and females respectively).

In the 18–month chronic feeding study in mice, increased liver weights were seen at high doses. The NOAEL was 80 ppm (19 and 26 mg/kg bwt/day in males and females respectively). BAS 670 H was not carcinogenic to mice. In the chronic feeding studies in rats, the main target organs were eye, liver, kidney, thyroid gland, and pancreas. The same organs were affected in the subchronic studies. Short-term mechanistic studies demonstrated that BAS 670 H causes elevated tyrosine levels by HPPD inhibition accounting for effects on the eye, liver and kidney. The mouse is the accepted model for this tyrosine level elevation, and a NOAEL of 1.2 mg/kg bwt/day was established for tyrosine elevation in mice. The NOAEL for effects on the exocrine pancreas in rats 6 ppm in both genders (0.4 and 0.5 mg/kg bwt/day in males and females respectively). At the end of the 24–month oncogenicity study, there was a slight but significant increase in benign thyroid adenomas in both genders. The thyroid was the only organ affected and the increase of the adenomas was significant only at the highest dose tested, while considerable general toxicity was already seen at 20–times lower doses. The mechanism of thyroid tumor formation by BAS 670 H was thoroughly investigated in short-term mechanistic studies. An enhanced hepatic clearance of thyroid hormones impairs pituitary-thyroid hormone levels leading to hypertrophy, hyperplasia and ultimately neoplasia. There is general agreement, that this mechanism is well understood in rodents and is of minor relevance to humans. A clear NOAEL of 0.4 mg/kg bwt/day was demonstrated for effects on thyroid hormone levels. A threshold (non-linear) cancer assessment is proposed and a cancer classification as ''not likely to be a human carcinogen.''

6. *Animal metabolism.* In the rat metabolism studies, the majority of the residue was excreted within 48 hours from both males and females. In all matrices investigated unchanged parent is the main component. Degradation starts with hydroxylation of the oxazole ring. The identified metabolites from both pyrazole ring label and phenyl ring label studies are reported. Goat and hen metabolism studies were conducted with feeding levels of about 10 ppm. In the goat, the majority of the applied dose was excreted. Non-metabolized BAS 670H was the major radioactive residue, and M670H02, formed from hydroxylation at the 4-position of the isoxazole ring, was the only significant metabolite formed. In poultry BAS 670 F was also rapidly excreted. Residues in liver consisted mainly of BAS 670H, and the only significant metabolite in poultry was again M670H02. The significant metabolite M670H02 was found in the rat metabolism study.

7. *Metabolite toxicology.* Toxicity of the metabolites of BAS 670 H with potential exposure to humans was concurrently evaluated during toxicity testing of the parent, because both plant and animal metabolites are formed during the course of toxicity testing. Both plant and animal metabolites are considered not of toxicological concern. Some testing was conducted on the anaerobic aquatic metabolite, 670M10. The results as given below show no toxicological concern:

- Bacterial reverse mutation test (Ames): No effect = negative.
- Mammalian somatic cell gene mutation test (MNT): No effect = negative.
- Cytogenetic study *in vivo* (mouse HPRT): No effect = negative.
- 28–Day feeding study (rat): NOAEL 1,197 mg/kg bwt/day and 1,304 mg/kg bwt/day (male and female, respectively).

8. *Endocrine disruption.* BAS 670 H has been shown to alter thyroid hormone levels in rats as also observed with other 4-hydroxyphenylpyruvate dioxygenase enzyme inhibitor active ingredients. However, there have been no effects noted on sexual or other hormones in numerous subchronic and chronic toxicity studies with multiple species.

C. Aggregate Exposure

1. *Dietary exposure.* A chronic population adjusted dose (cPAD) of 0.00044 mg/kg/day is proposed. This cPAD is based on a lowest observed adverse effect level (LOAEL) of 0.4 mg/kg/day for pup renal pelvis dilation in the 2-generation rat reproduction study with an extra 3X uncertainty factor for using the LOAEL (rather than a NOAEL) plus a 3X Food Quality Protection Act (FQPA) factor on top of the standard 100X uncertainty factor. So the total uncertainty factor is 900 (3 x 3 x 100), and the cPAD is calculated as 0.4/900 = 0.00044.

An acute dietary population adjusted dose (aPAD) is proposed as 0.0013 mg/kg/day. This aPAD is based upon a NOAEL of 0.4 mg/kg/day obtained in the rat thyroid hormone study and a 3X FQPA uncertainty factor on top of the standard 100 (0.4/300 = 0.0013).

BAS 670 H has been shown to be non-carcinogenic in mice, but was associated with an increase in thyroid follicular cell tumors at high doses in the rat. These tumors have been shown to develop by a non-genotoxic mode of action, in fact they were the consequence of induced changes of thyroid hormone levels. Therefore BAS 670 H should be classified as ''not likely to be a human carcinogen.''

i. *Food.* Exposure estimates were compared against the cPAD and aPAD of 0.0013 mg/kg bwt/day and 0.004 mg/kg bwt/day, respectively. Results of the chronic dietary exposure assessments demonstrated that even with the worst-case assumptions (residues at tolerance level and 100% crop treated), the estimated chronic dietary exposure was

less than 12.5% of the cPAD for the total U.S. population and all the subpopulations. The greatest exposure occurred in infants and children. Exposure estimates for the acute dietary assessment were well under 100% of the acute population adjusted dose (aPAD) at the 99th percentile. The overall U.S. population and the highest exposed subpopulation (infants <1 year) utilized only 5.3% and less than 21%, respectively.

ii. *Drinking water.* There are no established maximum contaminant levels or health advisory levels for residues of BAS 670 H or its metabolites in drinking water. A tier 1 drinking water modeling assessment for BAS 670 H using the FIRST model (for surface water) and SCI-GROW (for ground water) produced estimated maximum concentrations of 0.22 parts per billion (ppb) (chronic) for surface water and 0.20 ppb for ground water. These estimated concentrations are less than a worst case calculated acceptable level of 3.95 ppb children chronic drinking water levels of concern (DWLOC) for residues in drinking water based on chronic aggregate exposure. Therefore, taking into account all uses and exposures one concludes, with reasonable certainty that residues of BAS 670 H in drinking water will not result in unacceptable levels of aggregate human health risk at this time.

2. *Non-dietary exposure.* There are no registered or proposed residential uses for BAS 670 H.

D. Cumulative Effects

At this time, there is no available information to indicate that BAS 670 H or its metabolites have a common mechanism of toxicity with other substances. Therefore, there is no reason to include this pesticide or its metabolites in a cumulative risk assessment. For the purposes of this tolerance action, EPA has not assumed that BAS 670 H and its metabolites have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Aggregate exposure to the overall U.S. population utilized only 8.7% of the aPAD and 12.7% of the cPAD, respectively. Therefore, no harm to the overall U.S. population would result from the use of BAS 670 H on field, sweet, or pop corn.

2. *Infants and children.* There is a complete toxicity base for BAS 670 H and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Taking into account the completeness of the data base, BASF Corporation concludes that the FQPA safety factor should be retained but reduced to 3X. This is based on the occurrence of kidney malformations in rabbits and skeletal variations in rabbits and rats, all occurring at doses, which caused either maternal tyrosine elevations or other evidence of maternal toxicity. The full toxicological data base that has been developed for BAS 670 H includes many additional mechanistic studies, revealing consistency and the mode of action of these effects. The kidney was a target organ in all repeated dose studies and these effects were caused by elevated tyrosine levels due to inhibition of the HPPD enzyme. Using the standard worst case exposure assumptions (residues at tolerance level and 100% crop treated), aggregate exposure to BAS 670 H from food and water will utilize 33% and less than 24% of the aPAD and cPAD, respectively for infants and children. EPA generally has no concern for exposures below 100% of the PAD because it represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. BASF Corporation concludes that there is a reasonable certainty that no harm will result to infants or children from aggregate exposure to BAS 670 H residues with the approval of this tolerance petition.

F. International Tolerances

No maximum residue levels (MRLs) have been established for BAS 670 H by the CODEX Alimentarius Commission or in Mexico.

[FR Doc. 03–14328 Filed 6–10–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0177; FRL–7308–7]

Acetic Acid; Notice of Filing a Pesticide Petition to Establish an Exemption from the Requirements of a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0177, must be received on or before July 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address:*benmhend.driss@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0177. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket

facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0177. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0177. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0177.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0177. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or

CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 22, 2003.

Sheryl K. Reilly,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of pesticide chemical residues or an explanation of why no such method is needed.

Eastman Chemical Company

PP 3F6516

EPA has received a pesticide petition (3F6516) from Eastman Chemical Company, P.O. Box 511, Kingsport, TN 37662 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide acetic acid. Pursuant to section 408(d)(2)(A)(i) of the FFDCA as amended, Eastman Chemical Company has submitted the following summary of information, data, and arguments in support of their pesticide petition. The summary of the petition was prepared by the petitioner and represent the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

It is the purpose of this petition to re-establish an exemption from the requirement of a tolerance for acetic acid when used as a grain and hay preservative on agricultural commodities such as alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut grass, Timothy, vetch, and wheat grain, or commodities described as grain or hay.

Acetic acid is currently exempt from the requirement of a tolerance when used as a catalyst under 40 CFR 180.1001(c). Previously, acetic acid was exempt from the requirement of a tolerance (40 CFR 180.1029), when used as a preservative on the above-mentioned commodities. This exemption was canceled, but only because the registrants at that time, did not wish to maintain the registration. Subsequent to the cancellation of the registrations, the tolerance exemption was revoked.

A. Residue Chemistry

There have been no analytical procedures conducted to ascertain residual acetic acid on treated commodities. The application rate for the preservation of grain and hay as per instructions, will result in concentrations of about 1% on hay and about 1.5% on grain. Additionally, acetic acid is generally recognized as safe (GRAS) under the Food and Drug Administration (FDA), 40 CFR 184.1005, for use in food when used in accordance with good manufacturing or feeding practice.

Since this request is for an exemption from the requirement of a tolerance, residual acetic acid on hay and grain will not pose a problem of exposure to humans or the environment especially since acetic acid is in the food chain and is naturally occurring in nature. Residuals at this low level are less than is found in vinegar used on foods.

B. Toxicological Profile

1. *Acute toxicity*. Acute oral at 4,960 milligrams/kilogram body weight (mg/kg) (bwt) (Category III). Acute dermal at 1,060 mg/kg bwt (Category II). Acute inhalation at 11.4 milligrams/Liter (mg/L) (Category III). Eye irritation, corrosive (Category I). Dermal irritation, corrosive (Category I). Mild irritant to guinea pigs at 20 mg/24 hours. (Category IV). Contact with concentrated acetic acid solutions may cause local damage to skin, eye, or mucosa.

2. *Genotoxicity*. Acetic acid and the sodium salt of acetic acid, provided negative results for mutagenicity assays in strains of *Salmonella typhimurium*.

3. *Reproductive and developmental toxicity*. In a teratogenicity study by the Food and Drug Research Laboratories, 5% acetic acid (apple cider vinegar), the administration of up to 1,600 mg/kg bwt, to pregnant mice for 10 consecutive days had no clear discernible effect on nidation or on maternal or fetal survival.

Additionally, similar acids to acetic acid, such as fumaric acid and citric acid, illicit no teratogenic or reproductive toxicity in rats or chick embryos. This is also true for propionic acid (or salts thereof) which is used in the same manner as proposed for acetic acid.

4. *Subchronic toxicity*. Waivers have been requested for the 90–day feeding, dermal and inhalation studies. The conditions of potential exposure requiring these studies are not triggered. Acetic acid is a food acid and is naturally occurring. Acetic acid is absorbed from the gastrointestinal tract and through the lungs and is readily, although not completely, oxidized in the organism. Acetic acid is proposed to be used as a hay and grain preservative at low concentrations, and for animal food only, and these low concentrations are lower than is found in commercially available vinegar (5% to 7%). Therefore, there would be no expected subchronic effects from the limited exposure expected to acetic acid, and the waivers should be granted.

5. *Chronic toxicity*. Waivers have been requested for chronic toxicity requirements for acetic acid. However, the results of two Russian studies reported the induction of hyperplasia in rats at 60 mg/kg bwt. This result is similar to induction of hyperplasia in rats by propionic acid in a 2–year study.

6. *Animal metabolism*. Acetic acid is a food acid and is naturally occurring. Acetic acid is utilized as an energy source in the body by combining first with Co-enzyme A to form Acetyl-CoA which then enters the Kreb's citric acid cycle by combining with oxaloacetate to yield citrate. This process is active in all animals and higher plants and is carried out in the mitochondria. Acetic acid is proposed to be used as a hay and grain preservative at low concentrations, and for animal food only. There are no expected adverse effects.

7. *Metabolite toxicity*. Acetic acid is a food acid and is naturally occurring in the environment as well as in plants and animals. Acetic acid is utilized as an energy source in the body by combining first with Co-enzyme A to form Acetyl-CoA which then enters the Kreb's citric acid cycle by combining with oxaloacetate to yield citrate. This process is active in all animals and higher plants and is carried out in the mitochondria.

C. Aggregate Exposure

1. *Dietary exposure*. Acetic acid is a food acid and is naturally occurring in plants and animals. Acetic acid is utilized as an energy source in the body by combining first with Co-enzyme A to form Acetyl-CoA which then enters the Kreb's citric acid cycle by combining with oxaloacetate to yield citrate. This process is active in all animals and higher plants and is carried out in the mitochondria.

Acetic acid is most commonly encountered by the human population in the form of vinegar, varying in concentration of acetic acid, from 4–7%. Acetic acid is considered generally recognized as safe (GRAS) by FDA when directly added to foods (20 CFR 184.1005). There are no reports in the literature of contact sensitization to vinegar.

Used in accord with instructions for the preservation of grain and hay, the concentration of acetic acid on the commodities used for animal food, will be less than 2%. Dietary exposure to acetic acid used in this application will therefore pose no threat to humans or the environment.

2. *Non-dietary exposure*. The only non-dietary exposure to acetic acid is the occupational exposure. Acetic acid end-use products are sprayed on grains and hay at application rates in ranges of less than 3% on the commodity, depending on the moisture content of the treated crop. Based on the use patterns, the potential for exposure of applicators and workers in the field being treated with acetic acid could be significant. However, applicators are generally confined in the cab of the tractor pulling the collecting systems to which the applicating sprays are attached. The hay or grain collected would contain less than 3% of the acetic acid and therefore subsequent exposure to the crop would cause no significant exposure to the acetic acid.

Certain protective clothing is recommended for acetic acid users due to eye and skin hazards associated with the handling of concentrated acetic acid and the use of such clothing and protective equipment is presented on the label.

D. Cumulative Effects

Acetic acid is used similarly as propionic acid, for the preservation of hay and grains. Under an aerobic conditions propionic acid acts as a carbon source for various microbes and is metabolized to acetic acid, methane, carbon dioxide, and water. For propionic acid, the metabolite of acetic acid poses no problems because acetic acid is also found in the food chain, is naturally occurring, and is applied in the same manner as propionic acid as a pesticide. For propionic acid all environmental fate data requirements are waived for the uses this petition requests for acetic acid. There should be no concern for cumulative effects for acetic acid as well.

E. Safety Determination

Human health assessment—i. *U.S. population*. Acetic acid is a normal component of metabolism in the human body and humans ordinarily consume acetic acid as vinegar, as a natural component of common foods, and as an added ingredient. Dietary exposure from pesticidal use would be very low.

ii. *Infants and children*. As noted above acetic acid is produced by the human body. Humans include infants and children as well as adults. For the same reasons as above, dietary exposure from pesticidal use would be of minimal concern.

F. Tolerance Exemptions for the Proposed Uses

The petitioner proposes that the use of acetic acid as a grain and hay preservative be granted an exemption from the requirement of a tolerance, as proposed below:

1. Post-harvest application of acetic acid, when used as a fungicide or preservative is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities: Alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut hay, peavine hay, rye grass, sorghum grain, soybean hay, sudan grass, Timothy, vetch, and wheat grain, or commodities described as grain or hay.

2. Acetic acid is exempt from the requirement of a tolerance for residues in or on meat, and meat by-products: Cattle, sheep, hogs, goats, horses, and poultry, milk, and eggs when applied as a bactericide/fungicide to livestock drinking water, poultry litter, and storage areas for silage and grain.

3. Post-harvest application of acetic acid when used as a fungicide/preservative is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities: Cottonseed, peanuts, rice grain, and soybeans.

Noticeably, this tolerance exemption request re-establishes the same exemption criteria as was previously granted for acetic acid for this use.

G. International Tolerances

There are no known international tolerances for residues of acetic acid in food or animal feed.

[FR Doc. 03–14200 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0165; FRL–7306–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of an inert ingredient hygromycin B phosphotransferase (APH4) marker protein and the genetic material necessary for its production in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0165, must be received on or before July 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0165. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0165. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0165. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0165.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0165. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 29, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Seeds, Inc.

PP 3G6590

EPA has received pesticide petition (PP 3G6590) from Syngenta Seeds, Inc., P.O. Box 12257, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the plant-pesticide inert ingredient hygromycin B phosphotransferase (APH4) marker protein and the genetic material

necessary for its production in or on cotton.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Syngenta Seeds, Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Syngenta Seeds, Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Hygromycin B phosphotransferase (APH4) marker protein is proposed for use as a plant-incorporated protectant formulation inert ingredient. APH4 protein is an aminocyclitol phosphotransferase that catalyzes the phosphorylation of hygromycin and closely related aminoglycoside antibiotics. Expression of the APH4 gene in plant cells allows for growth and selection of transformed cells in the presence of hygromycin B. APH4 has no insecticidal activity.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The *aph4* gene in event COT102 cotton plants was derived from a plasmid harbored by a hygromycin-resistant isolate of *E. coli*, and encodes a 341 amino-acid enzyme, hygromycin B phosphotransferase (APH4). Hygromycin B phosphotransferases with significant homology to the APH4 protein in event COT102 plants have also been identified in other microbes including *Streptomyces hygroscopicus*, the source of hygromycin B.

APH4 has a molecular weight of ca. 42,000 and catalyzes the phosphorylation of the 4-hydroxyl group on the hyosamine moiety of hygromycin B, thereby inactivating it. The enzyme has a narrow range of substrates, in that it phosphorylates hygromycin B, hygromycin B_2 and the closely related antibiotics destomycin A and destomycin B, but does not phosphorylate other aminocyclitol or aminoglycoside antibiotics including neomycin, streptomycin, gentamicin, kanamycin, spectinomycin, tobramycin, and amikacin. Hygromycin B is not used in human clinical therapy, but is principally used as an antihelminthic agent in swine and poultry feeds.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* A determination of the magnitude of residue at harvest is not required for residues exempt from tolerances. However, the petitioner has provided data on the quantity of APH4 protein measured in various plant parts including seeds of VIP3A cotton, as measured by enzyme linked immunosorbent assay (ELISA). APH4 was either not detectable in most COT102 plant tissues or the levels were too low to quantify. Pollen was the only tissue in which quantifiable levels were measured.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method is not required because this petition requests an exemption from tolerances. However, the petitioner has submitted an analytical method for detection of the APH4 protein by ELISA analysis.

C. Mammalian Toxicological Profile

Syngenta Seeds is providing the results of a mammalian toxicology study, *in vitro* digestibility study, and bioinformatics evaluations conducted on the selectable marker protein APH4. These studies, summarized herein, demonstrate the lack of toxicity of the APH4 protein following acute oral exposure to mice, rapid degradation of APH4 upon exposure to simulated gastric and intestinal fluids, and the lack of amino acid sequence similarity of the APH4 protein to proteins known to be mammalian toxins or human allergens.

When proteins are toxic, they are known to act via acute mechanisms and at very low doses (Ref. 1). Therefore, when a protein demonstrates no acute oral toxicity in high-dose testing using a standard laboratory mammalian test species, this supports the determination that the protein will be non-toxic to humans and other mammals, and will not present a hazard under any realistic exposure scenario, including long-term exposures.

Because it is not possible to extract sufficient APH4 protein from transformed plants for toxicology studies, APH4 protein was produced in recombinant *E. coli* by over-expressing the same *aph4* gene that was introduced into VIP3A cotton event COT102. The *aph4* gene was cloned into the inducible, over-expression pET-3a® vector (Novagen, Madison, WI) in *E. coli* BL21DE3pLysS. The APH4 protein, as encoded in this vector, was identical in amino acid sequence to that encoded by the plant transformation vector, pCOT1, except for an additional 11 amino acids from the T7 Tag™ and three amino acids from the vector polylinker. Following purification from *E. coli*, dialysis and lyophilization, the resulting sample, designated Test Substance APH4-0102, was estimated by ELISA to contain ca. 42.6% APH4 protein by weight. The test material was confirmed to be enzymatically active.

An acute mouse oral toxicity study was conducted at the Syngenta Central Toxicology Laboratory (Alderley Park, Macclesfield, Cheshire, UK) according to OPPTS Harmonized Guideline 870.1100. Test substance APH4-0102 (see above description of test substance) was administered to five male and five female mice strain Alderley Park albino mouse (APfCD-1); 8–9 weeks old via a gavage dose of 1,828 milligrams/kilogram (mg/kg) body weight. The test substance contained ca. 42.6% APH4 protein by weight. Therefore, the mice received ca. 779 mg APH4/kg body weight. A negative control group (5 mice/sex) concurrently received the dosing vehicle alone, a suspension of 1% methylcellulose, at the same dosing volume as used for the test material mixture. Food was provided ad libitum, except during the ca. 1–hour prior to dosing, when the animals were fasted. Water was provided ad libitum throughout the study. Observations for mortality and clinical/behavioral signs of toxicity were made at least twice on the day of dosing, and at least once daily thereafter for 14 days. Detailed clinical observations were made for each animal at each observation time. Body weights were recorded daily and food consumption was recorded weekly. Surviving animals were euthanized 14 days post dosing and subjected to gross necropsy. Organ weights (brain, liver with gall bladder, kidneys and spleen) were recorded and principal tissues were processed for microscopic examination.

No mortalities occurred during the study, and no clinical signs of toxicity were observed in either the test or control groups. There were no treatment-related effects on body weight, food consumption, or organ weights, nor were any treatment-related effects observed following macroscopic or microscopic examination. APH4–0102 is not acutely toxic to mice. There is no evidence of toxicity of the test substance at 1,828 mg APH4–0102/kg body weight, representing ca. 779 mg APH4 protein/kg body weight. The estimated LD_{50} value for pure APH4 protein in male and female mice is >779 mg/kg body weight, the single dose tested.

The APH4 protein shows no homology to proteins known to be

mammalian toxins or human allergens; is not derived from a source known to produce allergens; is not targeted to a cellular pathway for glycosylation in the plant; and is rapidly degraded upon exposure to simulated gastric and intestinal.

The genetic material necessary for the production of APH4 as an inert ingredient are the nucleic acids (DNA) which comprise genetic material encoding this protein and its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the protein, such as promoters, terminators, and enhancers. DNA is common to all forms of plant and animal life and the Agency has previously stated that they are not aware of an instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food. These ubiquitous nucleic acids, as they appear in the subject inert ingredient, have been adequately characterized. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the subject inert plant pesticidal ingredient.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Derivatives of cottonseed (e.g., refined cottonseed oil) and fiber (e.g., linters, which are essentially 100% cellulose) are used in some food products. However, APH4 was not detected in most of the samples of COT102-derived cottonseed analyzed or any of the cotton fiber samples analyzed. In the few cottonseed samples in which APH4 was detectable, the quantities were below the limit of quantification (<137 ng APH4/g fresh wt; <150 ng APH4/g dry wt). It is expected that any trace quantities of APH4 in cottonseed will be eliminated by standard seed processing methods. As demonstrated by the analysis of cottonseed products for VIP3A protein, no VIP3A was detected in refined cottonseed oil from COT102-derived plants, despite the presence of ca. 3 micrograms VIP3A/g seed (fresh or dry wt.). Additionally, no protein of any kind was detected in the same sample of refined cottonseed oil. It can be concluded that APH4, as produced in COT102-derived cotton plants, does not pose a risk of becoming allergenic via food, because there will be no exposure via food. Additionally, the APH4 protein shows no amino acid sequence homology to known allergens; is not derived from a source known to produce allergens; is not targeted to a cellular pathway for glycosylation in the plant; and is rapidly degraded upon exposure to simulated gastric and intestinal.

ii. *Drinking water*. No exposure to the APH4 and the genetic material necessary for its production as an inert ingredient via drinking water are expected. The protein is incorporated into the plant and will therefore not be available to drinking water sources.

2. *Non-dietary exposure*. Non-dietary exposure is not anticipated, due to the proposed use pattern of the product. Exposure via dermal or inhalation routes is unlikely because the inert ingredient is contained within plant cells. However, if exposure were to occur by non-dietary routes, no risk would be expected because the APH4 protein is not toxic to mammals.

E. Cumulative Exposure

Because there is no indication of mammalian toxicity to the APH4 protein, it is reasonable to conclude that there are no cumulative effects for this inert ingredient.

F. Safety Determination

1. *U.S. population*. The lack of mammalian toxicity at high levels of exposure to the APH4 protein demonstrates the safety of the product at levels well above possible maximum exposure levels anticipated via consumption of processed food products produced from VIP3A cotton. Moreover, little to no human dietary exposure to APH4 protein is expected to occur via VIP3A cotton. Due to the lack of toxicity of the APH4 protein and its very low potential for allergenicity, dietary exposure is not anticipated to pose any harm for the U.S. population. No special safety provisions are applicable for consumption patterns or for any population sub-groups.

2. *Infants and children*. Syngenta has evaluated the acute toxicity data generated on APH4, the lack of homology to known allergens or toxins, and the limited exposure to this protein based on the residue profile and limited number of food/feed products resulting from cotton and has determined that there is ample evidence to indicate a reasonable certainty of no harm to infants and children as a result of the use of this product.

G. Effects on the Immune and Endocrine Systems

The inert ingredient APH4 is a protein, derived from sources that are not known to exert an influence on the endocrine or immune systems.

H. Existing Tolerances

The registrant is not aware of any known existing tolerances or exemptions for APH4 and the genetic material necessary for its production as an inert ingredient.

I. International Tolerances

The registrant is not aware that any Codex maximum residue levels exist for the APH4 protein and the genetic material necessary for its production.

J. Reference

1. Sjoblad, R.D., J.T. McClintock and R. Engler (1992) Toxicological considerations for protein components of biological pesticide products. *Regulatory Toxicol. Pharmacol.* 15: 3–9.

[FR Doc 03–14327 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0187; FRL–7311–8]

Experimental Use Permit; Receipt of Application for Use of Aspergillus Flavus NRRL 21882

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 75624-EUP-R from Circle One Global, Inc. requesting an experimental use permit (EUP) for the *Aspergillus flavus* NRRL 21882. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2003–0187, must be received on or before July 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: bacchus.shanaz@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be

of interest to an agricultural producer, food manufacturer, pesticide manufacturer, or a person who may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0187. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0187. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0187. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in

WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0187.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0187. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Circle One Global, Inc., One Arthur St., P.O. Box 28, Shellman, GA 39886–0028, has applied for an EUP for field testing of a new end-use product of a microbial pesticide containing the active ingredient, *Aspergillus flavus* NRRL 21882, in a non-crop destruct program. The product is to be ground applied and is a granular formulation. At the proposed use rate of 20 lbs/acre, the equivalent amount of active ingredient applied is only 0.002 lbs/acre. The requested EUP is for a total of 5,000 acres to be treated for a total application of 10 lbs of the active ingredient. Concurrent with this application, the applicant filed a pesticide petition number 3G6559 for a temporary exemption from tolerance for residues of *Aspergillus flavus* NRRL 21882 in/on the food/feed commodity peanut. Application of the pesticide is proposed to reduce aflatoxin-producing colonies of *Aspergillus flavus* on the crop and in the soil by competitive displacement. Testing of 100 lbs of the active ingredient will occur in three States: Alabama, Florida, and Georgia.

III. What Action is the Agency Taking?

Following the review of the Circle One Global, Inc. application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5

List of Subjects

Environmental protection, Experimental use permits.

Dated: June 2, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–14462 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7510–9]

Horseshoe Bend Dump Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered a settlement at the Horseshoe Bend Dump Superfund Site in Lawrenceburg, Lawrence County, Tennessee under a CERCLA 122(h) Agreement for recovery of Response Costs to settle claims for past costs at the Site. The two (2) parties to the agreement have returned signature pages accepting EPA's settlement offer. EPA will consider public comments on the proposed settlement until July 11, 2003. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, CERCLA Program Services Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written Comments made be submitted to Ms. Paula V. Batchelor at the above address within 30 days of the date of publication.

Dated: May 21, 2003.

Archie Lee,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–14747 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission

ACTION: Notice.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension without change of the existing recordkeeping requirements under 29 CFR part 1602 *et seq*. Recordkeeping and Reporting Requirements under Title VII and the ADA. The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before August 11, 2003.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW, Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW, Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Richard V. Roscio, Assistant Legal Counsel, Legal Services Programs, Thomas J. Schlageter, Assistant Legal Counsel or Mona Papillon, General Attorney, at (202) 663–4669 or TDD (202) 663–4074. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publication Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 and Title I of the Americans with Disabilities Act, which prohibit discrimination on the basis of race, color, religion, sex, national origin or disability. Sections 709(c) of Title VII and section 107(a) of the ADA authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary or appropriate. EEOC has promulgated recordkeeping regulations under those authorities that are contained in 29 CFR part 1602 *et seq*. Those regulations do not require the creation of any particular records but generally require employers to preserve any personnel and employment records they make or keep for a period of one year. The EEOC seeks extension of these regulations without change.

Overview of This Information Collection

Collection Title: Recordkeeping under Title VII and the ADA.

OMB-Number: 3046–0040.

Description of Affected Public: Employers with 15 or more employees are subject to Title VII and the ADA.

Number of Responses: 627,000.

Reporting Hours: One.

Number of Forms: None.

Federal Cost: None.

Abstract: Section 709(c) of Title VII, 42 U.S.C. 2000e–8(c) and section 107(a) of the ADA, 42 U.S.C. 12117(a) require the Commission to establish regulations pursuant to which employers subject to those Acts shall make and preserve certain records to assist the EEOC in assuring compliance with the Acts' nondiscrimination in employment requirements. This is a recordkeeping requirement. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII which are also incorporated by reference into the ADA at section 107(a).

Burden Statement: The estimated number of respondents is approximately 627,000 employers. The recordkeeping requirement does not require reports or the creation of new documents; it merely requires retention of documents that the employer has made or kept. Thus, the burden imposed by these regulations is minimal. The burden is estimated to be less than one hour per employer.

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: June 4, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–14628 Filed 6–10–03; 8:45 am]

BILLING CODE 6570–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Revision of the Employer Information Report (EEO–1) Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed revision of the Employer Information Report (EEO–1).

SUMMARY: In the late 1990's, the Office of Management and Budget (OMB) issued revisions of three standard Federal classifications related to the U.S. Equal Employment Opportunity Commission's Employer Information Report (EEO–1)—the North American Industry Classification System (1997), the Standards for the Classification of Federal Data on Race and Ethnicity (1997), and the Standard Occupational Classification (1999).

In response to the changes in the OMB classification standards, and under § 709(c) of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 200e–8(c)), the U.S. Equal Employment Opportunity Commission (EEOC or Commission) is proposing modifications to the system currently used to classify the race and ethnicity and job categories used by respondents to file annual EEO–1 reports. This notice solicits public comment on the EEOC proposals. The proposed EEO–1 form can be found at *http://www.eeoc.gov/eeo1.*

DATES: Written comments on this notice must be submitted on or before August 11, 2003. A public hearing concerning these proposed changes will be held on

a date and at a time and place to be announced.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th floor, 1801 L Street, NW., Washington, DC 20507. The Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of a FAX transmittal will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: On October 30, 1997, OMB issued a **Federal Register** notice (Vol. 62. No. 210, Part II, pp. 58781–58790) titled ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity.'' On September 30, 1999, OMB issued its Notice of final decision for the Standard Occupational Classification system in the **Federal Register** (Vol. 64. No. 189, Part IV, pp. 53135–53163). These proposed revisions to the EEO–1 respond to these changes in the Federal classification standards. EEOC seeks to avoid burden and disruption by proposing these changes simultaneously.

The Commission is soliciting public comment on its proposals to modify the EEO–1 form to use the revised race and ethnicity and job categories, as well as comments addressing the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Persons wishing to present their views orally should notify the Commission of their desire to do so, in writing, no later than [Insert 60 days from the date of publication] with a request to Francis Hart, Executive Officer, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507. The request should include a written summary of the remarks to be offered.

The remainder of this **SUPPLEMENTARY INFORMATION** section provides the public with access to the information it will need to comment on the EEOC proposals. It is organized into three parts—an overview of the information collection, followed by discussions of the proposed changes for EEO–1 data on race and ethnicity and proposed changes for EEO–1 job category data.

Overview of This Information Collection

Collection Title: Employer Information Report (EEO–1).

OMB Number: OMB Number 3046–0007.

Frequency of Report: Annual.

Type of Respondent: Private industry employers with 100 or more employees and certain Federal Government contractors and first-tier subcontractors with 50 or more employees.

Description of Affected Public: Private industry employers with 100 or more employees and certain Federal Government contractors and first tier subcontractors with 50 or more employees.

	Current	Proposed
Reporting Hours	402,700	644,320
Respondent Cost	$6.0 million	$9.7 million.
Federal Cost	$1.3 million	$2.1 million.
Number of Forms	1	1

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–8(c)), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations set forth in the Code of Federal Regulations, title 29, chapter XIV, subpart B, Section 1602.7. Employers in the private sector with 100 or more employees and some Federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential. EEO–1 data are used by EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women. The data are shared with the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, and several other Federal agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with eighty-six State and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 report survey is 45,000 private employers. The estimated number of establishment-based responses per reporting company is between 3 and 4 EEO–1 reports annually. The annual number of responses is approximately 170,000. The proposed form is estimated to impose 644,320 burden hours annually. It is also estimated that the total one time implementation burden for the proposed revision for all reporters will be about 660,000 hours or about $9.9 million. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Proposed Changes for EEO–1 Data on Race and Ethnicity

Revised Race/Ethnic Category Definitions

Table 1 below compares the current EEO–1 race/ethnic categories in the first column, as they have appeared on the EEO–1 since 1977, with the proposed EEO–1 race/ethnic categories in the second column. Definitions of the proposed EEO–1 ethnicity and race categories are in accordance with the 1997 revised standards and are as follows:

Ethnicity

Hispanic or Latino—A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

Race

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Black or African American—A person having origins in any of the Black racial groups of Africa.

Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Phillipine Islands, Thailand, and Vietnam.

American Indian or Alaska Native—A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Two or More Races—All person who identify with more than one of the above five races

TABLE 1

Current EEO–1	Proposed EEO–1 (Answer for both male and female)
Hispanic	Hispanic or Latino. (This category includes all employees who answe—-YES—to the question—are you Hispanic or Latino? Report in the appropriate categories below all employees who answer—No—to the question—are you Hispanic or Latino?
White (Not of Hispanic origin)	White not Hispanic or Latino.
Black (Not of Hispanic origin)	Black or African American not Hispanic or Latino.
Asian or Pacific Islander	Native Hawaiian or Other Pacific Islander not Hispanic or Latino. Asian not Hispanic or Latino.
American Indian or Alaskan Native	American Indian or Alaska Native not Hispanic or Latino. Two or more Races not Hispanic or Latino.

Race and Ethnicity Reporting Instructions on the Proposed Revised EEO–1 Race and Ethnic Identification

Self identification is the preferred method of identifying the race and ethnic information necessary for the EEO–1 report. Employers are strongly encouraged to rely on employee self-identification to obtain this information. It self-identification is not feasible, post-employment records or observer identification may be used to obtain this information. The following language is suggested for use by employers when collecting race and ethnicity information from employees.

Suggested Employee Questionnaire on Race and Ethnicity

Below are two questions, the first is about your ethnicity and the second about your race. You are to answer both questions. In answering the second question, you may select one or more races. The summarized information is reported to the Federal government for civil rights enforcement and monitoring purposes. For these purposes, if you mark ''Yes, Hispanic or Latino'', your race will not be reported. The summarized information on race will be reported in the following categories only:

1. White
2. Black or African American
3. Asian
4. Native Hawaiian or Other Pacific Islander
5. American Indian or Alaska Native
6. Two or More Races

If you select more than one race, you will be reported to the Two or More Races category. For example, if you select Black and American Indian or Alaska Native, you will be reported in the Two or More Races category.

Question 1—Ethnicity

Are our Hispanic or Latino?

_____ No, not Hispanic or Latino

_____ Yes, Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

Question 2—Race

What is your race? Select one or more of the following five race categories.

_____ White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

_____ Black or African American—A person having origins in any of the Black racial groups of Africa.

_____ Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

_____ Native Hawaiian or Other Pacific Islander—A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

_____ American Indian or Alaska Native—A person having origins in any of the original peoples of North and South American (including Central America), and who maintains tribal affiliation or community attachment.

Proposed Changes for EEO–1 Job Category Data

Proposed EEO–1 Job Categories

The Commission is also proposing to modify the current EEO–1 job categories by: using the detailed 2000 (SOC) job definitions; cross-classifying them against the 2000 Census Occupational classification codes; aggregating them according to a skill-based schema; and

also subdividing the current Officials and Managers category into three distinct hierarchical sub-categories. The proposed EEO–1 job categories would continue to be skill-based rather than industry-based. Consequently, the proposed EEO–1 job categories differ from the 2000 SOC intermediate level aggregation categories and are not comparable. Please see *http://www.eeoc.gov/stats/census/crosswalk.html* for a detailed crosswalk to the proposed EEO–1 job categories.

The Commission is also proposing to include most business and financial operations occupations in the Officials and Managers category and to split that category into three levels of responsibility, allowing for more detailed assessment of the utilization of minorities and women in these activities. This split would increase the current number of job categories by two. Table 2 compares the current and the proposed EEO–1 job categories:

TABLE 2.—CURRENT AND PROPOSED EEO–1 JOB CATEGORIES

Current EEO–1	Proposed EEO–1
1. Officials and Managers.	1.1 Executive/Senior Level Officials and Managers. 1.2 Mid-Level Officials and Managers. 1.3 Lower-Level Officials and Managers.
2. Professionals	2. Professionals.
3. Technicians	3. Technicians.
4. Sales Workers	4. Sales Workers.
5. Office and Clerical	5. Administrative Support Workers. 6. Service Workers.
6. Craft Workers (Skilled).	7. Craft Workers.
7. Operatives (Semi-skilled).	8. Operatives.
8. Laborers (Unskilled).	9. Laborers and Helpers.
9. Service Workers.	

Description of Proposed EEO–1 Job Categories

The proposed EEO–1 job categories are listed below, including a brief description of the skills and training required for occupations in that category, examples of the jobs that fit each category and the ranges of 2000 Census Occupation codes included in the category. Please *see http://www.eeoc.gov/stats/census/crosswalk.html* for a detailed crosswalk. These job categories are primarily based on average skill levels, knowledge, and responsibility involved in each occupation within the job category. They are not industry based and thus are not directly comparable to the 2000 SOC intermediate aggregation levels. The examples presented below are illustrative and not intended to be exhaustive of all job titles in a job category.

Executive/Senior Level Officials and Managers. Individuals who plan, direct and formulate policies, set strategy and provide the overall direction of companies/organizations for the development and delivery of products or services at a global or national level, within the parameters approved by boards of directors or other governing bodies. Residing in the highest levels of organizations, these executives plan, direct or coordinate activities with the support of subordinate executives and staff managers. Examples of these kinds of managers are: Chief executive officers, chief operating officers, chief financial officers, line of business heads, presidents or executive vice presidents of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners. (2000 Census Occupation Codes: 001–010)

Mid-Level Officials and Managers. Individuals who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations. They get their directions from the executive/senior level management. These jobs include vice president or director. They typically lead departments, divisions, programs, regional offices or other major business units. Through subordinate managers and within parameters established by executive/senior management, they implement policies, processes, products, services, programs and other directives of executive/senior management. Examples of these kinds of managers include: group, regional or divisional controllers; treasurers; human resources; information systems; marketing; and operations managers. (2000 Census Occupation Codes: 011–016)

Lower-Level Officials and Managers. Individuals at functional, line of business segment or branch levels who are responsible for directing and executing the day-to-day operational objectives of companies/organizations, directly supervising the activities of exempt and non-exempt personnel. Reporting to mid-level officials and managers, they may be first-line managers, team or unit managers. Examples of these types of managers include: operations and production managers; branch managers; administrative services managers; purchasing and transportation managers; storage and distribution managers; call center or customer service managers; technical support managers; and brand or product managers. (2000 Census Occupational Codes: 020–043, 050–060, 070–073, 081–095, 470–471, 601, 666, 931)

Professionals. Most jobs in this category require bachelor and graduate degrees, and/or professional, certification, In some instances, comparable experience may establish a person's qualifications. These kinds of positions include: accountants and auditors; airplane pilots and flight engineers; architects; artists; chemists; computer programmers; designers; dietitians; editors; engineers; lawyers; librarians; mathematical scientists; natural scientists; registered nurses; physical scientists; physicians and surgeons; social scientists; teachers; surveyors and similar workers (2000 Census Occupation Codes: 062, 080, 100–153, 160–186, 200–211, 220–243, 255–286, 291–326, 434, 493, 903)

Technicians. Jobs in this category include activities that require applied scientific skills, usually obtained by bachelor degree education, although in some instances additional training, certification, or comparable experience is required. These types of positions include: drafters; emergency medical technicians; dental hygienists; and licensed vocational nurses. (2000 Census Occupation Codes: 154–156, 190–196, 290, 300–354, 904)

Sales Workers. These jobs include non-managerical activities that wholly and primarily involve direct sales. These types of positions: include: advertising sales agents; insurance sales agents; real estate brokers and sales agents; wholesale and retail sales agents; securities, commodities, and financial services sales agents; personal financial advisors; telemarketers; demonstrators; retail sales workers; counter and rental clerks; and cashiers. (2000 Census Occupation Codes: 470–492, 494–496)

Administrative Support Workers. These jobs involve non-managerial tasks providing administrative and support assistance, primarily in office settings. These types of positions include: office and administrative support workers; bookkeepers; accounting and auditing clerks; cargo and freight agents; dispatchers; couriers; data entry keyers; computer operators; shipping receiving and traffic clerks; word processors and typists; proofreaders; desktop publishers; and general office clerks. (2000 Census Occupation Codes: 214–215, 244–254, 500–593)

Service Workers. This overall category includes four subcategories, covering food service, cleaning service, personal service, and protective service activities. Skill may be acquired through formal training, job-related training or direct experience. Food service positions include: cooks, bartenders and other food service workers. Personal service positions include: medical assistants and other healthcare support positions; hairdressers; ushers; and transportation attendants. Cleaning service positions include: cleaners, janitors, and porters. The protective service worker subcategory includes: transit and railroad police and fire fighters; guards; private detectives; and investigators. (2000 Census Occupation Codes: 360–420, 422–224, 430–432, 440–465)

Craft Workers. This category includes higher skilled occupations in construction (building trades craft workers and their formal apprentices) and natural resource extraction workers. Examples include: boilermakers; brick and stone masons; carpenters; electricians; painters (both construction and maintenance); glazers, pipe-layers; pipe-fitters and plumbers; plasterers; roofers; elevator installers; earth-drillers; derrick operators, oil and gas rotary drill operators; and blasters and explosive workers. Also includes occupations related to the installation, maintenance and part-replacement of equipment, machines and tools, such as automotive mechanics; aircraft mechanics, electric and electronic equipment repairers. This category also contains some production occupations that are distinguished by the high degree of skill and precision required to perform them, based on clearly-defined task specifications, such as millwrights; etchers and engravers; tool and die makers; and pattern makers. (2000 Census Occupation Codes: 620–625, 630–653, 670–674, 676–756, 762–770, 774, 803, 806, 813, 816, 823, 825, 833, 835, 845, 850–851, 855–862, 875–876, 891, 951–952)

Operatives. This category includes intermediate skilled occupations and includes workers who operate machines or factory-related processing equipment. Most of these occupations do not usually require more than several months of training. Examples include: textile machine workers; laundry and dry cleaning workers; milliners; photographic process workers; weaving machine operators; electrical and electronic equipment assemblers; semiconductor processors; testers and graders; bakers; and butchers or other meat, poultry or fish-processing workers. Also includes occupations of generally intermediate skill levels that are concerned with operating and controlling equipment to facilitate the movement of people or materials, such as: bridge and lock tenders; truck, bus or taxi driver; industrial truck and tractor (forklift) operators; parking lot attendants; sailors; conveyor operators; and hand-packers and packagers. (2000 Census Occupation Codes: 604, 771–773, 775–801, 804, 810, 814–815, 820–822, 824, 826–832, 834, 836–842, 846, 853–854, 863–874, 880–886, 892–894, 896, 900, 912–930, 933–935, 941–942, 956–960, 964–965, 975)

Laborers and Helpers. This category includes workers with more limited skills who require only brief training to perform tasks that require little or no independent judgment. Examples include: production and construction worker helpers; vehicle and equipment cleaners; laborers; freight, stock and material movers; service station attendants; construction laborers, refuse and recyclable materials collectors; septic tank servicers; and sewer pipe cleaners. (2000 Census Occupation Codes: 421, 425, 435, 600, 605–613, 626, 660, 675, 761, 895, 936, 961–963, 972)

Dated: June 4, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–14739 Filed 6–10–03; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice; cancellation of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, Public Law 92–463, as amended, this notice advises interested persons that the meeting of the Network Reliability and Interoperability Council scheduled for June 13, 2003 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp at 202–418–1096, TTY 202–418–2989, or e-mail *Jeffery.Goldthorp@fcc.gov.*

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–14741 Filed 6–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Application Pursuant to Section 19 of the Federal Deposit Insurance Act.

OMB Number: 3064–0018.

Form Number: 6710/07.

Annual Burden:

Estimated annual number of respondents: 14.

Estimated time per response: 16 hours.

Total annual burden hours: 224 hours.

Expiration Date of OMB Clearance: July 31, 2003.

SUPPLEMENTARY INFORMATION: Section 19 of the Federal Deposit Insurance Act requires insured depository institutions to obtain the FDIC's consent prior to any participation in their affairs by a person convicted of crimes involving dishonesty or breach of trust. Form 6710/07 is the vehicle for requesting FDIC consent.

2. *Type of Review:* Renewal of a currently approved collection.

Title: Activities and Investments of Insured State Banks.

OMB Number: 3064–0111.

Annual Burden:

Estimated number of respondents: 130.

Estimated time per response: 8 hours.

Total annual burden hours: 1,040 hours.

Expiration Date of OMB Clearance: August 31, 2003.

SUPPLEMENTARY INFORMATION: Part 362 of the FDIC's rules and regulations, implement the provisions of section 24 of the Federal Deposit Insurance Act that restrict and prohibit insured state banks and their subsidiaries from engaging in activities and investments that are not permissible for national banks and their subsidiaries. The

collection of information involves banks or their subsidiaries desiring to engage in activities that would be impermissible absent the FDIC's consent or nonobjection.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before July 11, 2003, to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: June 4, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–14639 Filed 6–10–03; 8:45 am]

BILLING CODE 6714–01–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.: 201144.

Title: ILWU/PMA Marine Clerk Opportunity Assessment Agreement.

Parties: Members of the Pacific Maritime Association.

Synopsis: The agreement provides the basis for the assessment under the Pacific Coast Clerks' Contract Document.

Agreement No.: 011848–001.

Title: WWL/K–Line Transatlantic Space Charter Agreement.

Parties: Wallenius Wilhelmsen Lines AS Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed agreement modification clarifies the authority contained in Articles 5.4 and 5.5. It further changes the notice period for withdrawal from the agreement.

Agreement No.: 011856.

Title: SCM Lines Caribbean Feeder Services, Ltd./Evergreen Marine Corp. Space Charter Agreement.

Parties: SCM Lines Caribbean Feeder Services, Ltd. (''SCM Lines'') Evergreen Marine Corp. (''Evergreen'').

Synopsis: The proposed agreement would enable Evergreen to take from one to 250 TEUs on SCM Lines' vessels on an ''as available'' basis between ports in the Caribbean, South America, and Central America and U.S. East Coast and Gulf Coast ports. The parties request expedited review.

Agreement No.: 201103–002.

Title: ILWU/PMA Agreement.

Parties: Members of the Pacific Maritime Association.

Synopsis: The agreement amendment changes the basis for the man-hour and tonnage assessment rates. The agreement continues to run for an indefinite period.

By Order of the Federal Maritime Commission.

Dated: June 6, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14805 Filed 6–10–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 03–05]

Monarch Shipping Agency, LLC, Monarch Shipping Lines, Inc., and American Lines, LLC v. Logistec Connecticut, Inc., Logistec USA, Inc., Coastline Terminals of Connecticut, Inc., and American Stevedoring, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by Monarch Shipping Agency, LLC, Monarch Shipping Lines, Inc., and American Lines, LLC (''Complainants'') against Logistec Connecticut, Inc., Logistec USA, Inc., Coastline Terminals of Connecticut, Inc., and American Stevedoring, Inc. (''Respondents''). Complainants contend that Respondents violated sections 10(b)(9), 10(b)(10), 10(d)(1), 10(d)(2), 10(d)(3) and 13(c) of the Shipping Act by engaging in certain activities. Specifically, Complainants allege that Respondents violated the Shipping Act by cancelling a contract and locking Complainants and its customers out of Respondents' terminal facilities; by failing to establish and observe reasonable regulations relating to the receipt, handling and storage of property by providing inadequate security which resulted in loss and damage to vehicles and equipment; by an arrangement that resulted in an unlawful boycott and unreasonable discrimination in the provision of terminal services due to Complainants being locked out of certain facilities in Brooklyn, New York; and by failing to deal or negotiate with Complainants to resolve their disputes. Complainants seek various orders prohibiting Respondents from violating the Shipping Act and reparations in the amount of $10,000,000 plus interest, attorney fees and such further order or orders as the Commission determines to be proper.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by June 8, 2004, and the final decision of the Commission shall be issued by October 6, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14804 Filed 6–10–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–15]

Notice of Hearing Schedule

The Commission has established the following allotment of time and order of presentation for the hearing scheduled in this proceeding. The hearing will convene at 10 a.m., June 11, 2003, in the Main Hearing Room, Room 100, 800 North Capitol Street, NW., Washington, DC 20573.

Company	Participant(s)	Time allotment (in minutes)
Royal Caribbean Cruises Ltd	John P. Fox, Vice President; Industry Relations, Hopewell H. Darneille III and Michael G. Roberts, Thompson Coburn, LLP.	10
The Passenger Vessel Association	Edmund B. Welch, Legislative Director	10
Visa U.S.A. Inc	Oliver I. Ireland, Morrison & Foerster, LLP	10
Discover Financial Services, Inc	Thomas M. Byrne, Sutherland Asbill & Brennan LLP	10
Norwegian Cruise Line	Robert M. Kritzman, Senior Vice President and General Counsel	10

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14806 Filed 6–10–03; 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 Ocean TransportationIntermediary Applicants

Eggi's Express Shipping, 1004 Halsey Street, Brooklyn, NY 11207, Egbert Sylvester Jeffers, Sole Proprietor.

Topocean Consolidation Service (New York), Inc., 181 S. Franklin Ave., #204, Valley Stream, NY 11581. *Officer:* Robert Wang, President/CEO/CFO (Qualifying Individual).

Valu Freight Consolidators, Inc., 1325 NW 21st Street, Miami, FL 33142. *Officers:* Mildred Evette Ferguson, Vice President (Qualifying Individual), Barry Ferguson, President.

CNR International, Inc., 500 E. Carson Plaza Drive, #2165, Carson, CA 90746. *Officers:* Sukyol (Chris) Oh, Vice President (Qualifying Individual), Ray Hyun Sung, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Payson International Freight, Inc., 145–52 157th Street, Jamaica, NY 11434. *Officer:* Shlomo Greenberg, President (Qualifying Individual).

Stern, Rogers & Co., Inc., 145–40 157th Street, Jamaica, NY 11434. *Officer:* Orhan Konur, President (Qualifying Individual).

Saltair Projects, LLC, 18900 8th So., Suite 1100, Seatac, WA 98148. *Officer:* Gregory Carl Aden, Owner (Qualifying Individual).

Dated: June 6, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14809 Filed 6–10–03; 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: 3748F.
Name: Aero Expedited, Inc. dba Aero Expediting, Inc.
Address: 29101 Airport Drive, Romulus, MI 48174.
Date Revoked: May 29, 2003.
Reason: Failed to a maintain valid bond.

License Number: 3307N.
Name: American Freight International, Inc.
Address: 8169 NW 67th Street, Miami, FL 33166.
Date Revoked: May 16, 2003.
Reason: Surrendered license voluntarily.

License Number: 3723NF.
Name: Birkart of America Inc. dba Birkart Fairs & Events c/o Thiel Logistics.
Address: 3200 NW 112 Avenue, Miami, FL 33172.
Date Revoked: April, 30, 2003.
Reason: Failed to maintain valid bonds.

License Number: 2363F.
Name: Cargoza Forwarding Corporation.
Address: P.O. Box 661275, Miami Springs, FL 33266.
Date Revoked: May 17, 2003.
Reason: Failed to maintain a valid bond.

License Number: 18051F.
Name: Dominicana Air & Ocean Freight Corp.
Address: 1332 NW 36th Street, Jamaica, NY 33142.
Date Revoked: May 22, 2003.
Reason: Failed to maintain a valid bond.

License Number: 7653N.
Name: Erika Charterers Inc.
Address: 3200 South Andrews Avenue, Suite 103, Ft. Lauderdale, FL 33316.
Date Revoked: May 29, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17912N.
Name: GPS Logistics, Inc. dba GPS Logistics Group.
Address: 175–18 147th Avenue, Jamaica, NY 11434.
Date Revoked: May 20, 2003.
Reason: Failed to maintain a valid bond.

License Number: 7013N.
Name: Midas Maritime, Inc.
Address: 950 Linden Avenue, S. San Francisco, CA 94080.
Date Revoked: May 29, 2003.
Reason: Failed to maintain a valid bond.

License Number: 11101N.
Name: Taiun Company (U.S.A.) Inc.
Address: 725 North Nash Street, El Segundo, CA 90245.
Date Revoked: May 29, 2003.
Reason: Failed to maintain a valid bond.

License Number: 14222N.
Name: Trademar Consolidators Corp.
Address: 8454 NW 70th Street, Miami, FL 33166.
Date Revoked: May 24, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4515NF.
Name: Transports P. Fatton Inc.
Address: 145 Hook Creek Blvd., Valley Stream, NY 11581.

Date Revoked: May 29, 2003.

Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–14807 Filed 6–10–03; 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
16356N	Jagremar Marine, Inc. 15490 Vickery Drive Houston, TX 77032	May 1, 2003.
11170NF	Sage Freight Systems Inc. dba Sage Container Lines 182–30 150th Road., Suite 108, Jamaica, NY 11413.	April 26, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–14808 Filed 6–10–03; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Minority Health

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice is given of the June meeting.

The Advisory Committee on Minority Health will meet on Thursday, June 26, 2003, from 9 a.m. to 5 p.m., and Friday, June 27, 2003, from 8:30 a.m. to 12 noon. The meeting will be held at the Hilton Garden Inn (Franklin Square), Georgetown ABC Rooms, 815 14th Street, NW., Washington, DC 20005. The meeting is metro accessible to the McPherson Square station.

The Advisory Committee will discuss racial and ethnic disparities in health, as well as, other related issues.

The meeting is open to the public. There will be an opportunity for public comment, which will be limited to five minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least two business days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila P. Merriweather, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 301–443–9923 Fax: 301–443–8280.

Dated: June 4, 2003.

CAPT Tuei Doong,

Deputy Director, Office of Minority Health.

[FR Doc. 03–14626 Filed 6–10–03; 8:45 am]

BILLING CODE 4150–29–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03072]

Strengthen Indian Network of Positive People Chennai, India; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program for the development and implementation of programs aimed at improving the quality of life for people living with AIDS in India. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Indian Network of Positive People (INP+). INP+ is in a unique position to provide linkages between the GHTM and community level health care and support for individuals who are HIV+ and their families. INP+ has the experience in the development, testing and production of education and training materials for prevention and care that are sensitive and can meet the needs of the positive community.

C. Funding

Approximately $40,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 1, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Nancy Hedemark Nay, MPH, Associate Director for Operations, Global AIDS Program, c/o U.S. Consulate, 220 Mount Road, Chennai, 600 006, India, Telephone: 91–44–2811–2000, E-mail address: *nhn1@cdc.gov*.

Dated: June 4, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14669 Filed 6–10–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03121]

Standards Development and Maintenance for Cancer Surveillance; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317(k)(2) of the Public Health Service (PHS) Act, (42 U.S.C. sections 241 and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Standards Development and Maintenance for Cancer Surveillance. This program addresses the ''Healthy People 2010'' focus area of Cancer.

This program will promote the development and maintenance of standards, which can be utilized by the National Program of Cancer Registries (NPCR) network of hospitals, free-standing pathology laboratories, central

cancer registries, and software developers, to collect, edit, and transmit data.

This program consists of 2 parts:

Part I—Standard-setting activities related to the operation of population-based cancer registries.

The purpose of Part I is to support efforts to improve the quality of population-based central cancer registry data and operations through data item and transmittal standards, to facilitate coordination and communication from health care facilities to (and among) central cancer registries, and to promote the use of cancer incidence data for cancer control such as health care interventions planning, resource allocation, program evaluation, and research.

Part II—Standardized reporting and Encoding of surgical pathology reports.

The purpose of Part II is to support and promote the development of a controlled medical vocabulary for: encoding pathology data elements, indexing the entire medical vocabulary, and establishing guidelines for standardizing the reporting of surgical specimens.

This program announcement addresses the National Center for Chronic Disease Prevention and Health Promotion performance goal to improve the quality of state-based cancer registries.

C. Eligible Applicants

Part I—Eligible applicants for Part I are non-profit, non-governmental organizations with a nationwide organizational infrastructure and the capacity to bring together cancer registry standard-setting organizations, central cancer registries, hospital cancer registries, and software developers in order to attain consensus on data item definitions, codes, format, transmission record layouts, and time line for implementation of new standards.

Applicants ideally should have local, state, or regional constituencies representing all states and territories, but at minimum representing 25 states/territories.

Part 2—Eligible applicants for Part 2 are non-profit, non-governmental organizations with a nationwide organizational infrastructure and the capacity to develop standardized medical vocabularies and structures for encoding the content of pathology reports; to obtain consensus from the clinical and anatomic pathology community; and to provide education and technical assistance to promote and encourage consistent pathology reporting throughout the United States.

Applicants ideally should have local, state, or regional constituencies representing all states and territories, but at minimum representing 25 states/territories.

D. Funding

Availability of Funds

Approximately $900,000 is available in FY 2003 to fund the following categories:

Part I—Standard-setting activities related to the operation of population-based cancer registries: Approximately $600,000 is available in FY 2003 to fund a single award.

Part II—Standardized reporting and encoding of surgical pathology reports: Approximately $300,000 is available in FY 2003 to fund a single award.

Applicants may apply for Part I, Part II, or both based on eligibility. It is expected that awards will begin on or about September 15, 2003 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, program progress, and the availability of funds.

Recipient Financial Participation

Matching funds are not required.

E. Program Requirements

In conducting activities to achieve the purposes of Parts I and/or II, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

Part I

a. Develop and provide infrastructure and management to address cancer registration issues including standards for completeness, timeliness, and quality (CTQ) for central cancer registries in the collection and processing of cancer incidence data. Performance will be measured by the extent to which the applicant develops, maintains, and promotes such standards.

b. Develop and provide infrastructure for the development of educational materials, guidance, and forums that promote the use of cancer registry data for the purposes of cancer control and prevention. Performance will be measured by the extent to which the applicant participates in or develops forums to either gain information or to educate constituents in cancer registry data use.

c. Coordinate and facilitate regional and national meetings of central cancer registry staff and related partners for consensus building, model development, and guidance development in the areas of central cancer registry operations, standard data item definitions, formats for the electronic transmittal of data, use of mortality data, cancer incidence and mortality rates, and mechanisms to share cancer reports with the community.

Performance will be measured by the extent to which the applicant participates in or coordinates such regional and national meetings to gain information; facilitate consensus; develop models and guidance; and to educate constituents in the accomplishment of program goals and objectives.

d. Participate in CDC-sponsored meetings and events. Performance will be measured by the extent to which the applicant attends and participates in NPCR–CDC conferences.

e. Participate in a post-award meeting (to occur no later than 45 days after the notice of award) to share information, clarify expectations, and establish regular conference call and face-to-face meetings (to occur at a minimum of every two months) to discuss issues and report progress.

Part II

a. Facilitate and promote the development, enhancement, and use of a controlled medical vocabulary to allow the encoding of information in a pathology report, typically a key component of a cancer patient's medical record, from a synoptic checklist as opposed to the traditional narrative-style report. Performance will be measured by the extent to which the applicant develops, enhances, and promotes the use of controlled medical vocabulary and site-specific synoptic checklists.

b. Monitor and evaluate the use of vocabulary among pathologists, registries, and pathology laboratory software vendors to identify inconsistent uses and new pathological trends in order to adjust and update the controlled medical vocabulary. Performance will be measured by the extent to which the applicant identifies inconsistencies and new trends and updates the controlled medical vocabularies.

c. Work to enhance the ability to reflect cancer protocols, as identified by committees of pathologists representing the United States, in the controlled medical vocabularies and the site-specific synoptic checklist. Performance

will be measured by the extent to which the applicant's controlled medical vocabularies and site-specific synoptic checklist reflect nationally recognized cancer protocols.

d. Identify, attend, and facilitate educational meetings and provide technical assistance to promote the use of controlled medical vocabularies and site-specific synoptic checklists in the pathologist community. Performance will be measured by the extent to which the applicant attends and facilitates educational meetings and provides technical assistance to promote the use of controlled medical vocabularies and site-specific synoptic checklists.

e. Participate in CDC-sponsored meetings and events. Performance will be measured by the extent to which the applicant attends and participates in NPCR–CDC conferences.

f. Participate in a post-award meeting (to occur no later than 45 days after the notice of award) to share information, clarify expectations, and establish regular conference call and face-to-face meetings (to occur at a minimum of every two months) to discuss issues and report progress.

2. CDC Activities

Part I

a. Participate in a post-award meeting (to occur no later than 45 days after the notice of award) to share information, clarify expectations, and establish regular conference calls and face-to-face meetings (to occur at a minimum of every two months) to discuss issues and report progress.

b. Enhance standards for completeness, timeliness, and quality (CTQ) for central cancer registries in the collection and process of cancer incidence data to ensure that CDC funded cancer registries continue to meet program standards.

c. Develop educational materials that promote the use of cancer registry data for the purposes of cancer control and prevention to ensure that CDC funded cancer registries continue to meet program standards.

d. Attend and participate in regional and national meetings of central cancer registry staff and related partners for consensus building, model development, and guidance development.

e. Monitor attendance of applicant at NPCR–CDC meetings and events.

Part II

a. Participate in a post-award meeting to share information, clarify expectations, and establish routine meetings to discuss issues and report progress.

b. Develop controlled medical vocabulary and site-specific synoptic checklists to promote the use of electronic data submissions from pathology laboratories to CDC funded cancer registries.

c. Monitor the development, publication, and use of controlled medical vocabulary and site-specific synoptic checklists to promote the use of electronic data submissions from pathology laboratories to CDC funded cancer registries.

d. Monitor and attend educational conferences and meetings where controlled medical vocabularies and site-specific synoptic checklists are promoted.

F. Content

Letter of Intent (LOI)

A LOI is requested from potential applicants. The non-binding LOI will be used to determine the level of interest for this program announcement. The narrative should be no more than two, single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter should include the following information: Program announcement number, name of the principal investigator, and specifically which Part(s) the applicant plans to apply for.

Pre-Application Conference Call

A Pre-application conference call is scheduled for [Fill in after HHS review]. Eligible applicants are invited to participate in this conference call. The purpose of the conference call will be to communicate the specifics of the application process and to respond to any questions applicants may have regarding this announcement. Participation in this conference call is optional. A summary of the questions and answers will be made available for those unable to participate. Information for this conference call will be sent to all eligible applicants that have submitted an LOI by [Fill in after HHS review].

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections for Parts I–II to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative for Part I and Part II should be no more than 30 double-spaced pages, printed on one side, with one inch margins, and unreduced 12-point font. The original and each copy of the application must be submitted unstapled and unbound. Pages should be clearly numbered and a complete index to the application and any appendices should be included.

Applicants may apply for support under one or both of the Parts. Only one application should be submitted. For each Part applied for, include a separate and complete narrative, a separate budget, and a separate budget justification that can stand alone as an application for review purposes.

Include funding for staff for Parts I and II to attend the following meetings: (1) A 1-day, post-award meeting in Atlanta; and (2) an additional 2-day meeting in a city to be determined later.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget. The program Plan should address activities to be conducted over the entire five-year project period.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before June 25, 2003, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application Form

Submit the signed original and two copies of PHS 5161 (OMB 0348–0043). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time July 28, 2003. Submit the application to: Technical Information Management—PA#03121, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date.

Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objective of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application individually against the following criteria.

Specific evaluation criteria for each part are as follows:

Part I—Evaluation Criteria

1. Methods (31 points total)—

a. The extent to which the applicant adequately describes the methods that will be used to accomplish the objectives of the project. (20 points)

b. The extent to which the timetable incorporates project activities and milestones and is specific, measurable and realistic (11 points)

2. Program Need (24 points total)—

a. The extent to which the applicant demonstrates the ability to provide infrastructure and management to address cancer registration issues including standards for completeness, timeliness, and quality for cancer incidence data. (6 points)

b. The extent to which the applicant demonstrates the ability to participate in activities that promote States' accessibility and use of cancer registry data for cancer control activities. (6 points)

c. The extent to which the applicant demonstrates the ability to convene regional and national meetings of central cancer registry staff and partner organizations for consensus building, model development, and guidance development in the areas of central cancer registry operations, standard data item definitions, formats for the electronic transmittal of data, use of mortality data, cancer incidence and mortality rates, and mechanism to share cancer reports with the community. (6 points)

d. The extent to which the applicant demonstrates the ability to participate in NPCR–CDC sponsored meetings and events. (6 points)

3. Objectives (20 points)—The extent to which the applicant demonstrates that the proposed program objectives are measurable, specific, time-phased, and related to the recipient activities, program purpose, and program need.

4. Evaluation (15 points)—The extent to which the applicant describes adequate plans for providing on-going communication including feedback and quality control suggestions for improvement and implementation of project objectives.

5. Program Management and Staffing Plan (10 points)—The extent to which proposed staffing and management is adequate as defined by:

a. Job descriptions for existing and proposed positions.

b. Descriptions of background, experience and qualification for the proposed responsibilities; education, experience and licensure requirements, and curriculum vitae for each staff member.

c. An organizational chart that identifies lines of communication, accountability and reporting authority.

6. Human Subjects (not scored)—Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

7. Requirements concerning the inclusion of women, racial, and ethnic groups (not scored)—Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community (ies) and recognition of mutual benefits.

8. Budget (not scored)—The extent to which the budget is reasonable, clearly justified, consistent with the demonstrated need and proposed activities, and likely to lead to program success.

Part II—Evaluation Criteria

1. Methods (31 points total)—

a. The extent to which the applicant adequately describes the methods that will be used to accomplish the objectives of the project. (20 points)

b. The extent to which the timetable incorporates project activities and milestones and is specific, measurable, and realistic. (11 points)

2. Program Need (24 points total)—

a. The extent to which the applicant demonstrates an ability to facilitate and foster development, revision, and enhancement of controlled medical vocabulary to encode the information in a pathology checklist report, which constitutes an essential part of a cancer patient's medical record. (6 points)

b. The extent to which the applicant describes a need to monitor the use of the vocabulary by clinical groups members, pathology laboratories, registries, and laboratory information system vendors to detect problems and address needs in implementation of a medical vocabulary. (6 points)

c. The extent to which the applicant describes a need to facilitate and foster the development, revision, and enhancement of cancer protocols by pathology laboratories, including automation of data entry, coding, and storage. (6 points)

d. The need to target appropriate educational and technical assistance interventions and workshops that would increase the use of encoded pathology reports and other data, including standardized reports that use cancer protocols. (6 points)

3. Objectives (20 points)—The extent to which the applicant demonstrates that the proposed program objectives are measurable, specific, time-phased, and related to the recipient activities, program purpose, and program need.

4. Evaluation (15 points)—The extent to which the applicant describes adequate plans for providing on-going communication including feedback and quality control suggestions for

improvement and implementation of project objectives.

5. Project Management and Staffing Plan (10 points)—The extent to which proposed staffing and management is adequate as defined by:

a. Job descriptions for existing and proposed positions.

b. Descriptions of background, experience and qualification for the proposed responsibilities; education, experience and licensure requirements, and curriculum vita for each staff member.

c. An organizational chart that identifies lines of communication, accountability, and reporting authority.

6. Human Subjects (not scored)—Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

7. Requirements concerning the inclusion of women, racial, and ethnic groups (not scored)—Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community (ies) and recognition of mutual benefits.

8. Budget (not scored)—The extent to which the budget is reasonable, clearly justified, consistent with the demonstrated need and proposed activities, and likely to lead to program success.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. An interim progress report. The interim progress report will be due on the 15th of March each year through 2008. This interim progress report will serve as your non-competing continuation application. A second report is due 90 days after the end of each budget period. These reports must include the following elements:

a. A succinct description of the program accomplishments and progress made in meeting each Current Budget Period Activities Objectives during the previous six months of the budget period.

b. A succinct description of the program accomplishments/narrative and progress made in meeting each Current Budget Period Activities Objectives during the previous six months of the budget period.

c. The reason(s) for not meeting established program objectives and strategies to be implemented to achieve unmet objectives.

d. Current Budget Period Financial Progress.

e. New Budget Period Proposed Activities and Objectives.

f. Detailed Line-Item Budget and Justification.

g. For all proposed contracts, provide the name of contractor, method of selection, period of performance, scope of work, and itemized budget and budget justification. If the information is not available, please indicate ''To Be Determined'' until the information becomes available; it should be submitted to CDC Procurement and Grants Management Office contact identified in this program announcement.

2. Financial status report, no more than 90 days after the end of the budget period. The financial status report should include an attachment that identifies unspent balances for each program component.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

To obtain business management and budget assistance, contact:

Glynnis Taylor, Grants Management Specialist, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2752, E-mail address: *gld1@cdc.gov.*

For business management and budget assistance in the territories, contact:

Charlotte Flitcraft, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2632, E-mail address: *caf5@cdc.gov.*

For program technical assistance, contact:

Part I

Faye Floyd, Cancer Surveillance Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention, and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, MS–K53, Atlanta, GA 30341–3717, Telephone number: (770) 488–4518, E-mail address: *ffloyd@cdc.gov.*

Part II

Ken Gerlach, Cancer Surveillance Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, MS–K53, Atlanta, GA 30341–3717, Telephone number: (770) 488–3008, E-mail address: *KGerlach@cdc.gov.*

Dated: June 3, 2003.

Sandra Manning,

Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 03–14671 Filed 6–10–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03076]

Development of a National Healthy Homes Training Center and Network; Notice of Availability of Funds

Application Deadline: July 28, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301, 311 and 317(c) of the Public Health Service Act, [42 U.S.C. sections 241, 243 NS 247B–4], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year 2003 funds for a cooperative agreement program for the development of a national healthy homes training center and network. This program addresses the ''Healthy People 2010'' focus area(s) Environmental Health, Injury and Violence Prevention, and Public Health Infrastructure.

Housing conditions have an important impact on public health. This project is designed to address the training and education needs of environmental public health managers and practitioners and housing specialists and inspectors whose work-related activities result in healthy and safe housing environments. Specifically, the purpose of the project is to develop a National Healthy Homes Training Center and Network (hereafter referred to as the Center). Note: The term ''Healthy Homes'' refers to a coordinated, comprehensive, systematic, and holistic approach to preventing disease and injury that result from environmental hazards and deficiencies related to housing.

The Center will develop a training center and network to deliver appropriate course material through formal programs, both at the Center and other locations, based on state and local needs. The Center also will develop internet-based course materials. At least one on-site pilot training program will be conducted and evaluated within the first operational year. In subsequent years, depending upon available funding, at least two training programs will be conducted on-site, and two training programs will be conducted off-site, determined by the award recipient with input from CDC.

The Center will address urban, rural, and Native American health and housing-related issues that impact public health and will complement the CDC draft Healthy Homes Training Center and Network Initiative (see Addendum II—all addendums referenced in this announcement are posted with the announcement on the CDC web site.) The Center's training programs will serve as a forum to (1) exchange information about federal, state, tribal, and local healthy homes related activities; (2) introduce new healthy homes research findings; (3) discuss program gaps and potential resources; and (4) create new opportunities for networking, collaboration, and partnerships.

Measurable outcomes of the program will be in alignment with the following performance goal of the National Center for Environmental Health (NCEH): To increase the capacity of state and local health departments and local housing authorities to deliver environmental public health services.

The program will also increase the understanding of the relationship between substandard, inadequate, or unsafe housing and health effects.

C. Eligible Applicants

Applications may be submitted by the following:

1. Academic Centers for Public Health Preparedness: A project of the Public Health Practice Program Office, CDC, that operates through the Association of Schools of Public Health (see Addendum III). These Centers are part of a national system for competency-based training for the public health work force and have an infrastructure in place to improve the competencies of the public health and housing work forces. Note: To create healthy homes, strategic partnerships must be developed with public health agencies and organizations, local housing agencies, and other appropriate disciplines. An applicant must provide evidence of collaboration with those agencies and organizations that have complementary responsibilities, and must describe how each contributes to the overall goals and objectives as described in the application.

There must be evidence of partnerships or working relationships with the following: state and/or local health departments, local housing agencies, an undergraduate college with an environmental health curriculum, and a national research and training organization with vested interest and responsibility that supports creating and maintaining healthy homes.

2. National Healthy Homes Research and Training Organizations: National, non-profit organizations with a mission that promotes through research, training, education, and outreach the protection of citizens from health and safety risks associated with inadequate, substandard, or unsafe housing conditions.

Note: To create healthy homes, strategic partnerships must be developed with public health agencies and organizations, local housing agencies, and other appropriate disciplines. An applicant must provide evidence of collaboration with those agencies and organizations that have complementary responsibilities, and must describe how each contributes to the overall goals and objectives as described in the application. There must be evidence of partnerships or working relationships with the following: state and/or local health departments, local housing agencies, and an undergraduate college with an environmental health curriculum with vested interest and responsibility that supports creating and maintaining healthy homes.

Applicants must demonstrate that the mission of the organization is committed to improving public health infrastructure and manpower development. Applications that do not include the above information will be determined as non-responsive and returned without review.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $300,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about September 15, 2003, and will be made for a 12-month initial budget period. Additional years will be for 12-month periods, within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

The recipient may use funds for the development, implementation, and operation of the National Healthy Homes Training Center and Network. This may include support for staff and materials to develop the curriculum and electronic, classroom, seminar and announcement materials; and costs related to implementing and conducting

the training programs on- and off-site, including subcontracting costs for experts to assist in developing the curriculum, course materials, and conduct the training.

Recipient Financial Participation

Matching funds are not required.

E. Program Requirements

In conducting activities to achieve the purpose of this project, the recipient will be responsible for the activities listed in 1. Recipient Activities. CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities:

a. Organize an eight to ten-member Healthy Homes Training Work Group, with input and approval from CDC and HUD, of environmental public health and housing experts to advise the award recipient on matters related to the development of the curriculum and course materials.

b. Develop the National Healthy Homes Training Center and Network, including a curriculum that includes a variety of course and seminar materials that can be presented on- and off-site.

Note: The curriculum and all course materials will be submitted to CDC for review and approval. Courses, seminars, and related materials will focus on the concept of healthy homes, methods of inspection and approaches to remediation, evaluation, and resource identification to create healthy and safe homes.

c. Conduct at least one training session within the first year of operation, limited to 15 enrollees.

d. Evaluate the activities, process, and outcome of the Healthy Homes Training Center and Network. The evaluation will include an analysis of the curriculum, and participant assessments.

2. CDC Activities:

a. Serve as technical consultants to the Healthy Homes Training Work Group that provides recommendations to the award recipient on matters related to the development of the curriculum and course materials. This includes ongoing consultation with appropriate recipient staff and other experts.

b. Review and approve the curriculum and course materials, and participate with the recipient and others in conducting courses. This includes identification of presenters, selection of the pilot training site and future training sites, and onsite participation of selected CDC experts in all workshops.

c. Participate with the award recipient in the selection of the pilot-training site and assist the award recipient in the evaluation of the pilot training program.

d. Assist the recipient in an analysis of the curriculum, the evaluation of courses, and participant assessments. This will include review and approval of evaluation materials.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed so it is important to follow them in laying out your program plan.

The narrative should be no more than 20 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Appendices should not exceed 30 pages, and curriculum vitae summaries are acceptable.

The narrative should consist of a Statement of Need and Plan; Collaboration and Partnerships; Personnel and Technical Experts; Objectives and Methods; Timeline; Evaluation; and Budget. The Timeline should address activities to be conducted over the entire three-year project period.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of the application PHS 5161–1 (OMB Number 0920–0428. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, July 28, 2003. Submit the application to: Technical Information Management—PA#03076, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Statement of Need and Plan (20 points)

a. The extent to which the applicant understands the need, requirements, problems, and complexities of this healthy homes work force training project, and the need to increase the capacity and performance of the environmental public health and housing work forces.

b. The adequacy of the operational plan to develop and implement the National Healthy Homes Training Center and Network, including the curriculum, course materials, and to conduct two pilot training programs.

2. Collaboration and Partnership (20 points)

The extent to which the applicant demonstrates their ability to collaborate on this project with other agencies, organizations, and academic institutions that have a vested interest and responsibility that supports creating and

maintaining healthy homes. Strategic partners will include national advocacy organizations, public health agencies and organizations, local housing agencies, and other disciplines. Letters of support from these collaborating agencies and organizations must include detailed information on the level of commitment and support they will provide to the project in terms of personnel and other resources.

3. Personnel and Technical Expertise (20 points)

The extent to which the applicant describes the qualifications of the staff and subcontractors to successfully accomplish the project goals, objectives and activities, including development and implementation of the National Healthy Homes Training Center and Network, development of the curriculum and course-related materials, conducting one pilot training program, and the evaluation plan.

4. Objectives and Activities (20 points)

The extent to which the proposed objectives and their activities are clearly stated, realistic, time-phased, and related to the goals of the project.

5. Timeline (10 points)

The extent to which the applicant presents a concise and realistic timeline for the entire project period to accomplish the goals, objectives and activities to develop, implement, and operate the National Healthy Homes Training Center and Network.

6. Evaluation Plan (10 points)

The extent to which the applicant presents a quality evaluation plan for the various initiatives of the project.

7. Budget (Not scored)

The extent to which the applicant provides justification for budget expenditures as well as their appropriateness to activities proposed in the project. The applicant should include costs for one person to travel to Atlanta, GA (three-overnight stays) to attend the 6th National Environmental Health Conference, December 3–5, 2003.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of—

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program:

AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

Executive Order 12372 does not apply to this program.

For a complete description of each additional requirement, see Addendum I of the program announcement as posted on the CDC web site.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov.*

Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Ms. Mildred Garner, Grants Management Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: (770) 488–2745. E-mail address: *Mgarner@cdc.gov.*

For program technical assistance, contact: Mr. Jerry Hershovitz, Associate Director for Program Management, Division of Emergency and Environmental Health Services, Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop F30, Atlanta, GA 30341–3724, (770) 488–4542, E-mail address: *jmh@cdc.gov.*

Dated: June 3, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14667 Filed 6–10–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0053]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Interstate Shellfish Dealers Certificate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by July 11, 2003.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yakota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Interstate Shellfish Dealers Certificate (OMB Control Number 0910–0021)—Extension

Under 42 U.S.C. 243, FDA is required to cooperate with, and aid, State and local authorities in the enforcement of their health regulations and is authorized to assist States in the prevention and suppression of communicable diseases. Under this

authority, FDA participates with State regulatory agencies, some foreign nations, and the molluscan shellfish industry in the National Shellfish Sanitation Program (NSSP).

The NSSP is a voluntary, cooperative program to promote the safety of molluscan shellfish by providing for the classification and patrol of shellfish growing waters and for the inspection and certification of shellfish processors. Each participating State and foreign nation monitors its molluscan shellfish processors and issues certificates for those that meet the State or foreign shellfish control authority's criteria. Each participating State and nation provides a certificate of its certified shellfish processors to FDA on Form FDA 3038 entitled ''Interstate Shellfish Dealer's Certificate.'' FDA uses this information to publish the ''Interstate Certified Shellfish Shippers List,'' a monthly comprehensive listing of all molluscan shellfish processors certified under the cooperative program. If FDA did not collect the information necessary to compile this list, participating States would not be able to identify and keep out shellfish processed by uncertified processors in other States and foreign nations. Consequently, the NSSP would not be able to control the distribution of uncertified, and possibly unsafe, shellfish in interstate commerce, and its effectiveness would be nullified.

In the **Federal Register** of March 6, 2003 (68 FR 10730), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3038	34	62	2,108	.10	211

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the numbers of certificates received in the past 3 years.

Dated: June 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14622 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0383]

Agency Information Collection Activities; Announcement of OMB Approval; Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 7, 2003 (68 FR 11117), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0012. The approval expires on May 31, 2004.

Dated: June 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14623 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 02P–0391 and 02P–0404]

Determination That Brimonidine Tartrate Ophthalmic Solution 0.2% Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that Alphagan 0.2% (brimonidine tartrate ophthalmic solution) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for brimonidine tartrate ophthalmic solution 0.2%.

FOR FURTHER INFORMATION CONTACT: Aileen H. Ciampa, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was

withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

Alphagan 0.2% (brimonidine tartrate ophthalmic solution) is the subject of NDA 20–613, held by Allergan, Inc. (Allergan). Alphagan 0.2% is administered as an eye drop to lower intraocular pressure in patients with open-angle glaucoma or ocular hypertension. FDA approved NDA 20–613 on September 6, 1996. In a letter dated August 20, 2002, Allergan informed FDA that it was withdrawing Alphagan 0.2% from the market. In a letter dated September 6, 2002, Allergan clarified that it was not requesting that approval be withdrawn for NDA 20–613, nor was Alphagan 0.2% being recalled from the market. Instead, Allergan explained that it was in the process of discontinuing distribution of Alphagan 0.2%. Following receipt of Allergan's letters, the agency moved Alphagan 0.2% from the ''Prescription Drug Product List'' section to the ''Discontinued Drug Product List'' section of the Orange Book.

In citizen petitions submitted under 21 CFR 10.30 and dated August 27, 2002 (Docket No. 02P–0404/CP1), and August 30, 2002 (Docket No. 02P–0391/CP1), respectively, Alcon, Inc. (Alcon), and IVAX Pharmaceuticals, Inc. (IVAX), requested that the agency determine whether brimonidine tartrate ophthalmic solution 0.2% was withdrawn from sale for reasons of safety or effectiveness. On October 28, 2002, Allergan submitted a citizen petition (Docket No. 02P–0469/CP1) opposing the granting of Alcon's and IVAX's petitions. Comments were submitted in response to Allergan's petition on November 13, 2002, and December 5, 2002, by Alcon and Bausch & Lomb, Inc. (Bausch & Lomb), respectively. Allergan responded to the comments on January 23, 2003. Bausch & Lomb submitted additional comments on February 10, 2003, and Allergan responded on March 18, 2003.

FDA has considered the information contained in the citizen petitions, comments, and agency records and has determined that Alphagan 0.2% was not withdrawn from sale for reasons of safety or effectiveness. There are several grounds for FDA's finding. First, Alphagan 0.2% has a safety and effectiveness profile that is comparable to that of Alphagan P (brimonidine tartrate ophthalmic solution 0.15%), the subject of NDA 21–262 approved March 16, 2001, for the same indication as Alphagan 0.2%. Approval of Alphagan P was based, in part, on references to the safety and efficacy of Alphagan 0.2% and the products' comparability as demonstrated in head-to-head studies. Second, FDA has independently evaluated relevant literature and data for possible postmarketing adverse event reports regarding brimonidine tartrate ophthalmic solutions, but has found no information that would indicate that Alphagan 0.2% was withdrawn for reasons of safety or effectiveness.

After considering the information contained in the citizen petitions, comments, and agency records, FDA determines that, for the reasons outlined above, brimonidine tartrate ophthalmic solution 0.2% approved under NDA 20–613 was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list Alphagan 0.2% (brimonidine tartrate ophthalmic solution) in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to Alphagan 0.2% (brimonidine tartrate ophthalmic solution) may be approved by the agency.

Dated: June 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14680 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Chiropractor and Pharmacist Loan Repayment Demonstration Project

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications from qualified chiropractors and pharmacists who agree to serve underserved populations in Primary Care Health Professional Shortage Areas (HPSAs) throughout the Nation will be accepted by the National Health Service Corps (NHSC) for loan repayment awards. A two-year service commitment is required. There is no guarantee that participants in this demonstration project will have an opportunity to continue their service and loan repayments beyond the initial two-year service period. Chiropractors and pharmacists, with qualifying educational loans, must serve at organized primary health care sites in Primary Care HPSAs that have another NHSC clinician on staff who will be concurrently fulfilling an NHSC service commitment through the scholarship or loan repayment program and who is licensed to prescribe medications.

This demonstration project will include an evaluation component to determine whether adding chiropractors and pharmacists as permanent NHSC members would enhance the effectiveness of the NHSC. A maximum of 36 individuals will be awarded loan repayment contracts under this demonstration project.

Purpose: Eligible chiropractors and pharmacists will participate in the Loan Repayment Demonstration Project to determine whether their services will enhance the effectiveness of the NHSC.

Legislative Authority: These applications are solicited under section 338L of the Public Health Service (PHS) Act, as amended by Pub. L. 107–251.

Eligible Applicants: Eligible applicants must (1) be citizens or nationals of the United States, (2) possess a current unrestricted license to practice as a chiropractor or pharmacist in the State in which they intend to practice, (3) be negotiating or have secured employment at an eligible community site, and (4) meet the additional eligibility requirements outlined in the application materials. Chiropractors must also have a doctor of chiropractic degree from a four-year chiropractic college that is currently fully accredited by the Commission on Accreditation of the Council on Chiropractic Education, and successfully passed the entire examination by the National Board of Chiropractic Examiners. Pharmacists must also have a baccalaureate or doctor of pharmacy degree from a school that is currently fully accredited by the American Council on Pharmaceutical Education.

Funding Priorities or Preferences: Priority will be given to (A) applicants who have characteristics that increase the probability of their continuing to practice in HPSAs after they have completed service, and (B) subject to paragraph (A), applicants from disadvantaged backgrounds. A funding preference will also be given to applicants serving Primary Care HPSAs

of greatest shortage (based on the HPSA scores).

Statutory Matching or Cost Sharing Requirement: None.

Review Criteria: Loan repayment applications will be evaluated to determine: (1) The eligibility of the applicant, and (2) the applicant's priority for funding.

Estimated Amount of this Competition: $3,000,000.

Estimated Number of Awards: 36.

Estimated or Average Size of Each Award: $75,000.

Estimated Project Period: 2 years.

Application Requests, Availability, Dates and Addresses: Application materials are available for downloading via the web at *http://nhsc.bhpr.hrsa.gov.* Applicants may also request a hard copy of the application materials by contacting the National Health Service Corps at 1–800–221–9393. All applications must be submitted in hard copy format. Only the original signed copy of the application is required for submission. In order to be considered for an award, applications from chiropractors and pharmacists must be postmarked, or delivered to the HRSA National Health Service Corps, by no later than July 11, 2003. Completed applications must be mailed or delivered to: Division of National Health Service Corps, NHSC Loan Repayment Program, c/o I.Q. Solutions, 11300 Rockville Pike, Suite 801, Rockville, MD, 20852. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications postmarked or submitted after the deadline date, or sent to any other address other than that above, will be returned to the applicant and not processed. NHSC will acknowledge receipt of the application if the applicant chooses to complete the notification postcard that is included in the application materials.

Application Availability Date: June 11, 2003.

Application Deadline: July 11, 2003.

Projected Award Date: September 30, 2003.

FOR FURTHER INFORMATION CONTACT: NHSC Loan Repayment Program, 12312–A Wilkins Avenue, Rockville, Maryland, 20852. Telephone: 1–800–221–9393. E-mail: *NHSC@hrsa.gov.*

Paperwork Reduction Act: The application for the Chiropractor and Pharmacist Loan Repayment Demonstration Project has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0127. Should the evaluation component involve data collection activities that fall under the purview of the Paperwork Reduction Act, OMB clearance will be sought.

The program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 22, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–14681 Filed 6–10–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Porcupine Clinic

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: The Indian Health Service (IHS) announces the Grant Award to the Porcupine Clinic for start up cost in reopening the Porcupine Dialysis Center for the dialysis patients who had utilized this center. Those dialysis patients have had to travel a long distance to make their appointments two to three times a week. The award is issued under the authority of the Indian Health Care Improvement Act, Section 1621(c), and is included under the Catalog of Federal Domestic Assistance number 93.933. The specific objectives of the project are:

1. To be used to prolong the lives of dialysis patients.

2. To provide culturally-based care for the Lakota people; and,

3. To ameliorate conditions resulting from lack of transportation, insufficient funding, and extreme social problems on the Pine Ridge Indian Reservation.

DATES: The Non-Competitive Emergency Grant is from 06/01/2003 to 5/31/2004 with a one time funding of $75,000.

FOR FURTHER INFORMATION CONTACT: For further information for program information, contact Paul Iron Cloud, Porcupine Clinic Executive Director, PO Box 275, Porcupine, South Dakota 57772, telephone (605) 867–5665 or Bruce Williams, Directors, Porcupine Clinic Dialysis Center, telephone (605) 867–6111. For grants information, contact Sylvia Ryan, Grants Management Specialist, Division of Acquisitions and Grants Management Branch, 801 Thompson Avenue, Rockville, Maryland 20852, telephone (301) 443–5204.

SUPPLEMENTARY INFORMATION: This project has been awarded on a non-competitive single source basis. Porcupine Dialysis Center is the only organization that represents approximately 23 dialysis patients who are treated two to three times a week. This dialysis center provides care to Native American people who live on the Pine Ridge and Rosebud reservations or who live in non-reservation areas with significant Native American populations. The population served by these programs is the same as IHS's user population.

The Grant Award has been awarded because of the need for dialysis and to present the need for dialysis renal failure. This grant is for one time funding of $75,000.

Dated: May 30, 2003.

Michel E. Lincoln,

Deputy Director.

[FR Doc. 03–14688 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: May 2003

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of May 2003, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ABBAS, SYED MOHAMMAD ... JAMAICA, NY	06/19/2003
ACOSTA, ARACELIS C ..... MIAMI, FL	06/19/2003
ALEXANDER, GWENDOLYN .. CHICAGO, IL	06/19/2003
ALVAREZ, PAULA V ..... MIAMI, FL	06/19/2003
ALVAREZ, JUAN U ..... MIAMI, FL	06/19/2003
AVERILL, JERRY ..... MARION, IL	06/19/2003
BRAACK, FORREST H ..... ROCHESTER, MN	06/19/2003
BULLOCK, JOHN III ..... ST LOUIS, MO	06/19/2003
BURGESS, KATHERINE COOK ..... GILBERT, SC	06/19/2003
CADSAWAN, IRENEO ..... WESTLAKE, OH	06/19/2003
CAMACHO, AUBREY A ..... FORSYTH, GA	06/19/2003
CANNADY, DORIS ..... FLORISSANT, MO	06/19/2003
CARADINE, LAVAUGHN ..... ERRE HAUTE, IN	06/19/2003
CASTALLANO, TOMETA ..... ROCHESTER, NY	06/19/2003
CHAVEZ, ESPERANZA ..... MIAMI, FL	06/19/2003
COHEN, TEDDY ALAN ..... LAS VEGAS, NV	06/19/2003
COHEN, ALAN STUART ..... WILLIAM ISLAND, FL	06/19/2003
COJOE, VAUCHEL KIM ..... NEW ORLEANS, LA	06/19/2003
CORIATY, EHAB ..... WHITE DEER, PA	06/19/2003
COURTNEY, ROBERT RAY .... GREENVILLE, IL	06/19/2003
COURTNEY PHARMACY, INC GREENVILLE, IL	06/19/2003
CPM CORPORATION ..... COLUMBIA, MD	06/19/2003
CUNNINGHAM, DEAN SCOTT LEWISBURG, PA	06/19/2003
DACOSTA, JANICE MARIA ..... OPA LOCKA, FL	06/19/2003
DAVIS, JAMES M ..... N MIAMI, FL	06/19/2003
DAVTYAN, ANDRANIK ..... GLENDALE, CA	06/19/2003
DENMAN, STEPHANIE ROSE NEWTON, IA	06/19/2003
DILAKYAN, GEGANUSH ..... SUN VALLEY, CA	06/19/2003
DIRECTO, JON EDWIN ..... LOS ANGELES, CA	06/19/2003
ETO, CARLTON ..... KANEOHE, HI	06/19/2003
FARRAR, FREDERICK R ..... MESA, AZ	06/19/2003
FRIEDMAN, MICHAEL ALLEN BROKEN ARROW, OK	06/19/2003
GIL, FREDRICK G ..... GARDEN GROVES, CA	06/19/2003
GOFF, GERALD ARTHUR ..... COLUMBIA, SC	06/19/2003
GOLI, RAJITHA ..... PEKIN, IL	06/19/2003
GREEN, JAMES W ..... LOUISVILLE, KY	06/19/2003
HALL, GEORGANN B ..... LEWIS CENTER, OH	06/19/2003
HAVERTY, CONSTANCE MAUREEN ..... PORTLAND, OR	06/19/2003
HENEGAR, DIANE ..... CINCINNATI, OH	06/19/2003
HOLMES, KEISHA C ..... WASHINGTON, DC	06/19/2003
HORAN, KIMBERLY KAY ..... MCALESTER, OK	06/19/2003
HUNTEMAN, DENISE MEREDITH ..... GREELEY, CO	06/19/2003
HUSKINSON, KENNETH D ..... BURLEY, ID	06/19/2003
IACONO, CANELA ..... HIALEAH, FL	06/19/2003
JOHNSON, SANDRA MARIE .. GRAND MEADOW, MN	06/19/2003
KALFUS, DENIS HERBERT .... WASHINGTON TWNSHP, NJ	06/19/2003
L & Z CORPORATION ..... W ORANGE, NJ	06/19/2003
LOPEZ, ADOLFO J ..... MIAMI, FL	06/19/2003
M & G LIVERY & TRANSPORTATION ..... W ORANGE, NJ	06/19/2003
MAKKI, MUSTAFA O ..... BUTNER, NC	06/19/2003
MELCHIOR, STACY LYNN ..... ARVADA, CO	06/19/2003
MURRAY, HARRY LYNN ..... LONG BEACH, CA	06/19/2003
NGANDJUI, ANTOINE ..... MINERSVILLE, PA	06/19/2003
O'BRIEN, PAUL EUGENE ..... FORT LAUDERDALE, FL	06/19/2003
OSTAD, MOSHE ..... ROSLYN, NY	06/19/2003
PARK, DAVID MIN ..... TAFT, CA	06/19/2003
PARSONS, JAMES THEODORE ..... BEAUMONT, TX	06/19/2003
PINTADO-GARCIA, IGNACIO EGLIN AFB, FL	06/19/2003
PINTADO-GARCIA, ISIDORO YAUCO, PR	06/19/2003
POWERS, ERIC JAMES ..... LA BELLE, FL	06/19/2003
PROVO, BENJAMIN EARL ..... DELANO, CA	06/19/2003
RANDOLPH, RICHARD A ..... MIDDLETOWN, NY	06/19/2003
RANKIN, RAYNELL ..... NEW ORLEANS, LA	06/19/2003
RENFRO, AUGUSTUS LAWSON JR ..... CANON CITY, CO	06/19/2003
RICE, LISA KAY ..... WILLS POINT, TX	06/19/2003
ROACH, KENDRA A ..... CARNESVILLE, GA	06/19/2003
ROFFMAN, JAY RONNIE ..... ORLANDO, FL	06/19/2003
SARAOS, NESTOR W ..... LOS ANGELES, CA	06/19/2003
SCEARCE, ROSANNA ELAINE LIVINGSTON, TX	06/19/2003
SOIL, VALERIE DENISE ..... KANSAS CITY, MO	06/19/2003
SPARKS, VIRGINIA DELORES KINGMAN, AZ	06/19/2003
SPINELLA, JOSEPH A ..... VENICE, FL	06/19/2003
SREENIVASAN-GEIBEL, SHEILA ..... BOISE, ID	06/19/2003
STRANGE, JONATHAN R ..... EASLEY, SC	06/19/2003
SVERDLOV, GREGORY ..... LEESBURG, NJ	06/19/2003
TAHA, MOHAMED A ..... GOLDSBORO, NC	06/19/2003
TAYLOR, TENISHA MARIE ..... INGLEWOOD, CA	06/19/2003
TAYLOR, LOIS ANN ..... DENVER, CO	06/19/2003
TERSAKYAN, KHACHATUR ... TAFT, CA	06/19/2003
THOMPSON, ADRIANNE YVONNE ..... KNOXVILLE, TN	06/19/2003
TOROSYAN, ANAIT ..... N HOLLYWOOD, CA	06/19/2003
TURTURO, FRANK JAMES ..... MIAMI, FL	06/19/2003
ULIBARRI, NANCY ..... ELLENSBURG, WA	06/19/2003
VANDERGRIFF, DAVID VON .. SURFSIDE BEACH, SC	06/19/2003
WHELDEN, TIFFANI ANN ..... COMSTOCK, NY	06/19/2003
WILEY, NELSON PAUL ..... PHILADELPHIA, PA	06/19/2003
WOOTEN, WAYNE MAXSON COLUMBIA, SC	06/19/2003
WRIGHT, RAYMOND ..... BEDFORD, OH	06/19/2003
YATROFSKY, STEVEN D ..... SANTA ANA, CA	06/19/2003
FELONY CONVICTION FOR HEALTH CARE FRAUD	
ACOSTA, CHRISTINA MARIA PEORIA, AZ	06/19/2003
ADAMS, JAIME LEE ..... CAPE MAY CT HOUSE, NJ	06/19/2003
ANSELMO, CHARLES ..... PORT NEECHES, TX	06/19/2003
BULL-CHAMBLISS, JEWELLE ST PETERSBURG, FL	06/19/2003
CASE, LISA MORRIS ..... FULTONDALE, AL	06/19/2003
CATES, KILAH PETTY ..... HAYDEN, AL	06/19/2003
CAVARETTA, KAREN ..... PITTSBURGH, PA	06/19/2003
CLOUGH, CHRISTINE A ..... N OLMSTED, OH	06/19/2003
DOONAN, GREGG C ..... MIDDLETON, MA	06/19/2003
GARRITY, ROBERT J ..... LAKEWOOD, OH	06/19/2003
GLADIEUX, MICHAEL SCOTT PERRYSBURG, OH	06/19/2003
HANEY, KANDY K ..... GREAT BEND, KS	06/19/2003
HIGGINS, MAUREEN TERESA MARBLEHEAD, MA	06/19/2003
HOWARD, JENNIFER CATHERINE	06/19/2003

Subject, city, state	Effective date
TUCSON, AZ	
JOHNSON, KIMBERLY R PURVIS ..... LEXINGTON, KY	06/19/2003
MEEHAN, JOHN MICHAEL ..... HAMILTON, OH	06/19/2003
MIDLICK, MICHELE M ..... COLUMBUS, OH	06/19/2003
MORRISON, KELLY J ..... MESA, AZ	06/19/2003
OLLIER, JO ANN ..... UNION, KY	06/19/2003
PEARSON, KIMBERLY ANN ... WAUKON, IA	06/19/2003
RUIZ, CHRISTINA PALOMINO TUCSON, AZ	06/19/2003
SALVATI, PETER A ..... BREWSTER, MA	06/19/2003
SAVRAN, STEVEN H ..... LAGUNA NIGUEL, CA	06/19/2003
UHRINEK, JOSEPH M ..... ENOLA, PA	06/19/2003
VERIZZO, ARLENE E ..... SARASOTA, FL	06/19/2003
WAXLER, RICHARD M ..... COLUMBIA, MD	06/19/2003
FELONY CONTROL SUBSTANCE CONVICTION	
ALEXANDER, MARY JO ..... BIRMINGHAM, AL	06/19/2003
BROOKS, STEPHANIE ANN ... CHESAPEAKE, VA	06/19/2003
CAUGHEY, MICHAEL ..... VIRGINIA BEACH, VA	06/19/2003
CAZORLA, JUAN MIGUEL ..... SAN DIEGO, CA	06/19/2003
COUP, KELLI ..... NORTH PORT, FL	06/19/2003
DORFMAN, ALVIN ..... CINCINNATI, OH	06/19/2003
EFFENBERGER, BOBBIE JEAN ..... DENVER, CO	06/19/2003
FLEMING, JAMES E ..... BRATENAHL, OH	06/19/2003
FONDREN, FRANK BURKETT SILVERHILL, AL	06/19/2003
GILL, ALYSON R ..... LAUREL SPRINGS, NJ	06/19/2003
JOHNSON, JERRY LEE ..... FLORENCE, AZ	06/19/2003
JONES, STEVEN DANIEL ..... YUCCA VALLEY, CA	06/19/2003
JOSEY, WILLIE L ..... PORTSMOUTH, OH	06/19/2003
LAFORGE, JOYCE ..... CROW AGENCY, MT	06/19/2003
MORELOS, LISA A ..... TOMS RIVER, NJ	06/19/2003
MORTON, DIANNE MARIE ..... LOGAN, OH	06/19/2003
O'BRIEN, MICHAEL J ..... STEUBENVILLE, OH	06/19/2003
ROSENBERG, LEONARD ..... WINTHROP, MA	06/19/2003
STANDRIDGE, DARLENE ..... VENICE, FL	06/19/2003
THOMPSON, DEBORAH A ..... CAMDEN, NJ	06/19/2003
TOBACK, BARRY ..... EDGEWATER, NJ	06/19/2003
TRIFTSHAUSER, CLARK G .... ALBION, NY	06/19/2003
VANCE, TERESA WALLACE .. REMLAP, AL	06/19/2003
WILLSON, CHARLES R ..... BERLIN CENTER, OH	06/19/2003
WINTERHALTER, VICTORIA L CINCINNATI, OH	06/19/2003
WOOD, LIBBY M ..... BIRMINGHAM, AL	06/19/2003
PATIENT ABUSE/NEGLECT CONVICTIONS	
AMOAH, FAUSTINA ..... COLUMBUS, OH	06/19/2003
BOGDANOFF, BRUCE M ..... WALLINGFORD, PA	06/19/2003
CHEN, WEI TANG ..... BUCKLEY, WA	06/19/2003
DELGADO, EDWIN ANTONIO CALIPATRIA, CA	06/19/2003
DUNN, CHARLES E ..... REDGRANITE, WI	06/19/2003
DUNNING, ELIZABETH K ..... HENDERSONVILLE, NC	06/19/2003
FREEDLANDER, DEAN GARY SAN FRANCISCO, CA	06/19/2003
FREEMAN, KATHRYN R ..... ELGIN, OK	06/19/2003
GRUBB, TRAVIS ESTEN ..... MORENO VALLEY, CA	06/19/2003
HAYES, KINTA MARIE ..... TOPEKA, KS	06/19/2003
HURT, JAMES HOLLIS JR ..... STRINGTOWN, OK	06/19/2003
KAHORO, JANE W ..... CLAYMONT, DE	06/19/2003
LEONARD, DANIEL L ..... WARREN, ME	06/19/2003
MCGOOKIN, ROGER BRIAN .. FOUNTAIN VALLEY, CA	06/19/2003
MOSELEY, APRIL DAWN ..... ARVADA, CO	06/19/2003
MYERS, MARIE ..... DENMARK, SC	06/19/2003
SANCHEZ, EDUARDO A ..... FLUSHING, NY	06/19/2003
SCHAUERHAMER, ROBERT ALLAN ..... MINNEAPOLIS, MN	06/19/2003
SMITH, TONEY O'NEAL ..... TUCSON, AZ	06/19/2003
THOMAS, JULIANA PIERRETTE ..... ORLANDO, FL	06/19/2003
THOMPSON, JACQUELINE .... CINCINNATI, OH	06/19/2003
WILTURNER, DAVID WAYNE NEW IBERIA, LA	06/19/2003
CONVICTION FOR HEALTH CARE FRAUD	
HENDERSON, TWILA D ..... TANGENT, OR	06/19/2003
JACOBS, DANIEL K ..... BLOOMFIELD, MI	06/19/2003
CONVICTION-OBSTRUCTION OF AN INVESTIGATION	
RENCHER, TAMLA. IDAHO FALLS, ID	
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ACOSTA, WENDY JEANNE .... IDAHO FALLS, ID	06/19/2003
ALFONE, SHEILA ANNE ..... PLYMOUTH, MA	06/19/2003
BAILEY, JANE ANN ..... FORT WAYNE, IN	06/19/2003
BARDOLPH, THOMAS RICH-ARD ..... RANCHO PALOS VERDES, CA	06/19/2003
BARLOW, LILLY N ..... PHOENIX, AZ	06/19/2003
BARTIS, SAMANTHA ..... HOLLIS, NH	06/19/2003
BERNAS, PATRICIA ..... CHESTER, VA	06/19/2003
BOXWELL, DAVID WARREN .. COLCHESTER, CT	06/19/2003
BRACCIA, JOSEPH L ..... REVERE, MA	06/19/2003
BROWN, HARRY LEON JR ..... PHOENIX, AZ	06/19/2003
BRUNS, MONTE TODD ..... PRIOR LAKE, MN	06/19/2003
BRYANT, KIMBERLY ANN ..... ALTUS, OK	06/19/2003
BUDNICHUK, ALFRED D ..... BEL AIR, MD	06/19/2003
BURKE, KAREN M ..... HOLBROOK, MA	06/19/2003
BUSER, KAREN JANE ..... MELBOURNE, FL	06/19/2003
CALLAN, BRENT LEE ..... HINTON, OK	06/19/2003
CALNAN, JEROME PETER ..... GLENDORA, CA	06/19/2003
CALVELO, ARSENIO C JR ..... HOUSTON, TX	06/19/2003
CASSELLI, MARIA GINA ..... MILFORD, CT	06/19/2003
CHAUDHARI, DASHRATH D ... CLEVELAND, TN	06/19/2003
CHINETTI, STEPHEN E ..... SALEM, NH	06/19/2003
CLAIRE, MICHELE RENA ..... CARTHAGE, TN	06/19/2003
CLARK, MELISSA WILDER ..... KEOKEE, VA	06/19/2003
CLARK, RENEE CATHERINE ROCHESTER HILLS, MI	06/19/2003
CLAUSEN, CHRISTOPH K ..... TUCSON, AZ	06/19/2003
CLEMENT, RICHARD JOSEPH LAKE CHARLES, LA	06/19/2003
COCKRELL, DELLA FRANCES LAMESA, TX	06/19/2003
COHEN, ADRIAN M ..... SILVER SPRING, MD	06/19/2003
CONLEY, DAVID JOSEPH ..... NORMAN, OK	06/19/2003
COPELAND, DEBORAH SWINNEY ..... CHARLOTTE, NC	06/19/2003
COPPEDGE, GEORGETTE E COVINA, CA	06/19/2003
COX, ALICIA ..... TEMPE, AZ	06/19/2003
CRAFT, BRIDGETT JANE	06/19/2003

Subject, city, state	Effective date
OXFORD, AL	
CRANE, KRISTIN ALEXANDRA ..... PHOENIX, AZ	06/19/2003
CRIDDLE NISSON, DEENA MARIE ..... DOWNEY, ID	06/19/2003
CROUCH, DONNA L ..... WASHINGTON, DC	06/19/2003
CURTISS, JAMES RICHARD .. MOBILE, AL	06/19/2003
DAVIDSON, DANIEL GLEN ..... MALVERN, IA	06/19/2003
DAVIDSON, SUSAN M ..... HOUMA, LA	06/19/2003
DEGRAZIA, JANETTE ANN .... POWAY, CA	06/19/2003
DEROQUE, JENNIFER BETH WALNUT CREEK, CA	06/19/2003
DILLINGHAM, DALE EDWARD O'FALLON, MO	06/19/2003
DOBBS, COLLEEN AGNES .... DUNCANVILLE, TX	06/19/2003
DUVERNE, JEAN M ..... FT MYERS, FL	06/19/2003
ECHELBERGER, MARY A ..... RICHMOND, VA	06/19/2003
EDWARDS, THOMAS A ..... FT PIERCE, FL	06/19/2003
ENGLISH, LORRIE ELIZABETH ..... THORNTON, CO	06/19/2003
ERICKSON, BETH M ..... EDINA, MN	06/19/2003
ESIGBONE, FREEBORN M ..... LEWISVILLE, TX	06/19/2003
EVANS, MARK WILLIAM ..... INDIANAPOLIS, IN	06/19/2003
EZIUKWU, CALLISTUS M ..... POWDER SPRINGS, GA	06/19/2003
FAPPIANO, DEBORAH D ..... PORT CHARLOTTE, FL	06/19/2003
FELLS, DEBORAH JEAN ..... PRATTVILLE, AL	06/19/2003
FISHER, GAIL WELCH ..... MORRIS, CT	06/19/2003
FLEET, RICHARD CHRISTOPHER ..... DAVIE, FL	06/19/2003
FORD, LANE J ..... VIRGINIA BEACH, VA	06/19/2003
FREEBURN, AGNES KATE ..... TUCSON, AZ	06/19/2003
FRIEND, CHARLES W ..... PENNSAUKEN, NJ	06/19/2003
GALLAGHER, KEITH J ..... PHOENIX, AZ	06/19/2003
GIPSON, DAPHENEY ..... DENVER, CO	06/19/2003
GLADNEY, SAMUEL LANGHORNE ..... SAGINAW, TX	06/19/2003
GOFORTH, LAMONT R ..... PUEBLO, CO	06/19/2003
GORDEN, CHRISTINE M ..... STUARTS DRAFT, VA	06/19/2003
HACKBERT, WILLIAM JAMES SAN DIEGO, CA	06/19/2003
HALL, LINDA MAE ..... LOS ANGELES, CA	06/19/2003
HANSEN, KAREN JEAN ..... PEACE VALLEY, MO	06/19/2003
HANSHAW, EARL RAY	06/19/2003
COCOA BEACH, FL	
HARPER, JENNIFER R ..... WOODBURY, NJ	06/19/2003
HARVEY, BERTHA BOWEN ... NEW BERN, NC	06/19/2003
HASLAM, CINDY R ..... JOHNSTON, IA	06/19/2003
HASSELMAN, BRIAN T ..... ST MARY'S, PA	06/19/2003
HAYNES, CHRIS E ..... TUCSON, AZ	06/19/2003
HAYS, MARY ELIZABETH ..... DECATUR, AL	06/19/2003
HEILBRUNN, HOWARD I ..... SAN DIEGO, CA	06/19/2003
HERNANDEZ, GRACIELA DE LA GARZ ..... CALEXICO, CA	06/19/2003
HICKS, RICKY ..... HACIENDA HGTS, CA	06/19/2003
HILDENSTEIN, ROBERT JOHN ..... WOOD RIVER, IL	06/19/2003
HOPPE, JACK C ..... EYOTA, MN	06/19/2003
HOWELL, ZENITH Z ..... LOMA LINDA, CA	06/19/2003
HUETT, KATHERINE ELIZABETH ..... BIRMINGHAM, AL	06/19/2003
HUNT, LORRAINE TANGELLA BOLIGEE, AL	06/19/2003
ICO, LELITA ORIA ..... REDLANDS, CA	06/19/2003
JOBE, JILL ALLISON JETER .. LITTLE ROCK, AR	06/19/2003
JOHNSON, MICHELLE ..... SAN BERNARDINO, CA	06/19/2003
JOHNSON, BRIAN ..... PHOENIX, AZ	06/19/2003
JONES, MILES JAMES ALFRED JR ..... LEE'S SUMMIT, MO	06/19/2003
KARETA, SUSAN MARY ..... WESTFIELD, MA	06/19/2003
KENDALL, TONY M ..... HANOVER, VA	06/19/2003
KENT, ELIZABETH ..... W PALM BEACH, FL	06/19/2003
KIRDY, ANGELA ..... PORT CHARLOTTE, FL	06/19/2003
KOTSCH, SIMONE PAMELA ... HUNTINGTON BCH, CA	06/19/2003
LAMPKIN, MARILYN ..... PINE BLUFF, AR	06/19/2003
LAUTENSCHLAGER, ANDREA MESA, AZ	06/19/2003
LEE, DEBBIE J ..... SAHUARITA, AZ	06/19/2003
LEISSOO, VIRGINIA M ..... DENVER, CO	06/19/2003
LEMIEUX, DAVID GERARO .... TORRINGTON, CT	06/19/2003
LEPKOWSKI, PHYLLIS R ..... PHOENIX, AZ	06/19/2003
LEWIS, PAMELA G ..... PHOENIX, AZ	06/19/2003
LOPEZ, EDWARD J ..... SAN DIEGO, CA	06/19/2003
LUKE, MARY R ..... WILLCOX, AZ	06/19/2003
LUSMAN, JULES M ..... LOS ANGELES, CA	06/19/2003
LYONS, JULIE LYNNE	06/19/2003
HESPERIA, CA	
MACIAK, CYNTHIA A ..... ST LOUIS, MO	06/19/2003
MADDEN, BERNADETTE ANN HERRIN, IL	06/19/2003
MAHAN, RONALD GENE ..... MESA, AZ	06/19/2003
MARASCO, KAYE L ..... INDIANOLA, IA	06/19/2003
MARTIN, RUTHE A ..... PASCAGOULA, MS	06/19/2003
MARTIN, STEPHEN WEEDE .. SPRINGERVILLE, AZ	06/19/2003
MARTIN, VALERIE ..... APTOS, CA	06/19/2003
MAY, WILLA D ..... LOUISA, KY	06/19/2003
MEYER, KELLY ANN ..... SANTA BARBARA, CA	06/19/2003
MILLER, NANCY J ..... DELTA, CO	06/19/2003
MILLWARD, MONTY LEE ..... SLIGO, PA	06/19/2003
MONROY, LORRAINE ..... PALM DESERT, CA	06/19/2003
MUHAMMAD, LASONJI T ..... CHICAGO, IL	06/19/2003
NGOMA, ANGELA ROBINSON YOUNGSTOWN, OH	06/19/2003
NICHOLS, LANA CAROL ..... LOUISVILLE, KY	06/19/2003
NOLES, ROBIN CHERRY ..... PINSON, AL	06/19/2003
OAKES, CECIL EVERETT JR SAN RAFAEL, CA	06/19/2003
PATTERSON, KATRINA VERNICE ..... NORFOLK, VA	06/19/2003
PELAT, GARY MICHAEL ..... MONTGOMERY, AL	06/19/2003
PELZMAN, DEBORAH LOUISE DURANGO, CO	06/19/2003
PEREZ, CHRISTINE ..... POMONA, CA	06/19/2003
PERILLI, DONNA MARIE ..... DRACUT, MA	06/19/2003
PULOS, GEORGE THOMAS ... SAN FRANCISCO, CA	06/19/2003
QUINONES, MARY E ..... TUCSON, AZ	06/19/2003
RABIDEAU, MARTIN SCOTT .. ARVADA, CO	06/19/2003
RAULSOME, RUTH ANN ..... GROTON, CT	06/19/2003
READ, MATTHEW J ..... MESA, AZ	06/19/2003
REYES, ARISTEO ..... SANTA ANA, CA	06/19/2003
REYNOLDS, ADA BARNES .... HOUSTON, TX	06/19/2003
RICE, REBECCA L GURLEY .. HARTWELL, GA	06/19/2003
RICHEY, JAMES CURTIS ..... BESSEMER, AL	06/19/2003
RITTALL, LAURA JEAN ..... BOOTHBAY, ME	06/19/2003
ROBERTS, LEA ANN ..... KNOXVILLE, TN	06/19/2003
RODENBERG, CHRISTINA ..... PLANT CITY, FL	06/19/2003
RODRIGUEZ, RAMON ROGELIO ..... VALENCIA, CA	06/19/2003
ROESNER, ELIZABETH KAYE	06/19/2003

Subject, city, state	Effective date
FYFFE, AL	
RUTLAND, ANDREW ..... ANAHEIM HILLS, CA	06/19/2003
SALEH, SAEED ..... ORCHARD LAKE, MI	06/19/2003
SANDERS, JULIANNE L ..... LOAMI, IL	06/19/2003
SCHMIDT, PETE E JR ..... PITTSBURGH, PA	06/19/2003
SCHNIPER, WYNNE CAROLINE ..... ODENVILLE, AL	06/19/2003
SCHOOLER, SUSAN D ..... SCOTTSDALE, AZ	06/19/2003
SEXTON, SARAH JANEEN ..... GALESBURG, IL	06/19/2003
SHIH, HSIEN SHOU ..... ARCADIA, CA	06/19/2003
SHUMWAY, JASON PHILIP .... MORGANTOWN, KY	06/19/2003
SIMON, JOLENE ANNETTE .... TABLE ROCK, NE	06/19/2003
SLOAN, JENNIFER J ..... CAMERON, MO	06/19/2003
SMITH, VANCE E ..... LAKEWOOD, CO	06/19/2003
SMITH, VIRGINIA A ..... FT MYERS, FL	06/19/2009
SOMMERVILLE, TERRI RAE .. KOUTS, IN	06/19/2003
SPENCER, SHEILA R ..... SMITHS GROVE, KY	06/19/2003
STETLER, ROBERT ..... GALAX, VA	06/19/2003
STONE, KRYSTAL L ..... MONTROSE, CO	06/19/2003
STRICKLAND, CINDY FONTAINE ..... TALLADEGA, AL	06/19/2003
TAYLOR, KENNETH EDWARD MONROVIA, CA	06/19/2003
TAYLOR, SHANNON LYNN .... NASHUA, NH	06/19/2003
THOMPSON, JERRY E SR ..... PHILADELPHIA, PA	06/19/2003
TIBBLES, JAY HAROLD ..... FONTANA, CA	06/19/2003
TRIPP, JOAN CHRISTINE ..... OLATHE, CO	06/19/2003
TURNAGE, KATHY J ..... DUNN, NC	06/19/2003
VALLEE, CHERYL DENICE ..... NEW MILFORD, CT	06/19/2003
VARA, JOY B ..... COLERAIN, NC	06/19/2003
VINCENT, PATRICK ..... SANFORD, FL	06/19/2003
VINCENT, ALICE F ..... HATTIESBURG, MS	06/19/2003
VINCI, JUDITH ..... SPOTSWOOD, NJ	06/19/2003
WACTOR, DONNA L ..... MONTCLAIR, NJ	06/19/2003
WILKINSON, LISA MICHELE .. PHOENIX, AZ	06/19/2003
WILLIAMS, BETTY LOUISE CORTHAN ..... RIVERDALE, GA	06/19/2003
WISE, APRIL DIONNE ..... BAY MINETTE, AL	06/19/2003
WOOD, KIMBERLY A ..... PHOENIX, AZ	06/19/2003
WORKMAN, DAWN R ..... LOUISVILLE, KY	06/19/2003
WULFF, SHAWNNA JEAN ..... PHOENIX, AZ	06/19/2003
YAZZIE, THOMASCITA ..... CHINLE, AZ	06/19/2003
YOUNG, LANITA ANN ..... BIRMINGHAM, AL	06/19/2003
ZUCHOWSKI, EDWARD MICHAEL ..... OMAHA, NE	06/19/2003
FEDERAL/STATE EXCLUSION/ SUSPENSION	
BIRCH, AARON ..... LINCOLNWOOD, IL	06/19/2003
LITTLEFIELD, SUSAN ..... CANOGA PARK, CA	06/19/2003
RASH, WAYNE CHARLES ..... SAN BERNARDINO, CA	06/19/2003
FRAUD/KICKBACKS	
SHRUM, DALE G ..... PALM DESERT, CA	11/26/2002
OWNED/CONTROLLED BY CONVICTED ENTITIES	
BARTOB PHARMACY, INC ..... EDGEWATER, NJ	06/19/2003
CENTRO EQUIPOS MEDICOS YAUCO, PR	06/19/2003
CHIROPRACTIC DIAGNOSTIC CARDIO ..... MIAMI, FL	06/19/2003
DIAGNOSTIC CARDIOLINE .... MIAMI, FL	06/19/2003
DIAGNOSTIC RESEARCH LABORATORI ..... MIAMI, FL	06/19/2003
EMERGENCY MANAGEMENT, INC ..... TUSCALOOSA, AL	06/19/2003
EMERGENCY PHYSICIANS, P C ..... TUSCALOOSA, AL	06/19/2003
EMERGI-CARE CLINIC, P C ... TUSCALOOSA, AL	06/19/2003
FIRST OPTION DIAGNOSTIC CTR ..... MIAMI, FL	06/19/2003
FIRST OPTION MEDICAL CTR, INC ..... MIAMI, FL	06/19/2003
JAMES D SPEER ..... CORPUS CHRISTI, TX	06/19/2003
KRISTA DISCOUNT PHARMACY, INC ..... MIAMI, FL	06/19/2003
ROBINSON INSTITUTE, INC .. NEW YORK, NY	06/19/2003
SOUTHERN INTEGRATED MEDICAL SV ..... YAUCO, PR	06/19/2003
SUNSHINE CHIROPRACTIC CLINIC ..... SAN JOSE, CA	06/19/2003
THE HERBERT ALDEN PROFESSIONAL ..... FT LAUDERDALE, FL	06/19/2003
DEFAULT ON HEAL LOAN	
BUAHIN, KWAME G ..... SACRAMENTO, CA	05/07/2003

Dated: June 3, 2003.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 03–14634 Filed 6–10–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health, Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, NIH.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, NIH.

Date: June 30, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: Topics proposed for discussion include ongoing and new committee business and scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Shelly Pollard, ACD Coordinator, Building 2, National Institutes of Health, Bethesda, MD 20892. 301–496–0595.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/about/director/acd.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: June 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14656 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 1—Clinical Sciences and Epidemiology.

Date: July 15, 2003.

Time: 8:30 a.m. to 3:40 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Abby B Sandler, PhD, Scientific Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2114, Rockville, MD 20852, (301) 496–7628.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Bilogy Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14651 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Review of Mentored Research Scientist Development Awards.

Date: June 17, 2003.

Time: 4:15 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey M Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14648 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Social and Behavioral Research on New Biomedical Methods for HIV/STD Prevention.

Date: June 30, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5e03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Inferity Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14649 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, R21 Application(s) Review.

Date: June 27, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14650 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Environment Health Sciences Review Committee.

Date: July 17–18, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, PO Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14652 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of RFA ES–03–001: Breast Cancer and the Environmental Research Centers.

Date: July 23–25, 2003.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, PO Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Mentored Clinical Scientist Development Applications (K08s).

Date: July 28, 2003.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, PO Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14653 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Research Grants.

Date: July 2, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: to review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A Ansari, PhD, Health Scientist Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Suite 800, Bethesda, MD 20892. (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14654 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Temporal Bone Hearing and Balance Pathology Resource Registry.

Date: July 10, 2003.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852.

Contact Person: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, EPS–400C, 6120 Executive Blvd MSC 7180, Bethesda, MD 20892–7180. (301) 496–8683. *azadegan@nih.gov.*

Name of Committee: National Institute of Deafness and Other Communications Disorders Special Emphasis Panel, Small Grant Program.

Date: July 16, 2003.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd—MSC 7180, Bethesda, MD 20892–7180. 301–496–8683. *so14s@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Health Communication Research: Improved Strategies.

Date: July 17, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, EPS–400C, 6120 Executive Blvd MSC 7180, Bethesda, MD 20892–7180. (301) 496–8683. *azadegan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14658 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel NeuroOncology Center.

Date: June 15–16, 2003.

Time: 7 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton International Hotel—BWI, 7032 Elm Road, Baltimore, MD 21240.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14659 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging Heart and Stem Cells.

Date: July 7–8, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin at Times Square, 270 West 43rd Street, New York, NY 10036.

Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. (301) 496–9666. *harwoodjmail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging Brain Study.

Date: July 7–8, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott, 866 Third Avenue, New York, NY 10022.

Contact Person: William Cruce, PhD, Scientific Review Administrator, National Institute on Aging, National Institutes of Health, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesa, MD 20892. 301–402–7704 *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Brain Diseases of Aging.

Date: July 8–9, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Drisco, 2901 Pacific Avenue, San Francisco, CA 94115.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. (301) 496–7705.

Name of Committee: National Institute on Aging Special Emphasis Panel, A Consortium to Study the Genetics of Longevity.

Date: July 22–23, 2003.

Time: 7 p.m. to 8 a.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, Scientific Review Office, National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. 301–402–7703. *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Molecular Biology of Aging.

Date: August 6, 2003.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave, 2C212, Bethesda, MD 20814. (Telephone conference call.)

Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. (301) 496–966. *harwoodj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance program No.s 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14660 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Potential Study on Chronic Renal Insufficiency in Children.

Date: July 7, 2003.

Time: 5:30 PM to 10 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14661 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–P–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Research Grants.

Date: June 25, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14729 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Program Project Grants.

Date: June 11, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place; Bethesda, Bethesda Marriott Suites Hotel, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Aftab A Ansari, PhD, Health Scientist Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos., 93.846. Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of federal Advisory Committee Policy.

[FR Doc. 03–14730 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Craniofacial Research Special Emphasis Panel 3–69, Review of R01s.

Date: July 15, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Craniofacial Research Special Emphasis Panel 03–59, Review of R01s.

Date: July 17, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Craniofacial Research Special Emphasis Panel 03–64, Review of R44s.

Date: July 18, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Craniofacial Research Special Emphasis Panel 03–68, Review of R44s.

Date: July 23, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Craniofacial Research Special Emphasis Panel 03–66, Review of R44s.

Date: July 24, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14731 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Project Grants.

Date: July 7, 2003.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14732 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Projects.

Date: July 1, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Rockville Pike, Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A. Ansari, PhD., Health Scientist Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14733 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 10, 2003, 12 p.m. to June 10, 2003, 2 p.m., National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 which was published in the **Federal Register** on May 27, 2003, 68 FR 28833–28834.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20882. The date and time remain the same. The meeting is closed to the public.

Dated: June 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14655 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Brain Disorders and Clinical Neuroscience 6, June 12, 2003, 3:30 a.m. to June 13, 2003, 5 p.m. Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC, 20036 which was published in the **Federal Register** on May 30, 2003, 68 FR 32534–32537.

The starting time of the meeting has been changed to 8:30 a.m. on June 12, 2003. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: June 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14657 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Reviews in Substance Abuse and Addiction.

Date: June 11, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902, *krausem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BM–1 Regular Mix Minus TB.

Date: June 12–13, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 3196, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 4.

Date: June 12–13, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142 MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Integrated Review Group, Allergy and Immunology Study Section.

Date: June 19–20, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG–1 F05(2) L Fellowships: Cell and Development.

Date: June 19–20, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive. Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, *rodewalr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis, Panel, Immunology Fellowship Study Section.

Date: June 20, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, *haydenb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Axon Guidance.

Date: June 20, 2003.

Time: 10:15 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Terrace Hotel, 1515 Rhode Island Ave. NW., Washington, DC 20005.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, *fujiij@drg.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tuberculosis SEP.

Date: June 23, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuro–SEP.

Date: June 23, 2003.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biochemical Sciences Integrated Review Group, Physiological Chemistry Study Section.

Date: June 26–27, 2003.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Geriatrics and Rehabilitation Medicine.

Date: June 26–27, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS 8 (10): Small Business: Bioengineering and Physiology.

Date: June 26–27, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Paul Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 435–1176, *parakkap@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Study Section.

Date: June 26–27, 2003.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212, *johnsong@csr.nih.gov.*

Name of Committee: Immunological Sciences Integrated Review Group, Immunological Sciences Study Section.

Date: June 26–27, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS2(10B) Proteomics, Protein Expression, and Protein Therapeutics.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–8367, *atreyap@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 8.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods

Integrated Review Group, Epidemiology and Disease Control Subcommittee 2.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Denise Wiesch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Muscle Biology.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Doyle Hotel Group, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *wagnerp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemistry/Biophysics SBIR/STTR Panel.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Vonda K, Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychosocial Risk and Disease Prevention.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 451–8008, *younghyd@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 6.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radission Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0676, *sirccok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biodefense SEP ZRG1 BM1–02.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7008, Bethesda, MD 20892, (301) 435–1147.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diagnosis and Treatment of Cancer.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, (301) 435–2681, *mayyasis@csr.nih.gov.*

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Social Sciences, Nursing, Epidemiology and Methods 3.

Date: June 26–27, 2003.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSSX 10B: Small Business: Electromagnetics.

Date: June 26, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nig.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB(02)M:Salt-Induced Hypertension.

Date: June 26, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review, Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nigh.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Skeletal Muscle.

Date: June 26, 2003.

Time: 5 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Doyle Hotel Group, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *wagnerp@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14662 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–P–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Human Resource Management System Senior Review Advisory Committee

AGENCY: Department of Homeland Security, DHS.

ACTION: Notice of committee establishment.

SUMMARY: Under the Federal Advisory Committee Act, the Secretary of Homeland Security is establishing the Human Resource Management System Senior Review Advisory Committee.

Purpose and Objective: The Committee is charged with reviewing the work of the DHS/OPM Human Resource System Design Team and providing options to the Secretary of DHS and the Director of OPM for their consideration in establishing the new Human Resources Management System provided for in section 841 of the Homeland Security Act.

Balanced Membership Plans: The Committee consists of senior leadership from DHS, OPM and DHS' major unions, as well as individuals with particular expertise, knowledge and experience in human resources.

Duration: The Committee will exist for 2 years from the date of the Charter, unless earlier renewed or terminated.

Responsible DHS Official: The Chief Human Capital Officer, Department of Homeland Security, Washington, DC 20528. Phone number: (202) 786–0061.

Dated: June 5, 2003.

Ronald J. James,

Chief Human Capital Officer.

[FR Doc. 03–14781 Filed 6–10–03; 8:45 am]

BILLING CODE 4410–10–P

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: Affidavit of Support under Section 213A of the Act, Contract Between Sponsor and Household Member, EZ Affidavit of Support under Sec. 213 of the Act, and Intending Immigrant's Affidavit of Support Exemption; Forms I–864, I–864A, I–864EZ and I–864W.

The Department of Homeland Security (DHS), Bureau of Citizenship and Immigration Services (BCIS) 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 February 10, 2003, at 68 FR 6773, allowing for a 60-day public comment period. No comments were received by the DHS on the proposed extension of this 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 11, 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, 725—17th Street, NW., Room 10235, Washington, DC 20503; Attn: Department of Justice Desk Officer.

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:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Affidavit of Support under Section 213A of the Act, Contract Between Sponsor and Household Member, EZ Affidavit of Support under Section 213 of the Act, and Intending Immigrant's Affidavit of Support Exemption.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–864, Form I–864A, I–864EZ, and I–864W. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The form are mandated by law for a petitioning relative to submit an affidavit on their relative's behalf. The executed form creates a contract between the sponsor and any entity that provides means-tested benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 439,500 principal I–864 responses at 6 hours per response; 215,800 I–864A responses at 1.75 hours per response; 100,000 I–864EZ responses at 2.5 hours per response, and 1,000 I–864W responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,265,650 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, Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, Washington, DC 20530.

Dated: June 5, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Bureau of Immigration and Customs Enforcement.

[FR Doc. 03–14629 Filed 6–10–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application for Extension of Bond for Temporary Importation

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: Application for Extension of Bond for Temporary Importation. 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) 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 11, 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: Application for Extension of Bond for Temporary Importation.

OMB Number: 1651–0015.

Form Number: Customs Form—3173.

Abstract: Imported merchandise which is to remain in the Bureau of Customs and Border Protection territory for 1-year or less without duty payment is entered as a temporary importation. The importer may apply for an extension of this period on Customs Form—3173.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 348.

Estimated Total Annualized Cost on the Public: $5,568.

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: June 3, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14689 Filed 6–10–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application and Approval to Manipulate, Examine, Sample or Transfer Goods

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: Application and Approval to Manipulate, Examine, Sample or Transfer Goods. 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 5697–5698) 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 11, 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: Application & Approval to Manipulate, Examine, Sample, or Transfer Goods.

OMB Number: 1651–0006.

Form Number: Form–3499.

Abstract: CBP Form–3499 is prepared by importers or consignees as an application to request examination, sampling, or transfer of merchandise under CBP supervision. This form is also an application for the manipulation of merchandise in a bonded warehouse and abandonment or destruction of merchandise.

Current Actions: This submission is being submitted to extend the expiration date, with a change to the expiration date.

Type of Review: Extension (with change).

Estimated Number of Respondents: 151,140.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 15,114.

Estimated Total Annualized Cost on the Public: $302,280.

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: June 3, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14690 Filed 6–10–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Deferral of Duty on Large Yachts Imported for Sale

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: Deferral of Duty on Large Yachts Imported for Sale. 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 5695–5696) 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 11, 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: Deferral of Duty on Large Yachts Imported for Sale.

OMB Number: 1651–0080.

Form Number: N/A.

Abstract: Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 provides that an otherwise dutiable ''large yacht'' may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the U.S.

Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change).

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annualized Cost on the Public: $2,200.

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: June 3, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14691 Filed 6–10–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; Employment Standards, 49 CFR Parts 1542 and 1544

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on December 6, 2002, 67 FR 72720.

DATES: Send your comments by July 11, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Privacy Act Officer, Information Management Programs, Office of Finance and Administration, Transportation Security Administration HQ, West Tower, Floor 4, TSA–17, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (571) 227–1954; facsimile (571) 227–2912.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Employment Standards.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0006.

Forms(s): NA.

Affected Public: Airports and air carriers.

Abstract: Section 105 of Public Law 101–604, the Aviation Security Improvement Act of 1990, directed the Federal Aviation Administration (FAA) to prescribe standards for the hiring and continued employment of air carrier and airport security personnel. These standards were developed and implemented at 14 CFR parts 107 and 108. The Aviation and Transportation

Security Act of 2001, Public Law 107–71, transferred the responsibility for civil aviation security, including the prescribing of employment standards as outlined above, from FAA to TSA. In February 2002, TSA implemented its employment standards at 49 CFR parts 1542 and 1544, while 14 CFR parts 107 and 108 were repealed. Airport operators maintain records of compliance with part 1542 for those employees with access privileges to secure areas of the airport. Air carrier operators maintain records of compliance with part 1544 for selected crew and security employees. TSA civil aviation security inspectors review these records to ensure that the safety and security of the public is not compromised. Estimates regarding the burden this collection places on the affected public were recalculated to more accurately reflect the time and effort that is being devoted to this collection in the wake of September 11, 2001.

Number of Respondents: 1165.

Estimated Annual Burden Hours: 120,005.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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.

Issued in Arlington, Virginia, on June 6, 2003.

Susan T. Tracey,

Deputy Chief Administrative Officer.

[FR Doc. 03–14803 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval; Togiak National Wildlife Refuge Oral History Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. The information collection requirement is described in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments before July 11, 2003.

ADDRESSES: Submit your comments on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–5806 (fax); *ruth_solomon@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22207; (703) 358–2269 (fax); or *anissa_craghead@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONACT: To request a copy of the information collection request, explanatory information, or related forms, contact Anissa Craghead at (703) 358–2445, or electronically to *anissa_craghead@fws.gov.*

SUPPLEMENTARY INFORMATION:

The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB for approval of a new collection of information on the traditional ecological knowledge of residents in the vicinity of Togiak National Wildlife Refuge, in southwestern Alaska. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Because this would be a new information collection, we are asking OMB to assign a new control number to this activity.

The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57) amends and builds on the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended) (Act) to improve the management of the National Wildlife Refuge System. Section 5 of the Act specifies that each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established, and to ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans. To help fulfill the goals of the Act, we are requesting OMB approval of a collection of information on traditional ecological knowledge relating to persistence and change over time of the fish and wildlife populations and habitats of the area in and around Togiak National Wildlife Refuge. The information collected during this project would be used by cooperators to create a permanent record of the long-term, local subsistence activities and status of natural resources in the area of the refuge.

Title: Oral History and Traditional Knowledge-Gathering Within Togiak National Wildlife Refuge.

Frequency of Collection: Annually.

Description of Respondents: Local rural residents.

Total Annual Burden Hours: The reporting burden is estimated to average 5.5 hours per respondent. The total annual burden is 55 hours.

Total Annual Responses: We expect 10 individuals to participate in the survey per year.

We invite comments concerning this new request on: (1) Whether the collection of information is necessary for the proper performance of our refuge management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Dated: June 5, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–14664 Filed 6–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 11, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Wildlife Conservation Society, Bronx, New York, PRT–070315.

The applicant requests a permit to export one female captive born snow leopard (*Uncia uncia*) to the Calgary Zoo, Alberta, Canada for the purpose of enhancement of the species through captive propagation.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: May 30, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–14711 Filed 6–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Record of Decision To Authorize Issuance of a Section 10 Permit to the Salt River Project for Incidental Take of Southwestern Willow Flycatcher, Yuma Clapper Rail, Bald Eagle, and Yellow-Billed Cuckoo in Gila and Maricopa Counties, AZ

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), this notice advises the public that the U.S. Fish and Wildlife Service (Service) has issued an incidental take permit (ITP), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), to the Salt River Project (SRP). The permit authorizes the incidental take of the following federally listed and candidate species: Southwestern willow flycatcher (*Empidonax traillii extimus*)(flycatcher), Yuma clapper rail (*Rallus longirostris yumanensis*) (clapper rail), bald eagle (*Haliaeetus leucocephalus*), and the yellow-billed cuckoo (*Coccyzus americanus*)(cuckoo). The authorized take will occur in Gila and Maricopa counties, Arizona, as a result of management actions allowing Roosevelt Lake to fill, causing inundation of occupied habitat. The Service issued an Environmental Impact Statement (EIS) that evaluated the impacts of alternatives considered prior to issuance of the ITP. SRP submitted the Roosevelt Habitat Conservation Plan (RHCP) and Implementing Agreement with their permit application. These documents describe measures to minimize and mitigate the effects of the taking of listed and candidate species and the habitats upon which they depend.

The Record of Decision became effective on February 27, 2003. It states that the preferred alternative, as described in the Final EIS, will be implemented, and discusses all factors leading to the decision.

ADDRESSES: The Record of Decision for the SRP can be accessed on the Internet at *http://southwest.fws.gov/htopic.html* or viewed at the following locations (by appointment at government offices):

- Department of the Interior, Natural Resources Library, 1849 C. St. NW., Washington, DC 20240.
- U.S. Fish and Wildlife Service, 110 S. Church, Suite 3450, Tucson, AZ 85701.
- U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021.
- Salt River Project, 1521 Project Drive, Tempe, AZ 85281.
- Globe Public Library, 339 S. Broad St., Globe, AZ 85501.
- Government Document Service, Arizona State University, Tempe, AZ 85287.
- Payson Public Library, 328 N. McLane Road, Payson, AZ 85541–4340.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., Phoenix, AZ 85004.
- Tonto Basin Library, 1 School St., Tonto Basin (Punkin Center), AZ 85553.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Barrett, Assistant Field Supervisor, Tucson Suboffice, U.S. Fish and Wildlife Service, 110 S. Church, Suite 3450, Tucson, AZ 85701 at 520/670–4617.

SUPPLEMENTARY INFORMATION: This notice advises the public that the Service gathered the information necessary to (1) determine impacts and formulate alternatives for the EIS, related to the issuance of an ITP to SRP; and (2) develop and implement the RHCP, which describes measures to minimize and mitigate the effects of the incidental take of federally listed species to the maximum extent practicable.

The Notice of Availability for the draft EIS, Application for the ITP, draft RHCP, and draft Implementing Agreement was published in the **Federal Register** on July 19, 2002 (67 FR 47564).

The Notice of Availability for the Final EIS, Final RHCP, and Implementing Agreement was published in the **Federal Register** on November 29, 2002 (67 FR 71193).

Background: Roosevelt is operated by SRP in conjunction with three other reservoirs on the Salt River and two reservoirs on the Verde River as integral features of the Salt River Reclamation Project, authorized by the Reclamation Act of 1902, and pursuant to a 1917 contract with the United States. Since completion in 1911, Roosevelt has provided water for power generation, irrigation, municipal and other uses. Currently, SRP reservoirs supply water to more than 1.6 million people in the cities of Phoenix, Mesa, Chandler, Tempe, Glendale, Gilbert, Scottsdale, Tolleson, and Avondale. In addition, water is provided to irrigate agricultural lands within SRP and for other uses. Also, water is delivered to the Salt River Pima-Maricopa Indian Community, Fort McDowell Indian Community, Gila River Indian Community, Buckeye

Irrigation Company, Roosevelt Irrigation District, Roosevelt Water Conservation District, and others. Roosevelt and the other SRP reservoirs also provide a variety of recreational uses and environmental benefits in central Arizona. Due to dry conditions in central Arizona for the past six years, the water level at Roosevelt has been below normal. As a result, riparian vegetation has invaded and flourished in the portion of Roosevelt historically used by SRP to store water for use in the Phoenix metropolitan area. Animals that use riparian habitat have followed the vegetation growth and now occupy areas within the reservoir. In particular, a population of flycatchers now occupies habitat within the storage space at Roosevelt. Thus, periodic refilling of the reservoir may adversely affect habitat used by the flycatcher, clapper rail, bald eagle, and cuckoo.

Bryan Arroyo,

Acting Regional Director, Southwest Region.

[FR Doc. 03–14677 Filed 6–10–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–78953]

Notice of Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of coal lease offering by sealed bid, South Crandall Canyon Tract.

SUMMARY: Notice is hereby given that at 1 p.m., June 12, 2003, certain coal resources in lands hereinafter described in Emery County, Utah will be offered for competitive lease by sealed bid of $100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). However, no bid will be accepted for less than fair market value as determined by the authorized officer. A company or individual is limited to one sealed bid. If a company or individual submits two or more sealed bids for this tract, all of the company's or individual's bids will be rejected.

Authority: 43 CFR 3422.2(a).

This lease is being offered for sale under the provisions set forth in the regulations for Leasing on Application at 43 CFR part 3425.

The lease sale will be held in the Bureau of Land Management Fourth Floor Conference Room, 324 South State Street, Suite 400, Salt Lake City, Utah, at 1 p.m. on June 12, 2003. At that time, the sealed bids will be opened and read. No bids received after 10 a.m., June 12, 2003, will be considered.

Coal offered: The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Emery County, Utah, approximately 10 miles northwest of Huntington, Utah on public land located in the Manti-LaSal National Forest:

T. 16 S., R. 7 E., SLM, Utah;
Sec. 4, W2SW, S2SWNW;
Sec. 5, SE, S2SENE;
Sec. 8, E2, NENW, S2NW;
Sec. 9, NW.

Containing 880.00 acres.

The tract has two potentially minable coal seams, the Blind Canyon and the Hiawatha. The minable portions of the seams in this area are from 6 to 8 feet in thickness. This tract contains more than 7.63 million tons of recoverable high volatile C bituminous coal.

The estimated coal quality using weighted averages of samples on an as-received basis is:

BTU/lb.	12,790
Percent moisture	5.26
Percent sulphur	0.61
Percent ash	4.68
Percent fixed carbon	45.88
Percent volatile matter	44.18

(Totals do not equal 100% due to rounding).

Rental and Royalty: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre or fraction thereof and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods, and 8 percent of the value of coal mined by underground methods. The value of coal shall be determined in accordance with BLM Manual 3070.

SUPPLEMENTARY INFORMATION: Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the detailed statement and the proposed coal lease are available by mail at the Bureau of Land Management, Utah State Office, PO Box 45155, Salt Lake City, Utah 84145–0155 or in the Public Room (Room 400), 324 South State Street, Salt Lake City, Utah 84111. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection in the Public Room (Room 400) of the Bureau of Land Management.

Dated: May 13, 2003.

Kent Hoffman,

Deputy State Director, Lands and Minerals.

[FR Doc. 03–14734 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XM–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, 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) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on July 16 and 17, 2003 at the Holiday Inn, 333 Sante Fe in Alamosa, Colorado and will begin at 9:30 a.m. on July 16. The public comment period will begin at approximately 9:45 a.m. and the meeting will end for the day at 4:30 p.m. On July 17 the meeting will reconvene at the same location at 8 a.m. for the field trip and will adjourn at 4 p.m.

SUPPLEMENTARY INFORMATION: The 15 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 the Front Range Center, Colorado. Planned agenda topics include:

July 16

Manager reports
Update on Blanca Wildlife Habitat Area
Overview of the Fuels Management and Travel Management Program.

July 17

Sites visited on the Field Trip will include Blanca Wetlands and the Rio Grande Corridor.

All meetings are open to the public. The public can make oral statements to the Council at 9:45 a.m. or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and

reproduction during regular business hours within thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (BLM), Attn: Ken Smith, 3170 East Main Street, Canon City, Colorado 81212. Phone (719) 269–8500.

Dated: June 3, 2003.

Roy L. Masinton,

Front Range Center Manager.

[FR Doc. 03–14665 Filed 6–10–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–03–1010–NQ]

Notice of Availability for Public Comment of an Administrative Order Concerning the Dinero Mine Located Near Leadville, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability for public comment of an administrative order on consent concerning the dinero mine located near Leadville, Colorado.

SUMMARY: Pursuant to section 122(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(1), notice is hereby given that the Bureau of Land Management (BLM), by and through the Department of the Interior, and the Environmental Protection Agency (EPA), have signed a proposed Administrative Order on Consent (AOC) concerning the Dinero Complex Site (Site) located near Leadville, Colorado. The Department of Justice has issued its concurrence with the AOC.

The Site affects public land managed by BLM and includes private land owned by John D. Lundquist (Lundquist). The Site includes two mine waste rock piles estimated to contain approximately 40,000 cubic yards of material extracted from the nearby Dinero mine tunnel. The piles are partially located on wetlands within the Sugarloaf Gulch drainage, a tributary of the Lake Fork of the Arkansas River. Several studies conducted at the Site indicate that the two mine waste rock piles contain toxic metal compounds which, when coming into contact with surface and ground water, release toxic metals and acidic drainage into the nearby wetlands and downstream surface waters. After completing an engineering evaluation/cost analysis (EE/CA) of response alternatives, BLM selected a non-time critical removal action to address releases from the two mine waste rock piles. Under the selected alternative, BLM will remove the waste from the gulch and consolidate it into two on-site repositories, which will be covered and revegetated. In addition, hydrological controls will be installed so as to minimize contact of surface water runoff with the repositories.

Through the proposed AOC, the United States and Mr. Lundquist would resolve the alleged liability of Mr. Lundquist under section 107 of CERCLA, 42 U.S.C. 9607. Mr. Lundquist would provide access and materials needed to implement the removal action, and would authorize the construction of a portion of the mine waste rock repositories on his lands. In addition, Mr. Lundquist would grant a covenant running with the land that would prevent disturbance of the portion of his lands subject to removal action.

DATES: BLM will receive comments on the proposed AOC until July 11, 2003. Comments should refer to the Dinero Complex Site. The proposed AOC may be examined at the BLM Royal Gorge Field Office in Canon City, Colorado, or at the Timberline Campus of the Colorado Mountain College in Leadville, Colorado.

ADDRESSES: A copy of the proposed AOC may also be obtained from the BLM Royal Gorge Field Office upon request. Comments or requests to obtain a copy of the proposed AOC should be addressed to: Dan Grenard, BLM Royal Gorge Field Office, 3170 East Main Street, Canon City, Colorado 81212, (719) 269–8500.

Robert H. Robinson,

Abandoned Mine Land Program, Division of Energy, Lands and Minerals.

[FR Doc. 03–14625 Filed 6–10–03; 8:45 am]

BILLING CODE 4310–JG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Draft Environmental Impact Statement/ General Management Plan, Big Bend National Park, Texas

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (C), the National Park Service announces the availability of a Draft Environmental Impact Statement for a General Management Plan (DEIS/GMP) for Big Bend National Park, Texas.

DATES: The National Park Service will accept comments from the public on the Draft Environmental Impact Statement through 60 days from the date of this notice. Public meetings will be held but have not been scheduled at this time. Dates, times and locations will be announced in the local media.

ADDRESSES: Copies of the DEIS/GMP are available from the Superintendent, Big Bend National Park, P.O. Box 129, Big Bend National Park, Texas 79834. Public reading copies of the DEIS/GMP will be available for review at the following locations: Office of the Superintendent, Park Headquarters (Administration Office), Big Bend National Park, P.O. Box 129, Big Bend National Park, Texas 79834. Telephone: (915) 477–1101.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Denver, CO 80225–0287. Telephone: (303) 969–2851 (or (303) 969–2377).

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Room 7012, Washington, DC 20240. Telephone: (202) 208–6843.

FOR FURTHER INFORMATION CONTACT: Superintendent or Management Assistant, Big Bend National Park at the above address and telephone numbers.

SUPPLEMENTARY INFORMATION: If you wish to comment you may submit your comments by any one of several methods. You may mail comments to Superintendent, P.O. Box 129, Big Bend National Park, Texas 79834. You may comment via the Internet to *BIBE_Superintendent@NPS.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: GMP Team'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Superintendent Frank Deckert directly at telephone (915) 477–1101 or Management Assistant Lou Good at telephone (915) 477–1103. Finally you may hand-deliver your comments to park headquarters, Panther Junction, Big Bend National Park, Texas. Comments should be received no later than 60 days from the publication of this notice of availability. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the

extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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.

Dated: March 31, 2003.

Michael D. Synder,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 03–14637 Filed 6–10–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Fire Management Plan, Environmental Impact Statement, Big Bend National Park, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the Fire Management Plan, Big Bend National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement for the Fire Management Plan for Big Bend National Park. This cooperative effort among park staff, other Federal and State agencies, non-profit organizations, and the public, is expected to result in a comprehensive management plan that protects life, property, and cultural resources; provides opportunities for visitor interpretation; and returns natural processes to park ecosystems. In cooperation with neighboring property owners attention will also be given to resources outside the boundaries that affect the integrity of Big Bend National Park. The international border forms the park's southern boundary, and coordination with Mexico is also integral to the fire management program. There are four Fire Management Alternatives being considered. These are No-Action, Full Suppression, Full Wildland Fire Use, and Progressive Fire Use. The No Action alternative maintains the current management direction of suppressing fires in the high Chisos and on park boundaries, along Rio Grande and around inholdings. Fire may be allowed to burn under pre-determined conditions in the rest of the park. The Full Suppression alternative suppresses all ignitions, while the Full Wildland Fire Use alternative allows for the use of naturally ignited fires to reduce fuels and benefit ecosystems except around developed areas, sensitive resources, and portions of the park boundary. The final alternative is Progressive Fire Use. It is similar to the Full Wildland Fire Use in that sensitive areas receive protection, and allows the use of prescribed and natural ignitions in the park. Unlike the Full Wildland Fire Use alternative; however, its application would be initially limited with expansion based on monitoring of prescribed fire projects and research results. Such information would help managers develop effective prescriptions for managing fires to meet ecological goals.

Major issues for fire management in the park include:

- Safety of firefighters, the public, and park staff;
- Persistence of unique habitats;
- Preservation of high quality visitor experiences;
- Maintenance of populations of threatened and endangered species;
- Control of the spread of exotic plant species;
- Concerns of neighboring landowners;
- Impacts on local communities and their economies;
- Protection of historic and prehistoric cultural resources and cultural landscapes.

A scoping newsletter has been prepared that details the issues identified to date. The newsletter will also announce the locations, times and dates of public scoping meetings that will be held in Alpine, TX and Study Butte, TX. The newsletter is available for downloading as a pdf document from Big Bend National Park's expanded Web site at *www.nps.gov/bibe/press.htm* or to obtain a paper copy call or write Richard Gatewood, Fire Ecologist, P.O. Box 368 Alpine, Texas 79830, Phone: (915)837–7056 e-mail: *Richard_Gatewood@nps.gov.*

DATES: Public scoping meetings are to be held in the towns of Study Butte, TX and Alpine, TX at locations, times and dates to be published in the scoping newsletter mentioned above. The National Park Service will accept comments from the public for 30 days from the date this notice is published in the **Federal Register**.

ADDRESSES: Information will be available for public review and comment in the Office of the Superintendent, Frank Deckert, Big Bend National Park, P.O. Box 129 Big Bend National Park, TX 79834 phone: (915) 477–2251.

FOR FURTHER INFORMATION CONTACT: Richard Gatewood, Fire Ecologist, Big Bend National Park, P.O. Box 368 Alpine, TX 79830, phone: (915) 837–7056, email: *Richard_Gatewood@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping newsletter or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to Superintendent P.O. Box 129 Big Bend National Park, TX 79830. You may also comment via the Internet to *BIBE_Superintendent@nps.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Superintendent'' and your name and return address in your Internet message and please indicate if you want confirmation that we received your comments. If you do not receive a confirmation that we have received your Internet message, contact directly Richard Gatewood, Fire Ecologist at (915) 837–7056. Finally, you may hand-deliver comments to Visitor's Center and Park Headquarters, Route 11, Panther Junction, Big Bend National Park. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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.

Dated: April 14, 2003.

Michael D. Synder,

Director, Intermountain Region, National Park Service.

[FR Doc. 03–14638 Filed 6–10–03; 8:45 am]

BILLING CODE 4310–AY–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Realty Action for Proposed Land Exchange

SUMMARY: A land exchange is proposed of a federally owned conservation easement on privately owned lands for a similar conservation easement on adjacent privately owned lands, located in Lake Clark National Preserve, and the Lake and Peninsula Borough, Alaska.

I. The following described federally owned conservation easement, which was acquired by the National Park Service in 1992, has been determined to be suitable for disposal by exchange. The authority for this exchange is section 1302 (h), Public Law 96–487, Alaska National Interest Lands Conservation Act, December 2, 1980. The current federally owned conservation easement is within the boundary of Lake Clark National Preserve. It is not required for retention, in that park unit. This federal conservation easement, which is proposed for disposal, is a 40-acre portion of a 66-acre conservation easement (Tract No. 08–107) that was acquired by the United States of America by deed recorded in Deed Book 20 on Page 528 of the Iliamna Recording District, Alaska. The land has been surveyed for cultural resources and endangered and threatened species. These reports are available upon request from the National Park Service Land Resources Program Center at the address set forth below.

Fee ownership to the federally owned property (conservation easement) is to be exchanged. Conveyance of the interest in land by the United States of America will be done by a Quitclaim Deed.

II. In exchange for the portion of the conservation easement identified in section 1 (above) the United States of America will acquire a 53-acre conservation easement on adjoining lands (Tract No. 08–106) that are currently owned by Ms. Bella Hammond, and which also lie within the boundary of Lake Clark National Preserve. The exchange will consolidate lands in protected status and lands subject to development. The value of the property interests exchanged shall be determined by current fair market value appraisals, and if they are not appropriately equal, the values shall be equalized by payment of cash as circumstances require. Detailed information concerning this exchange, including precise legal descriptions, is contained in an environmental assessment, cultural reports, and Finding of No Significant Impact, which are available at the National Park Service, Land Resources Office, 2525 Gambell Street, Anchorage, Alaska 99503–2892, or call 907–257–2590. For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: May 6, 2003.

Marcia Blaszen,

Acting Regional Director, Alaska.

[FR Doc. 03–14636 Filed 6–10–03; 8:45 am]

BILLING CODE 4312–64–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–436 (Preliminary) and 731–TA–1042 (Preliminary)]

Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions From India

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of the preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty and antidumping investigation nos. 701–TA–436 (Preliminary) and 731–TA–1042 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of certain colored synthetic organic oleoresinous pigment dispersions. This petition covers imports of colored synthetic organic pigment dispersions, in flush or base form, containing pigments classified in either the Azo or Phthalo chemical classes that have been dispersed in an oleoresinous organic vehicle system comprising assorted combinations of various solvents, oils, and resins (''the varnish''). The subject pigment dispersions are a thick putty that contain by weight 20 percent or more pigment dispersed in the varnish. The subject pigment dispersions are used primarily for the manufacture of letterpress and lithographic printing inks, provided for in subheadings 3204.17.6020 (Pigment Blue 15:4), 3204.17.6085 (Pigments Red 48:1, Red 48:2, Red 48:3, and Yellow 174), 3204.17.90 (Pigments Red 57:1, Yellow 12, Yellow 13, Yellow 74, Blue 15:3, Green 7), and 3204.17.9085 (Pigments Red 22, Red 48:4, Red 49:1, Red 49:2, Red 52:1, Red 53:1, Yellow 14, Yellow 83, and Green 36) of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in these investigations in 45 days, or in this case by July 21, 2003. The Commission's views are due at Commerce within five business days thereafter, or by July 28, 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or *fruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on June 5, 2003, by Apollo Colors, Inc., Rockdale, IL, General Press Colors, Ltd.,

Addison, IL, Magruder Color Company, Inc., Elizabeth, NJ, and Sun Chemical Corporation, Fort Lee, NJ.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to these investigations under the APO issued in these investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 27, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187 or *fruggles@usitc.gov*) not later than June 25, 2003, to arrange for their appearance. Parties in support of the imposition of countervailing duties and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 2, 2003, a written brief containing information and arguments pertinent to the subject matter of these investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to these investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: June 6, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–14793 Filed 6–10–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–453]

Conditions of Competition for Milk Protein Products in the U.S. Market

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: June 5, 2003.

SUMMARY: Following receipt of the request on May 14, 2003, from the Senate Committee on Finance, the Commission instituted investigation No. 332–453 *Conditions of Competition for Milk Protein Products in the U.S. Market,* under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

As requested by the Committee, the Commission will conduct an investigation and provide a report on competitive conditions for milk protein products in the U.S. market. In its report the Commission will provide, to the extent possible, the following:

- An overview of the global market for milk proteins in their various forms, including such factors as consumption, production, and trade during the period 1998–2002;
- Profiles of the milk protein industries of the United States and major dairy exporting countries, and in particular, the industries of Australia, New Zealand, and the European Union;
- Information on the overall level of government support and other government intervention affecting producers of milk proteins in the United States and in each of the above-referenced trading partners together with a discussion of competitive factors, including government policies, that impact U.S. production, use, and trade in milk protein products in their various forms;
- Information on U.S. imports and exports of milk protein in its various forms with data broken down, to the extent possible, by protein content, end use, and manufacturing processes;
- A history of U.S. tariff classification of milk proteins and tariff treatment of these products, including any fees or quotas imposed under section 22 of the Agricultural Adjustment Act, tariff rate quotas established pursuant to the Uruguay Round Agreements, and U.S. Customs Service classification decisions;
- A qualitative and, to the extent possible, quantitative assessment of how imported milk proteins affect farm level milk prices in the United States; and,
- Other information relating to competitive factors affecting: (1) The U.S. industry that imports and consumes milk proteins; (2) the U.S. industry that supplies competitive products, and (3) the competitive factors, including government policies, that impact potential U.S. production of milk proteins in their various forms.

As requested by the Committee, the Commission's report will provide information on the competitiveness of a variety of milk proteins in the U.S. market, focusing on milk protein concentrate, casein, and caseinate and the market for those products compared with other milk proteins, including whole milk, skim milk, dried whole milk, dried skim milk, whey, dried whey, and whey protein concentrates, covering the period 1998–2002. As

requested, the Commission will transmit its report to the Committee by May 14, 2004. The Committee indicated that it intends to make the report public.

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Jonathan Coleman, Project Leader (202–205–3465 or *jcoleman@usitc.gov*) or Warren Payne, Deputy Project Leader (202–205–3317 or *wpayne@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on legal aspects of this investigation, contact William Gearhart of the Office of General Counsel (202–205–3091 or *wgearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC beginning at 9:30 a.m. on December 4, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., November 20, 2003. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., November 24, 2003, the deadline for filing post-hearing briefs or statements is 5:15 p.m., December 18, 2003. In the event that, as of the close of business on November 20, 2003, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–1806) after November 20, 2003, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested parties. The Senate Committee on Finance has requested that the Commission prepare a public report (containing no confidential business information). Accordingly, any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on December 18, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules, as amended, 67 FR 8036 (Nov. 8, 2002). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

Milk proteins, government intervention, tariffs, and imports.

Issued: June 5, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–14792 Filed 6–10–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection Commnets Requested

ACTION: 30-day notice of information collection under review: extension of a currently approved collection; Application and Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 51, and page 12716 on March 17, 2002, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 11, 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 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, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overviews of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 6NIA (5330.3D). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* none. *Abstract:* This information collection is needed to determine if the firearms or ammunition listed on the application qualify for importation and to certify that a nonimmigrant alien is in compliance with 18 U.S.C. 922(g)(5)(B). This application will also serve as the authorization for importation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 15,000 respondents, who will complete the form within approximately 30 mintues.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are 7,500 estimated total burden hours associated with this collection.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suit 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 5, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14620 Filed 6–10–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Pending Registration

By Notice dated January 27, 2003, and published in the **Federal Register** on February 6, 2003, (68 FR 6183), Houba, Inc., 16235 State Road 17, Culver, Indiana 46511, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of Schedule II controlled substances Oxycodone (9143) and Hydrocodone (9193). The firm plans to bulk manufacture the controlled substances for sale to its customers for the production of finished dosage form products.

Comments and Objections have been filed with the Drug Enforcement Administration and are currently under review. A final decision regarding the firm's renewal application as a bulk manufacturer is hereby being held pending investigation and resolution of issues raised.

Houba, Inc. is authorized to continue operating under the manufacturer registration issued pursuant to the Notice of Registration published June 13, 2002 (67 FR 40752) pending final approval or denial of the renewal application.

Dated: May 23, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–14737 Filed 6–10–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 24, 2002, Noramco, Inc. (formerly Noramco of Delaware, Inc.), 500 Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal and on December 4 and 26, 2002, by letters to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Morphine-N-Oxide	I
Codeine-N-Oxide (9053)	I
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than August 11, 2003.

Dated: May 16, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–14755 Filed 6–10–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 3, 2002, Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7470)	II
1-Piperidincyclohexane-carbonitrille (8603).	II
Benzoylecgoonine (9180)	II

The firm plans to manufacture small quantities of controlled substances for use in diagnostic products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than August 11, 2003.

Dated: May 16, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–14736 Filed 6–10–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Optional Professional Management Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Friday, June 27, 2003, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study optional professional management for defined contribution plans.

The session will taken place in Room N–4437 C–D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 3:30 p.m., is for working group members to hear testimony from witnesses about the optional professional management for defined contribution plans, including employer delegation to professional managers.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies before June 18, 2003 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the working group should contact the Executive Secretary by mail or call (202) 693–8668 before June 18. Oral presentations should be limited to 20 minutes, but an extended statement may be submitted for the record. Individual with disabilities who need special accommodations should contact the Executive Secretary by mail or phone before June 18.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary before June 18. Papers received after that date will not be included in the record of the meeting.

Signed in Washington, DC this 5th day of June 2003.

Paul Zurawski,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–14698 Filed 6–10–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

122nd Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 122nd open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Friday, June 27, 2003.

The session will take place in Conference Room N–4437 C–D, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will begin at 3:30 p.m. and end at approximately 4:30 p.m., is for the chairs of this year's three Working Groups to provide progress reports on their individual study topics to the full Council.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies before June 18, 2003 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the working group should contact the Executive Secretary by mail or call (202) 693–8668 before June 18. Oral presentations should be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by mail or phone before June 18.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary before June 18. Papers received after that date will not be included in the record of the meeting.

Signed in Washington, DC this 5th day of June 2003.

Paul Zurawski,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–14699 Filed 6–10–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Defined Benefit Funding and Discount Rate Issues Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the Authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Thursday, June 26, 2003, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study defined benefit plan funding and discount rate issues.

The session will take place in Room S–2322, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9:15 a.m. to approximately 5 p.m., is for working group members to hear testimony from witnesses about the appropriate discount rate for defined benefit plans, and related funding issues.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies before June 18, 2003 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the working group should contact the Executive Secretary by mail or call (202) 693–8668 before June 18. Oral presentations should be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by mail or phone before June 18.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary before June 18. Papers received after that date will not be included in the record of the meeting.

Signed in Washington, DC, this 5th day of June, 2003.

Paul Zurawski,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–14700 Filed 6–10–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Health Care Security Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Wednesday, June 25, 2003, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study health care security.

The session will take place in Room N–4437 C–D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 4 p.m., is for Working Group members to hear testimony from witnesses about the relative merits of defined contribution and self-insured health plans.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies before June 18, 2003 to Sharon Morrisey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives or organizations wishing to address the working group should contact the Executive Secretary by mail or call (202) 693–8668 before June 18. Oral presentatives should be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by mail or phone before June 18.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary before June 18. Papers received after that date will not be included in the record of the meeting.

Signed in Washington, DC this 5th day of June 2003.

Paul Zurawski,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–14701 Filed 6–10–03; 8:45 am]

BILLING CODE 4510–29–M

LIBRARY OF CONGRESS

Copyright Office

Notification of Agreement Under the Small Webcaster Settlement Act of 2002

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of agreement.

SUMMARY: The Copyright Office is publishing an agreement which sets rates and terms for the reproduction and performance of sound recordings made by a noncommercial webcaster under the section 112 and 114 statutory licenses. Noncommercial webcasters who meet the eligibility requirements may choose to operate under the statutory licenses in accordance with the rates and terms set forth in the agreement published herein rather than the rates and terms adopted by the Librarian of Congress in an earlier proceeding.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423. See the final paragraph of the **SUPPLEMENTARY INFORMATION** for information on where to direct questions regarding the rates and terms set forth in the agreement.

SUPPLEMENTARY INFORMATION:

Background

In 1998, Congress amended the Copyright Act, title 17 of the United States Code, to make clear that an eligible nonsubscription service may publicly perform copyrighted sound recordings by means of digital audio transmissions under a statutory license, 17 U.S.C. 114, provided that the service pays the appropriate royalty fee and complies with the terms of the license. At the same time, Congress created a second statutory license, 17 U.S.C. 112(e), to allow for the making of ephemeral reproductions for the purpose of facilitating the digital audio transmissions made by the nonsubscription services under the section 114 license. Rates and terms for both licenses were set after a hearing before a copyright arbitration royalty panel (''CARP''). *See* 67 FR 45239 (July 8, 2002). However, some small webcasters, including some noncommercial webcasters, did not participate in that proceeding and expressed reservations about the fee structure adopted through that process.

In response to those concerns, Congress passed the Small Webcaster Settlement Act of 2002 (''SWSA''), Pub. L.107–321, 116 Stat. 2780, amending the section 112 and section 114 statutory licenses as they relate to small commercial webcasters and noncommercial webcasters. Specifically, the SWSA authorizes SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc. and the Receiving Agent designated by the Librarian of Congress in the initial rate setting proceeding, to enter into agreements on behalf of all copyright owners and performers for the purpose of establishing an alternative payment structure for small commercial webcasters [1] and noncommercial webcasters [2] operating under the section 112 and section 114 statutory licenses.

The rates and terms set forth in such agreements apply only to the time periods specified in the agreement and have no precedential value in any proceeding concerned with the setting of rates and terms for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings. To make this point clear, Congress included language expressly addressing the precedential value of such agreements. Specifically, section 114(f)(5)(C), as added by the SWSA, states that:

Neither subparagraph (A) nor any provisions of any agreement entered into pursuant to subparagraph (A), including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth therein, shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the

[1] SoundExchange and small commercial webcasters negotiated such an agreement and submitted it to the Copyright Office for publication in December, 2002. *See* 67 FR 78510 (December 24, 2002).

[2] For purposes of the SWSA, a ''noncommercial webcaster'' is defined as a webcaster that: (1) Is exempt from taxation under section 501 of the Internal Revenue Code of 1986, 26 U.S.C. 501; (2) has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or (3) is operated by a State or possession or any govenmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes. 17 U.S.C. 114(f)(5)(E).

public performance or reproduction in ephemeral recordings or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice and recordkeeping requirements by the Librarian of Congress under paragraph (4) or section 112(e)(4). It is the intent of Congress that any royalty rates, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b).

17 U.S.C. 114(f)(5)(C) (2002).

Request for Publication of Negotiated Rates and Terms Available to Certain Noncommercial Webcasters

On June 2, 2003, SoundExchange, and a group of membership organizations, including American Council on Education, Collegiate Broadcasters, Inc., the Intercollegiate Broadcasting System, Inc., Harvard Radio Broadcasting Co., Inc., and the National Religious Broadcasters Music License Committee, on behalf of their members and/or stations that operate or plan to operate noncommercial webcasting services, notified the Copyright Office that they had negotiated such an agreement for the reproduction and performance of sound recordings by noncommercial webcasters under the section 112 and section 114 statutory licenses, and requested that the Copyright Office publish the Rates and Terms in the **Federal Register,** as required under section 114(f)(5)(B) of the Copyright Act, as amended by the SWSA.

Thus, in accordance with the requirement set forth in amended section 114(f)(5)(B), the Copyright Office is publishing the submitted agreement, as Appendix A, thereby making the rates and terms in the agreement available to any noncommercial webcaster meeting the eligibility conditions of the agreement as an alternative to the rates and terms announced by the Librarian in his July 8, 2002 order. Moreover, publication of the agreement in the **Federal Register** makes the agreement binding on all copyright owners of sound recordings and other persons entitled to payment under section 114 in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress and fulfills the Copyright Office's responsibility with respect to this agreement.

Beyond publication of this document, the Copyright Office has no responsibility for administering the rates and terms of the agreement. For this reason, questions regarding the rates and terms set forth in this agreement should be directed to SoundExchange (for contact information, *see http://www.soundexchange.com*). Similarly, questions regarding the previously published agreement between SoundExchange and small commercial webcasters should also be directed to SoundExchange.

Dated: June 6, 2003.

Marybeth Peters,

Register of Copyrights.

Note: This appendix will not be codified in Title 37, part 261, of the Code of Federal Regulations.

Appendix A

Rates and Terms Available to Certain Noncommercial Webcasters

1. General

(a) *Availability of Rates and Terms.* The rates and terms set forth herein (the ''Rates and Terms'') cover the making of public performances of sound recordings by means of digital audio transmissions under the statutory license of 17 U.S.C. 114 by ''Noncommercial Webcasters'' (as defined in Section 9(e) hereof), and the reproduction of ephemeral recordings used solely to facilitate such transmissions under the statutory license of 17 U.S.C. 112(e), during the period beginning on October 28, 1998, and ending on December 31, 2004. A Noncommercial Webcaster may elect to be subject to these Rates and Terms, in their entirety, by complying with the procedure set forth in Section 2 hereof.

(b) *Relationship to Other Provisions.* Subject to Section 7, any Noncommercial Webcaster relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114 under these Rates and Terms shall comply with the requirements of 17 U.S.C. 112 and 114, these Rates and Terms and other governing provisions established by the Copyright Office. Any terms determined in accordance with 17 U.S.C. 112 and 114 and applicable to the collection and distribution by SoundExchange of payments under 17 U.S.C. 112 and 114 from commercial eligible nonsubscription transmission services (*e.g.* terms relating to distribution of royalties by SoundExchange, deductions from distributions, unclaimed funds, possible designation of successors to SoundExchange in the event of its dissolution, retention of records, verification, and confidentiality of payment information) shall apply to payments under these Rates and Terms except to the extent inconsistent with these Rates and Terms.

(c) *Relationship to Other Agreements.* These Rates and Terms are without prejudice to, and subject to, any voluntary agreements that a Noncommercial Webcaster may have entered into with any sound recording copyright owner. Should there be any voluntarily negotiated rates and terms arrived at between copyright owners and webcasters that are adopted by the Librarian of Congress during 2003 as rates and terms for eligible nonsubscription transmission services following publication of such rates and terms in the **Federal Register** pursuant to 37 CFR 251.63(b), any Noncommercial Webcaster that qualifies for such rates may, by written notice to SoundExchange, elect, for 2004, to pay royalties under the rates and terms adopted by the Librarian in lieu of the rates and terms applicable hereunder; provided that if a Noncommercial Webcaster does so, it shall at the time its first 2004 payment is due under the terms adopted by the Librarian, pay any additional amount that would have been due under the rates and terms adopted by the Librarian for the period beginning on October 28, 1998, and ending on December 31, 2003, in excess of the royalties previously paid by the Noncommercial Webcaster for that period under these Rates and Terms.

(d) *CARP Proceedings.* A Noncommercial Webcaster that elects to be subject to these Rates and Terms agrees that it has elected these terms in lieu of participating in a copyright arbitration royalty panel (''CARP'') proceeding to set rates for the 2003–2004 period and in lieu of any different rates and terms that may be determined through such a CARP proceeding. Thus, once a Noncommercial Webcaster has elected these Rates and Terms, it shall refrain from participating in any such CARP proceeding and can opt out of these Rates and Terms only as provided in Section 1(c).

2. Election for Treatment as a Noncommercial Webcaster

(a) *Election Process.* A Noncommercial Webcaster that wishes to elect to be subject to these Rates and Terms in lieu of any other royalty rates and terms that otherwise might apply under 17 U.S.C. 112 and 114 for the period beginning on October 28, 1998, and ending on December 31, 2004, shall submit to SoundExchange a completed and signed election form (available on the SoundExchange Web site at *http://www.soundexchange.com*) by no later than the date 30 days after publication of these Rates and Terms in the **Federal Register**. Notwithstanding the preceding sentence—

(1) if a Noncommercial Webcaster has not previously made digital audio transmissions of sound recordings under the section 114 statutory license, the Noncommercial Webcaster may make its election by no later than the first date on which it would be obligated under these Rates and Terms to make a royalty payment for the use of sound recordings under the section 112 or 114 statutory license; and

(2) an ''NEE'' (as defined in Section 9(d)) may make its election by no later than October 15, 2003.

(b) *Effect of Election or Nonelection.* A Noncommercial Webcaster that fails to make a timely election shall pay royalties as otherwise provided under 17 U.S.C. 112 and 114 (the ''Statutory Rate''). Subject to Section 1(c), if a Noncommercial Webcaster timely elects to be covered by these Rates and Terms, the Noncommercial Webcaster shall thereafter be obligated to pay royalties under

and comply with the provisions of these Rates and Terms through December 31, 2004, provided that such Noncommercial Webcaster continues to meet the conditions for eligibility as a Noncommercial Webcaster, as set forth in 17 U.S.C. 114(f)(5)(E)(i) (as added by the Small Webcaster Settlement Act of 2002).

(c) *Proof of Eligibility.* A Noncommercial Webcaster that makes an election pursuant to Section 2(a) shall make available to SoundExchange, within 30 days after SoundExchange's written request at any time during the 3 years following such election, sufficient evidence to support its eligibility as a Noncommercial Webcaster and, if applicable, as an NEE. Any proof of eligibility provided hereunder shall be provided with a certification signed by the chief executive officer of the Noncommercial Webcaster, or other person with similar management authority over the Noncommercial Webcaster, certifying that the information provided is accurate and the person signing is authorized to act on behalf of the Noncommercial Webcaster.

3. Minimum Annual Fees

(a) *NEEs Transmitting a Single Channel.* Except as provided in Section 3(c) and subject to Section 4, each NEE shall pay nonrefundable minimum annual fees as set forth below for all or any portion of a year in which it made or makes any digital audio transmissions of sound recordings under the section 114 statutory license (whether a ''Broadcaster Simulcast'' (as defined in Section 9(b)), an Internet-only transmission or otherwise):

(1) $200 for the period beginning on October 28, 1998, and ending on December 31, 1999 (which shall be treated as one year for purposes of these Rates and Terms);

(2) $250 for each of the years 2000 through 2003; and

(3) $500 for 2004, except in the case of an NEE that is, or is affiliated with, an educational institution with fewer than 10,000 enrolled students, in which case the minimum fee shall be $250.

(b) *Other Noncommercial Webcasters Transmitting a Single Channel.* Except as provided in Section 3(c) and subject to Section 4, each Noncommercial Webcaster that is not an NEE shall pay nonrefundable minimum annual fees as set forth below for all or any portion of a year in which it made or makes any digital audio transmissions of sound recordings under the section 114 statutory license (whether a Broadcaster Simulcast, an Internet-only transmission or otherwise):

(1) $200 for the period beginning on October 28, 1998, and ending on December 31, 1999 (which shall be treated as one year for purposes of these Rates and Terms);

(2) $250 for 2000;

(3) $300 for 2001, except in the case of a Noncommercial Webcaster substantially all of the programming of which is reasonably classified as news, talk, sports or business programming, in which case the minimum fee shall be $250;

(4) $350 for 2002, except in the case of a Noncommercial Webcaster substantially all of the programming of which is reasonably classified as news, talk, sports or business programming, in which case the minimum fee shall be $250;

(5) $400 for 2003, except in the case of a Noncommercial Webcaster substantially all of the programming of which is reasonably classified as news, talk, sports or business programming, in which case the minimum fee shall be $250; and

(6) $500 for 2004, except in the case of a Noncommercial Webcaster substantially all of the programming of which is reasonably classified as news, talk, sports or business programming, in which case the minimum fee shall be $250.

(c) *Noncommercial Webcasters Transmitting Multiple Channels.* Notwithstanding Section 3(a) or (b) as applicable, the nonrefundable minimum annual fee shall be $500 for each year (as identified in Section 3(a)(1) through (3) or 3(b)(1) through (6)) for any Noncommercial Webcaster that made or makes digital audio transmissions of sound recordings on more than one channel or station of programming; provided that—

(1) if the digital audio transmissions of sound recordings over any channels or stations in excess of one consist only of ''Incidental Performances'' (as defined in Section 9(f)), the nonrefundable minimum annual fee shall be as provided in Section 3(a) or (b) as applicable;

(2) if substantially all of the programming of all of a Noncommercial Webcaster's channels and stations is reasonably classified as news, talk, sports or business programming, the minimum fee shall be $250;

(3) if a Noncommercial Webcaster that owns or operates multiple over-the-air terrestrial AM or FM radio stations offers more than one Internet channel or station on which substantially all of the programming consists of Broadcaster Simulcasts, then—

(A) a nonrefundable minimum annual fee otherwise determined in accordance with this Section 3(c) shall extend to only three such Internet channels or stations offering Broadcaster Simulcasts, as well as associated Internet-only channels (subject to Section 5);

(B) additional nonrefundable minimum annual fees shall be payable under this Section 3(c) for additional groups of up to three Internet channels or stations offering Broadcaster Simulcasts, as well as associated Internet-only channels (subject to Section 5);

(C) each such group of up to three such Internet channels or stations, as well as associated Internet-only channels (subject to Section 5), shall be treated as a separate Noncommercial Webcaster for purposes of Sections 3(c)(2), 4 and 5;

(D) all such channels or stations offering Broadcaster Simulcasts in a group shall be treated as a single channel or station for purposes of Section 5;

(E) any additional channels or stations considered with the group for purposes of Section 5 shall also be considered with the group for purposes of Section 4; and

(F) accordingly, the Noncommercial Webcaster may offer two additional Internet-only channels or stations with each group of up to three channels or stations offering Broadcaster Simulcasts without triggering payments under Section 5(b), but all of such channels or stations (up to a total of five) shall be considered together for purposes of determining whether the Noncommercial Webcaster exceeds the 146,000 Aggregate Tuning Hour threshold in Section 4; and

(4) for purposes of determining the number of channels or stations of programming offered by a Noncommercial Webcaster, an ''archived program'' (as defined in 17 U.S.C. 114(j)(2)) that complies with the conditions in 17 U.S.C. 114(d)(2)(C)(iii)(I) and (II) shall not be considered a separate channel or station of programming except in the case of a Noncommercial Webcaster that exclusively makes digital audio transmissions of archived programming.

(d) *Payment in Lieu of Providing Reports of Use.* All Noncommercial Webcasters' payments of nonrefundable minimum annual fees for each of 2003 and 2004 shall be accompanied by an additional payment of $50 in 2003 and $25 in 2004 in lieu of the provision of reports of use of sound recordings, as described in Section 7.

4. Usage Fees for 2004

(a) *In General.* Subject to Section 5, the nonrefundable minimum annual fee payable under Section 3 for 2004 shall constitute full payment for digital audio transmissions totaling not more than 146,000 ''Aggregate Tuning Hours'' (as defined in Section 9(a)) per month. If, in any month during 2004, a Noncommercial Webcaster makes digital audio transmissions of sound recordings under the section 114 statutory license in excess of 146,000 Aggregate Tuning Hours, the Noncommercial Webcaster shall pay additional royalties for those digital audio transmissions in excess of 146,000 Aggregate Tuning Hours at the following rates, subject to an election as provided in Section 4(b):

(1) $0.0002176 (.02176¢) per ''Performance'' (as defined in Section 9(f)); or

(2) $.00251 (.251¢) per ''Aggregate Tuning Hour,'' except in the case of channels or stations where substantially all of the programming is reasonably classified as news, talk, sports or business programming, in which case the royalty rate shall be $.0002 (.02¢) per Aggregate Tuning Hour.

For the avoidance of doubt, a Noncommercial Webcaster shall calculate its Aggregate Tuning Hours of digital audio transmissions each month and shall pay any additional royalties owed for such month as provided above in this Section 4(a), but the Noncommercial Webcaster shall not owe any additional royalties for any subsequent months until such time as the Noncommercial Webcaster again exceeds the 146,000 Aggregate Tuning Hour threshold during a given month.

(b) *Election of Per Performance or Aggregate Tuning Hour Rate.* The first time a Noncommercial Webcaster is required to pay additional royalties under Section 4(a), the Noncommercial Webcaster shall elect to pay based on the per performance royalty set forth in Section 4(a)(1) or the aggregate tuning hour royalty set forth in Section 4(a)(2) for all additional royalties under Section 4(a) incurred during the remainder of 2004, if any. Thus, for example, a Noncommercial Webcaster may not in one

month when its digital audio transmissions exceed 146,000 Aggregate Tuning Hours calculate its additional royalties based on the per performance royalty and in another month when its digital audio transmissions exceed 146,000 Aggregate Tuning Hours calculate its additional royalties based on the aggregate tuning hour royalty.

(c) *Reporting.* For 2004, each Noncommercial Webcaster making digital audio transmissions in excess of 146,000 Aggregate Tuning Hours in any month shall report its Aggregate Tuning Hours of digital audio transmissions to SoundExchange in its monthly statement of account under Section 6(d). Each Noncommercial Webcaster having a statutory license in 2004 and not making digital audio transmissions in excess of 146,000 Aggregate Tuning Hours in any month shall so certify in the statement of account accompanying its first payment in 2005, if any.

5. Fees for More Than Three Channels of Programming

Subject to Section 3(c)(3), if in any year (as identified in Section 3(a)(1) through (3) or 3(b)(1) through (6)), a Noncommercial Webcaster made or makes digital audio transmissions of sound recordings on more than three channels or stations of programming, then—

(a) the Noncommercial Webcaster shall by written notice to SoundExchange at the time of its first payment for the year or its inception of its first channel or station in excess of three, whichever is later, designate three channels or stations for which the nonrefundable minimum annual fee payable under Section 3, and in 2004, any additional royalty payment under Section 4, shall constitute full payment; and

(b) the Noncommercial Webcaster shall pay royalties for all its digital audio transmissions of sound recordings under the section 114 statutory license over its other channels and stations at the Statutory Rate for digital audio transmissions made by commercial eligible nonsubscription transmission services at such time, provided that—

(1) the Noncommercial Webcaster shall not be required to make any minimum payment that otherwise applies to commercial eligible nonsubscription transmission services;

(2) the nonrefundable minimum annual fee payable under Section 3 shall not be creditable toward such payments for its other channels and stations;

(3) such payments for its other channels and stations shall be due at the times provided in Section 6 (rather than any different times otherwise applicable to commercial eligible nonsubscription transmission services), except that if the Statutory Rate for digital audio transmissions made by commercial eligible nonsubscription transmission services has not then been determined, such payments for its other channels and stations shall be due 45 days following the month in which the Statutory Rate is determined; and

(4) the Noncommercial Webcaster shall comply with other terms relating to royalty payments that otherwise apply to commercial eligible nonsubscription transmission services (*e.g.* terms concerning any election among payment options).

For the avoidance of doubt, by operation of Section 3(c)(3), when a Noncommercial Webcaster that owns or operates multiple over-the-air terrestrial AM or FM radio stations offers more than one Internet channel or station on which substantially all of the programming consists of Broadcaster Simulcasts: (i) such Broadcaster Simulcasts shall in no event be subject to the Statutory Rate for digital audio transmissions made by commercial eligible nonsubscription transmission services, and (ii) only programming offered on Internet-only channels or stations in excess of two that may be associated with a group of up to three channels or stations offering Broadcaster Simulcasts may be subject to that Statutory Rate as provided in this Section.

6. Payment of Royalties in General

(a) *Timing of Minimum Payments.* Payments of nonrefundable minimum annual fees under Section 3 for the period beginning on October 28, 1998, and ending on December 31, 2003, shall be due by October 15, 2003. Nonrefundable minimum annual fees for 2004 shall be due by January 31, 2004. Notwithstanding the foregoing provisions of this Section 6(a), when a Noncommercial Webcaster has not previously made digital audio transmissions of sound recordings under the section 114 statutory license, the Noncommercial Webcaster may make its first payment of nonrefundable minimum annual fees within 45 days following the month in which the Noncommercial Webcaster commences digital audio transmissions of sound recordings under the section 114 statutory license.

(b) *Timing of Other Payments.* Any payments due under Section 4 or 5 shall be due 45 days following the month in which the liability accrues.

(c) *Credit.* Any payments of section 112 or 114 statutory license royalties made by a Noncommercial Webcaster to SoundExchange prior to its election under Section 2 shall be creditable to the payments due under Sections 3 through 5 of these Rates and Terms.

(d) *Remittance.* Payments of all amounts due under these Rates and Terms shall be made to SoundExchange and shall under no circumstances be refundable. Payments shall be accompanied by a statement of account in the form made available on the SoundExchange Web site located at *http://www.soundexchange.com.*

(e) *Ephemeral Recordings.* The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made during the period beginning on October 28, 1998, and ending on December 31, 2004, and used solely by a Noncommercial Webcaster to facilitate transmissions for which it pays royalties as and when provided in these Rates and Terms shall be deemed to be included within, and to comprise 8.8% percent of, the Noncommercial Webcaster's royalty payments under these Rates and Terms.

(f) *Continuing Obligation to Pay.* If Statutory Rates and terms for Noncommercial Webcasters for the period beginning January 1, 2005, have not been established by December 31, 2004, then Noncommercial Webcasters shall continue to make payments at the 2004 rates under these Rates and Terms until such successor rates and terms are established. Such interim royalties shall be subject to retroactive adjustment based on the final successor rates. Any overpayment shall be fully creditable to future payments, and any underpayment shall be paid within 30 days after establishment of the successor rates and terms, except as may otherwise be provided in the successor terms.

(g) *Late Payments.* A Noncommercial Webcaster shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by SoundExchange after the due date. Late fees shall accrue from the due date until payment is received by SoundExchange.

7. Notice and Recordkeeping

(a) *Data for Distributions.* Noncommercial Webcasters electing these Rates and Terms shall not be required to provide reports of use of sound recordings for 2003 and 2004, even if the Librarian of Congress issues regulations otherwise requiring such reports by Noncommercial Webcasters. The payments required by Section 3(d) are intended to facilitate SoundExchange's ability to collect or otherwise acquire substitute data on which to base distributions to copyright owners and performers of payments made by Noncommercial Webcasters, although SoundExchange shall be under no obligation to spend such payments in any particular way or to collect or otherwise acquire any particular data by any particular means. SoundExchange may base its distributions to copyright owners and performers of payments made by Noncommercial Webcasters on any data or methodology determined by its board.

(b) *Future Reporting.* The Noncommercial Webcasters shall designate a task force of not less than five members that shall be obligated to use reasonable efforts to work with SoundExchange to determine data fields and report formats and recommend policies, procedures and systems for the delivery of electronic reports of use of sound recordings to SoundExchange sufficient to permit SoundExchange, beginning in 2005, to distribute the royalties paid by Noncommercial Webcasters to those copyright owners and performers whose sound recordings are used by Noncommercial Webcasters based on data reported by or on behalf of Noncommercial Webcasters. In the absence of agreement among the Noncommercial Webcasters concerning the membership of such task force, each Noncommercial Webcaster shall be obligated to use reasonable efforts to do the foregoing.

8. Default

A Noncommercial Webcaster shall comply with all the requirements of these Rates and Terms. If it fails to do so, SoundExchange may give written notice to the Noncommercial Webcaster that, unless the breach is remedied within 30 days from the date of notice and not repeated, the

Noncommercial Webcaster's authorization to make public performances and ephemeral reproductions under these Rates and Terms will be automatically terminated. Such termination renders any public performances and ephemeral reproductions as to which the breach relates actionable as acts of infringement under 17 U.S.C. 501 and fully subject to the remedies provided by 17 U.S.C. 502–506 and 509.

9. Definitions

As used in these Rates and Terms, the following terms shall have the following meanings:

(a) The term ''*Aggregate Tuning Hours*'' means the total hours of programming that a Noncommercial Webcaster has transmitted during the relevant period to all listeners within the United States over the relevant channels or stations, and from any archived programs, that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions, less the actual running time of any sound recordings for which the Noncommercial Webcaster has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a Noncommercial Webcaster transmitted 1 hour of programming to 10 simultaneous listeners, the Noncommercial Webcaster's Aggregate Tuning Hours would equal 10. If three minutes of that hour consisted of transmission of a directly licensed recording, the Noncommercial Webcaster's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one listener listened to a Noncommercial Webcaster for 10 hours (and none of the recordings transmitted during that time was directly licensed), the Noncommercial Webcaster's Aggregate Tuning Hours would equal 10.

(b) A ''*Broadcaster Simulcast*'' is a simultaneous Internet transmission or retransmission of an over-the-air terrestrial AM or FM radio broadcast, including one with previously broadcast programming substituted for programming for which requisite licenses or clearances to transmit over the Internet have not been obtained and one with substitute advertisements, where such Internet transmission or retransmission is made by a Noncommercial Webcaster that owns or operates the over-the-air radio station making the AM or FM broadcast.

(c) An ''*Incidental Performance*'' is a Performance that both:

(1) makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk, sports and business programming, brief background performances during disk jockey announcements, brief performances during commercials of 60 seconds or less in duration, or brief performances during sporting or other public events; and

(2) other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than 30 seconds (as a sound recording used as a theme song is featured).

(d) An ''*NEE*'' or ''*Noncommercial Educational Entity*'' is a Noncommercial Webcaster that is directly operated by, or is affiliated with and officially sanctioned by, and the digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled at, a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution, but that is not a ''public broadcasting entity'' (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

(e) The term ''*Noncommercial Webcaster*'' shall have the meaning given in 17 U.S.C. 114(f)(5)(E)(i) (as added by the Small Webcaster Settlement Act of 2002).

(f) A ''*Performance*'' is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission or retransmission (*e.g.*, the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) a performance of a sound recording that does not require a license (*e.g.*, the sound recording is not copyrighted);

(2) a performance of a sound recording for which the Noncommercial Webcaster has previously obtained a license from the copyright owner of such sound recording; and

(3) an Incidental Performance.

[FR Doc. 03–14791 Filed 6–10–03; 8:45 am]

BILLING CODE 1410–33–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–35334]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 29–30560–01, Linguagen, Corp., Paramus, NJ

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Linguagen Corp. for Materials License No. 29–30560–01, to authorize release of its facility in Paramus, New Jersey for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Paramus, New Jersey facility for unrestricted use. Linguagen Corp. has been authorized by NRC since April 13, 2002 to use radioactive materials for research and development purposes at the site. On January 3, 2003, Linguagen Corp. requested that NRC release the facility for unrestricted use. Linguagen Corp. has conducted surveys of the facility as required by 10 CFR part 20 and has determined that the facility meets the license termination criteria in Subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Linguagen Corp.'s request and the results of the surveys and has concluded that the completed action complies with Subpart E of 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML031550264, ML030080404, ML030430589, ML030650126, ML030690328 and ML030630684. These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. Any questions with respect to this action should be referred to Judy Joustra, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, PA 19406, telephone (610) 337–5355, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 4th day of June, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–14682 Filed 6–10–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–16]

Environmental Assessment and Finding of No Significant Impact Related to Virginia Electric and Power Company's Proposed Amendment to License No. SNM–2507

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an amendment, pursuant to 10 CFR 72.56, to Special Nuclear Material License No. 2507 (SNM–2507) held by Virginia Electric and Power Company (Dominion) for the North Anna independent spent fuel storage installation (ISFSI). The requested amendment would revise the Technical Specifications (TS) of SNM–2507 to specifically permit the use of the TN–32 storage cask to store spent fuel with a higher initial enrichment and burnup than currently specified in the TS for the North Anna ISFSI. An environmental assessment (EA) was performed by the NRC staff in support of its review of the license amendment request, in accordance with the requirements of 10 CFR part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI).

Environmental Assessment

Identification of Proposed Action: By letter dated May 28, 2002, as supplemented, Dominion requested an amendment to revise the TS of SNM–2507 for the North Anna ISFSI. The changes would specifically permit the use of the TN–32 storage cask to store spent fuel with a higher initial enrichment and burnup than currently specified in the TS. Currently, the TS for the North Anna ISFSI limit the fuel to be stored in the TN–32 to the following: initial enrichment of ≤3.85% (wt U-235), assembly average burnup of ≤40,000 MWD/MTU, and heat generation of ≤0.847 Kw/assembly. This amendment requests the limits be amended as follows: initial enrichment of ≤4.35% (wt U-235), assembly average burnup ≤45,000 MWD/MTU, and heat generation of ≤1.02 Kw/assembly.

Need for the Proposed Action: The proposed action is necessary to allow continued storage of spent fuel in dry casks at the North Anna ISFSI. Without this amendment, North Anna will be unable to load spent fuel in TN–32 casks because the remaining spent fuel at the site has the higher enrichment and burnup. If unable to store spent fuel in TN–32 casks, North Anna will not be able to retain full core offload capability. North Anna would eventually have to find an alternate means to store fuel, or shut down.

Environmental Impacts of the Proposed Action: The NRC has completed its evaluation of the proposed action and concludes that granting the request for amendment to allow the storage of spent fuel assemblies with burnup and initial enrichment of up to 45,000 MWD/MTU and 4.35% (wt U-235), respectively, in TN–32 casks used at the North Anna ISFSI, will not increase the probability or consequence of accidents beyond that bounded by previous analysis. No changes are being made in the types of any effluents that may be released offsite. With regard to radiological impacts, the addition of higher burnup and initial enrichment spent fuel assemblies was calculated to yield an average surface dose rate of 218 mrem/hour at the TN–32 cask side surface. A re-evaluation of occupational doses based on actual operating experience and the revised surface dose rate, indicates that the overall exposure to workers during cask loading, transport, and emplacement will increase from the original estimate of 7.19 person-rem to 14.30 person-rem. The dose to the nearest permanent resident due to ISFSI operations was calculated to be 2.10 mrem/yr. If the proposed amendment is approved, the total annual dose for all site sources (ISFSI, Unit 1 and Unit 2) would be 5.10 mrem/yr. This is well below the 25 mrem/yr limit cited in 10 CFR 72.104(a). Based on the occupational and public dose analysis results, there are no significant radiological environmental impacts associated with the proposed action.

The amendment only affects the requirements associated with the contents of the casks and does not affect non-radiological plant effluents or any other aspects of the environment. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impact of the Alternative to the Proposed Action: The alternative to the proposed action would be to deny the request for amendment (*i.e.*, the ''no-action'' alternative). Denial of the proposed action would result in North Anna having to store its remaining spent fuel in the spent fuel pool. Without dry cask storage, North Anna would lose the capability to maintain full core offload and eventually both units would have to shut down due to lack of storage space. The electrical generating capacity lost would have to be replaced by another source of power, which could result in greater environmental impact and/or higher electricity rates for customers. Increased storage in the spent fuel pool could potentially lead to greater occupational exposure than dry cask storage due to the proximity of workers to the fuel. The environmental impacts of the alternative action could be greater than the proposed action.

Given that the alternative action of denying the approval for the amendment has no lesser environmental impacts associated with it, the Commission concludes that the preferred alternative is to grant this amendment.

Agencies and Persons Consulted and Sources Used: On April 9, 2003, Mr. Les Foldese of the Virginia Department of Health, Radiological Health Programs, was contacted regarding the proposed action and had no concerns. The NRC staff have determined that the proposed amendment will not introduce any new effects on listed species, critical habitat, or historical properties. Therefore no further consultation is required. 10 CFR part 51 was used as a source.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an amendment to permit the use of the TN–32 dry storage casks to store spent fuel with a higher initial enrichment (≤4.35% wt U-235) and burnup (≤45,000 MWD/MTU) at the North Anna ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

The request for the amendment was docketed under 10 CFR part 72, Docket 72–16. For further details with respect to this action, see the amendment application dated May 28, 2002, as supplemented, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.*

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 2nd day of June, 2003.

For the Nuclear Regulatory Commission.

Mary Jane Ross-Lee,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–14683 Filed 6–10–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Regulatory Guide 1.194, ''Atmospheric Relative Concentrations for Control Room Radiological Habitability Assessments at Nuclear Power Plants,'' provides guidance on determining atmospheric relative concentration ($_{X}$/Q) values in support of design basis control room radiological habitability assessments at nuclear power plants.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Regulatory Guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov.* Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; *http://www.ntis.gov/;* telephone 1–800–553–6847. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, MD this 30th day of May 2003.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–14684 Filed 6–10–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Regulatory Guide 1.195, ''Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light-Water Nuclear Power Reactors,'' provides guidance to licensees of operating power reactors on methods and assumptions for performing evaluations of fission product releases and radiological consequences of several postulated light-water reactor design basis accidents.

Regulatory Guide 1.196, ''Control Room Habitability at Light-Water Nuclear Power Reactors,'' provides guidance and criteria acceptable to the NRC staff for implementing the NRC's regulations regarding control room habitability.

Regulatory Guide 1.197, ''Demonstrating Control Room Envelope Integrity at Nuclear Power Reactors,'' provides an approach acceptable to the NRC staff for measuring inleakage into the control room and associated rooms and areas at nuclear power reactors.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Regulatory Guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov.* Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, MD this 29th day of May 2003.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–14685 Filed 6–10–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Solicitation of Public Comments on Draft NMSS Policy and Procedures Letter 1–82 and Backfit Guidance

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for comment.

SUMMARY: The NRC's Office of Nuclear Material Safety and Safeguards (NMSS) has drafted guidance for the NRC staff on applying the backfit requirements of 10 CFR part 70 to fuel cycle facilities. The draft guidance is titled, NMSS Policy and Procedures Letter (P&PL) 1–82, ''10 CFR part 70 Backfit Guidance.'' The P&PL is now available for stakeholder review and comment.

DATES: Written comments must be filed within 30 days of the publication of this **Federal Register** notice. Comments received after this date will be considered, however the Commission will only be able to ensure the incorporation of comments received on or before this date.

Availability of Documents

A copy of this draft P&PL is available in the NRC's Agency-Wide Document Access and Management System (ADAMS). This document can be viewed by searching for ADAMS accession no. ML030730680. ADAMS is accessible from the NRC Web site at *www.nrc.gov/reading-rm/adams.html.* Comments should be clear and reproducible, and include name, affiliation (as applicable) and address of sender. Comments on this document must be sent to the Chief, Rules and Directives Branch, ADM, U.S. NRC, Washington, DC, 20555, or may be hand-delivered to 11555 Rockville Pike, Rockville, Maryland, 20852, between the hours of 7:45 a.m. and 4:15 p.m. on Federal work-days. All comments will be made available for public inspection in ADAMS and at the NRC headquarters public document room (PDR). Following evaluation of the comments, changes will be made to the final version of the P&PL and the guidance published for NRC staff use. The draft P&PL is available to read and copy for a fee at the NRC's PDR located at 11555 Rockville Pike, Rockville, Maryland, 20852.

FOR FURTHER INFORMATION CONTACT: Billy Gleaves, Mechanical Systems Engineer, Office of Nuclear Materials Safety and Safeguards, U.S. NRC, Mail Stop T8 A33, Washington, DC, 20555, or by e-mail at *bcg@nrc.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the draft P&PL 1–82 is to provide guidance to the NRC staff for implementing the backfit provisions in 10 CFR 70.76. In this context, 10 CFR 70.76 will become effective upon issuance of the final NMSS P&PL 1–82 for all Part 70 requirements, except for subpart H, and following NRC approval of a licensee's ISA Summary, the requirements of 10 CFR 70.76 become effective for Subpart H requirements.

The availability of this document is the latest step in an NRC effort to improve the efficiency of the NRC's fuel cycle oversight program and to enable open communications with stakeholders.

Dated at Rockville, Maryland, this 2nd day of June, 2003.

For the Nuclear Regulatory Commission.

Susan M. Frant,

Chief, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–14686 Filed 6–10–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

2003 List of Designated Federal Entities and Federal Entities

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice provides a list of Designated Federal Entities and Federal Entities, as required by the Inspector General Act of 1978 (IG Act), as subsequently amended.

FOR FURTHER INFORMATION CONTACT: Office of Federal Financial Management, Office of Management and Budget, at 202–395–3993.

SUPPLEMENTARY INFORMATION: This notice provides a copy of the 2003 List of Designated Federal Entities and Federal Entities, which the Office of Management and Budget (OMB) is required to publish annually under the IG Act. This list is also posted on the OMB Web site at *http://www.whitehouse.gov/financial.*

The list is divided into two groups: Designated Federal Entities and Federal Entities. The Designated Federal Entities are required to establish and maintain Offices of Inspector General. The Designated Federal Entities are listed in the IG Act, except that those agencies which have ceased to exist or have changed status have been deleted from the list.

Federal Entities are required to report annually to each House of the Congress and OMB on audit and investigative activities in their organizations. Federal Entities are defined as any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive Branch of government, or any independent regulatory agency'' other than the Executive Office of the President and agencies with statutory Inspectors General. For 2003, there is one addition to the Designated Federal Entities list (Election Assistance Commission) and two deletions to the Federal Entities list (the Export-Import Bank now has a Inspector General nominated by the President and confirmed by the Senate, and the National Commission on Libraries and Information Science was not funded in 2003), for a total of three changes from the 2002 list.

The 2003 List of Designated Federal Entities and Federal Entities was prepared in consultation with the U.S. General Accounting Office.

Linda M. Springer,

Controller, Office of Federal Financial Management.

Herein follows the text of the 2003 List of Designated Federal Entities and Federal Entities:

2003 List of Designated Federal Entities and Federal Entities

The Inspector General Act of 1978, as subsequently amended, requires OMB to publish a list of ''Designated Federal Entities'' and ''Federal Entities'' and the heads of such entities. Designated Federal Entities were required to establish Offices of Inspector General. Federal Entities are required to report annually to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations.

Designated Federal Entities and Entity Heads

1. Amtrak—President
2. Appalachian Regional Commission—Federal Co-Chairperson
3. The Board of Governors, Federal Reserve System—Chairperson
4. Commodity Futures Trading Commission—Chairperson
5. Consumer Product Safety Commission—Chairperson
6. Corporation for Public Broadcasting—Board of Directors
7. Denali Commission—Chairperson
8. Election Administration Commission—Chairperson
9. Equal Employment Opportunity Commission—Chairperson
10. Farm Credit Administration—Chairperson
11. Federal Communications Commission—Chairperson
12. Federal Election Commission—Chairperson
13. Federal Housing Finance Board—Chairperson
14. Federal Labor Relations Authority—Chairperson
15. Federal Maritime Commission—Chairperson
16. Federal Trade Commission—Chairperson
17. Legal Services Corporation—Board of Directors
18. National Archives and Records Administration—Archivist of the United States
19. National Credit Union Administration—Chairperson
20. National Endowment for the Arts—Chairperson
21. National Endowment for the Humanities—Chairperson
22. National Labor Relations Board—Chairperson
23. National Science Foundation—National Science Board
24. Peace Corps—Director
25. Pension Benefit Guaranty Corporation—Chairperson

26. Securities and Exchange Commission—Chairperson
27. Smithsonian Institution—Secretary
28. United States International Trade Commission—Chairperson
29. United States Postal Service—Governors of the Postal Service

Federal Entities and Entity Heads

1. Advisory Council on Historic Preservation—Chairperson
2. African Development Foundation—Chairperson
3. American Battle Monuments Commission—Chairperson
4. Architectural and Transportation Barriers Compliance Board—Chairperson
5. Armed Forces Retirement Home—Board of Directors
6. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson
7. Chemical Safety and Hazard Investigation Board—Chairperson
8. Christopher Columbus Fellowship Foundation—Chairperson
9. Commission for the Preservation of America's Heritage Abroad—Chairperson
10. Commission of Fine Arts—Chairperson
11. Commission on Civil Rights—Chairperson
12. Commission on Ocean Policy—Chairperson
13. Committee for Purchase from People Who Are Blind or Severely Disabled—Chairperson
14. Court of Appeals for Veterans Claims—Chief Judge
15. Defense Nuclear Facilities Safety Board—Chairperson
16. Delta Regional Authority—Federal Co-Chairperson
17. Farm Credit System Financial Assistance Corporation—Chairperson
18. Farm Credit System Insurance Corporation—Chairperson
19. Federal Financial Institutions Examination Council Appraisal Subcommittee—Chairperson
20. Federal Mediation and Conciliation Service—Director
21. Federal Mine Safety and Health Review Commission—Chairperson
22. Federal Retirement Thrift Investment Board—Executive Director
23. Harry S. Truman Scholarship Foundation—Chairperson
24. Institute of American Indian and Alaska Native Culture and Arts Development—Chairperson
25. Institute of Museum and Library Services—Director
26. Inter-American Foundation—Chairperson
27. James Madison Memorial Fellowship Foundation—Chairperson
28. Japan-U.S. Friendship Commission—Chairperson
29. Marine Mammal Commission—Chairperson
30. Merit Systems Protection Board—Chairperson
31. Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation—Chairperson
32. National Capital Planning Commission—Chairperson
33. National Council on Disability—Chairperson
34. National Mediation Board—Chairperson
35. National Transportation Safety Board—Chairperson
36. National Veterans Business Development Corporation—Chairperson
37. Neighborhood Reinvestment Corporation—Chairperson
38. Nuclear Waste Technical Review Board—Chairperson
39. Occupational Safety and Health Review Commission—Chairperson
40. Office of Government Ethics—Director
41. Office of Navajo and Hopi Indian Relocation—Chairperson
42. Office of Special Counsel—Special Counsel
43. Offices of Independent Counsel—Independent Counsels
44. Overseas Private Investment Corporation—Board of Directors
45. Pacific Charter Commission—Chairperson
46. Postal Rate Commission—Chairperson
47. Presidio Trust—Chairperson
48. Selective Service System—Director
49. Smithsonian Institution/John F. Kennedy Center for the Performing Arts—Chairperson
50. Smithsonian Institution/National Gallery of Art—President
51. Smithsonian Institution/Woodrow Wilson International Center for Scholars—Director
52. Trade and Development Agency—Director
53. U.S. Holocaust Memorial Museum—Chairperson
54. U.S. Institute of Peace—Chairperson
55. Vietnam Education Foundation—Chairperson

[FR Doc. 03–14738 Filed 6–10–03; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47990; File No. PCAOB–2003–03]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules Relating to Registration System

June 5, 2003.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (''Act''), notice is hereby given that on May 8, 2003, the Public Company Accounting Oversight Board (''Board'' or ''PCAOB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rules described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

The Board proposes to adopt a registration system for public accounting firms to implement section 102 of the Act. The proposed registration system consists of eight rules (PCAOB Rules 2100 through 2106, and 2300, plus definitions that would appear in Rule 1001) and a form (PCAOB Form 1). The text of the proposed rules is available for inspection at the Office of the Secretary, the PCAOB, the Commission's Public Reference Room, and on the Board's Internet Web site at *http://www.pcaobus.org/pcaob_rulemaking.htm.*

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

1. Purpose

Section 102 of the Act prohibits accounting firms that are not registered with the Board from preparing or issuing audit reports on issuers, as that term is defined in the Act and the Board's rules, or from participating in these activities. The Act provides that firms must register during the 180-day period following the Commission's determination that the Board has the capacity to carry out the requirements of Title I of the Act and to enforce compliance therewith.[1] The Commission made this determination on April 25, 2003. In order to permit public accounting firms to comply with this requirement, the Board has adopted proposed rules to implement a registration system. The registration system consists of eight rules (PCAOB Rules 2100 through 2106, and 2300, plus definitions that would appear in Rule 1001) and a form (PCAOB Form 1). Each of the rules and each part of the form are discussed below.

[1] *See* sections 101(d) and 102(a) of the Act.

Rule 1001—Definitions of Terms Employed in Rules

Rule 1001 contains definitions of terms used in the Board's rules. Certain of the definitions are taken, or closely track, those found in section 2 of the Act.[2] Other definitions are based on those used in the Commission's rules.

Accountant

Although used in the Act, the term ''accountant'' is not defined in the Act. As used in the Act, the term refers to a natural person, as opposed to a legal entity.[3] This concept of ''accountant'' is different from the Commission's definition of accountant under Regulation S–X, which includes legal entities, such as a registered public accounting firm.[4] Therefore, to reflect the context in which the term ''accountant'' is used in the Act, and to distinguish the Board's definition from that in Regulation S–X, the Board is adopting a definition of ''accountant'' in Rule 1001(a)(ii) that is limited to natural persons.[5]

The definition covers three types of natural persons: (i) Those who are certified public accountants, (ii) those who hold a college, university, or higher professional degree in accounting, or a license or certification authorizing him or her to engage in the business of auditing or accounting, and (iii) those who hold a college, university, or higher professional degree in a field, other than accounting, and who participate in audits. The definition also specifies that the term does not include persons engaged only in ministerial or clerical tasks.

The Board's definition is intended to include all natural persons, who have the requisite licensing, certification, training, and/or experience, whether obtained in the U.S. or a non-U.S jurisdiction, to be considered an accountant. In its proposing release, the Board put forth a similar definition. Commenters raised several concerns with the proposed definition. First, several commenters suggested that the proposed definition was overbroad and asked the Board to limit its application to only certified public accountants, or, at least, to clarify that it does not apply to persons with college degrees that perform only clerical or ministerial tasks on an audit. After considering these comments, the Board decided to revise the definition to clarify that the term does not capture persons engaged only in clerical or ministerial tasks. The Board did not, however, adopt the suggestions to limit the definition to only certified public accountants because such a definition would be significantly narrower than the common meaning of the term and because the Board understands that accountants who are not certified public accountants often participate in the preparation or issuance of audit reports. In addition, at least one non-U.S. commenter suggested that the proposed definition's use of the term ''undergraduate degree'' would not be meaningful as applied to non-U.S. accountants. Accordingly, at this commenter's suggestion, the Board has decided to change this part of the definition to refer to a ''college, university, or higher professional degree.''

Associated Entity

Rule 1001(a)(iv) defines ''associated entity,'' as ''with respect to a public accounting firm (i) any entity that directly, indirectly, or through one or more intermediaries, controls or is controlled by, or is under common control with, such public accounting firm; or (ii) any ''associated entity,'' as used in Rule 2–01(f)(2) of Regulation S–X, 17 CFR 210.2–10(f)(2), that would be considered part of that firm for purposes of the Commission's auditor independence rules.'' This definition of ''associated entity'' is meant to give the term the same meaning as in the Commission's auditor independence rules.[6]

A few commenters suggested that the Board create its own definition of this term, rather than relying on the meaning of the term in the Commission's rules. One of these commenters suggested that the Board define the term as those firms with which the applicant ''holds itself out as being associated.'' The Board has decided not to adopt this suggestion because the suggested definition is narrower than the Commission's interpretation of the term, in some contexts, and does not seem more definite than the SEC's interpretation.

Audit

In general, Rule 1001(a)(v) defines ''audit'' as an examination of an issuer's financial statements by an independent public accounting firm in accordance with the rules of the Board or the Commission for purposes of expressing an opinion on such statements. For the period preceding the adoption of the Board's applicable rules under section 103 of the Act, however, the term covers an examination of an issuer's financial statements by an independent public accounting firm in accordance with generally accepted auditing standards (''GAAS'').[7] The Board has adopted the same meaning for ''audit'' as used in section 2(a)(2) of the Act.

Audit Report

Rule 1001(a)(vi) defines ''audit report'' to mean ''a document or other record (1) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report or other document; or (ii) asserts no such opinion can be expressed.'' The Board has adopted the same meaning for audit as used in section 2(a)(4) of the Act.

Two commenters suggested that the term could be confusing to applicants and, if applied in certain contexts, could be overbroad. The Board has decided not to change the definition of this term since the term is defined in the Act. If specific issues arise in administering the definition in the context of the Board's registration rules or otherwise, the Board will consider issuing guidance on the definition.

Audit Services

Rule 1001(a)(vii)(1) defines ''audit services'' as ''professional services

[2] Certain definitions in the Board's rules that are taken verbatim from the statute or that are self-evident are not discussed below.

[3] For example, section 102(b)(2)(E) of the Act requires disclosure of a list of ''all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person * * *.''

[4] Under Rule 2–01(f)(1) of Regulation S–X, accountant means a ''registered public accounting firm, certified public accountant or public accountant performing services in connection with an engagement for which independence is required.'' Rule 2–01(f)(1) provides further that ''references to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated.'' *See* Rule 2–01(f)(1) of Regulation S–X, 17 CFR 210.2–01(f)(1).

[5] The definitions in proposed Rule 1001 are marked with a letter and a Roman numeral. The letter matches the first letter of the word or phrase being defined and the Roman numeral serves to distinguish the definition from other defined words or phrases beginning with the same letter. This system has been adopted so that the definitions within Rule 1001 will remain in rough alphabetical order.

[6] *See* Rule 2–01(f)(2) of Regulation S–X, 17 CFR 210.2–01(f)(2); *see also* Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33–7919, at notes 490 and 491 (November 21, 2000).

[7] Because GAAS and Commission rules require interim reviews of issuers' financial statements by independent public accountants, the term audit includes work performed in the context of such reviews. *See* American Institute of Certified Public Accountants (''AICPA'') Statement on Auditing Standards (''SAS'') 100 and Rule 10–01 of Regulation S–X, 17 CFR 210.10–01; *see also* section 2(a)(8) of the Act (implicitly stating that these reviews are audit services, by excluding from the definition of ''non-audit services'' services provided to an issuer ''in connection with an audit or review of the financial statements of an issuer'').

rendered for the audit of an issuer's annual financial statements and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports.'' This definition of ''audit services'' is intended to capture the same category of services for which fees were required to be disclosed as ''audit fees'' pursuant to the Commission's 2000 proxy disclosure rules.[8]

Several commenters suggested that the Board change the definition of ''audit services'' to conform to the category of fees disclosed as ''audit fees'' under the SEC's recently revised auditor independence rules, adopted on January 28, 2003, as amended on March 26, 2003. As noted below in the discussion of Part II of the Form, the Board has decided not to change this definition at this time. However, the Board has decided to add paragraph (2) to this rule, which provides that, effective after December 15, 2003, the term ''audit services'' will mean ''professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.'' This definition in paragraph (2) is intended to conform to the category of fees disclosed as ''audit fees'' under the SEC's recently revised auditor independence rules.

Foreign Public Accounting Firm

Rule 1001(f)(i) defines foreign public accounting firm as a ''public accounting firm that is organized and operates under the laws of a non-U.S. jurisdiction, government or political subdivision thereof.'' This definition, which follows closely the definition of foreign public accounting firm in section 106(d) of the Act, is intended to clarify that the term covers accounting firms that are organized and operate in any jurisdiction outside of the United States.[9]

Issuer

Rule 1001(i)(iii) defines the term ''issuer'' to include any public company, regardless of the jurisdiction of its organization or operation, that is required to file reports with the Commission or that has filed a registration statement for a public offering of securities. This definition is the same as the definition of the term ''issuer'' in section 2(a)(7) of the Act.

Non-Audit Services

Rule 1001(n)(ii)(1) defines ''non-audit services'' to mean services related to financial information systems design and implementation as defined in Rule 2–01(c)(4)(ii) of Regulation S–X, 17 CFR 2–01(c)(4)(ii), and all other services, other than audit services or other accounting services. This definition will be effective through December 15, 2003. Paragraph (2) of the rule provides that effective after December 15, 2003, ''non-audit services'' will mean ''all other services other than audit services, other accounting services, and tax services.'' The definition in paragraph (2) is designed to be consistent with the category of services disclosed as ''all other fees'' under the Commission's revised auditor independence rules, adopted on January 28, 2003, as amended on March 26, 2003. This definition is further addressed as part of the discussion of Part II of the Form below.

Other Accounting Services

Rule 1001(o)(i)(1) defines ''other accounting services'' as services that are normally provided by the public accounting firm that audits the issuer's financial statements in connection with statutory and regulatory filings or engagements and assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than ''audit services.'' The Board has modeled its definition of ''other accounting services'' on concepts used in the Commission's recent revision of its auditor independence disclosure rules.[10] The term is meant to capture two categories of services: (1) Services the fees for which are to be disclosed as ''audit fees'' under the Commission's revised rules, but that were not previously disclosed as ''audit fees,'' and (2) services the fees for which are to be disclosed as ''audit-related fees'' under the Commission's revised rules.

The first category generally consists of those services that, while not captured as ''audit services'' under the Board's rules, are performed to comply with GAAS. As explained in the Commission's adopting release, certain services, such as tax services and accounting consultations, may not be billed as audit services, but are necessary to comply with GAAS.[11] This category would also include ''services that normally would be provided by the accountant in connection with statutory and regulatory filings or engagements'' and ''services that only the independent accountant reasonably can provide, such as comfort letters, statutory audits, attest services, consents and assistance with review of documents filed with the Commission.''[12]

The term is also meant to capture services the fees for which are to be disclosed as ''audit-related fees'' under the Commission's revised auditor independence disclosure rules.[13] In general, these are fees for ''assurance and related services (*e.g.*, due diligence services) that traditionally are performed by the independent accountant.'' More specifically, as noted in the Commission's adopting release, these services would include, among others, ''employee benefit plan audits, due diligence related to mergers and acquisitions, accounting consultations and audits in connection with acquisitions, internal control reviews, attest services that are not required by statute or regulation and consultation concerning financial accounting and reporting standards.''[14]

In addition, paragraph (2) of the rule provides that, effective after December 15, 2003, the term ''other accounting services'' will mean assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than audit services. The Board intends that this definition in paragraph (2) be consistent with the category of services disclosed as ''audit-related fees'' under the Commission's revised auditor independence rules. This definition is discussed further below in connection with the discussion of Part II of the Form.

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[8] *See* Schedule 14A, Item 9(e)(1), 17 CFR 240.14a–101; *see also* Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33–7919 (November 21, 2000).

[9] Section 106(d) of the Act defines foreign public accounting firm as a ''public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.''

[10] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003).

[11] *Id.* At 39.

[12] *Id.*

[13] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003). *See also* Schedule 14A, Item 9(e)(2), 17 CFR 240.14a–101 (as amended, January 28, 2003).

[14] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003).

Person Associated With A Public Accounting Firm (and Related Terms)

The Board is adopting the same meaning for ''person associated with a public accounting firm'' as used in section 2(a)(9) of the Act, with a few, technical modifications. Commenters raised a number of concerns about the proposed definition. A number of commenters suggested that the definition should be limited to only a public accounting firm's employees, or at least should leave out certain independent contractors. While the Board does not believe that all independent contractors should be excepted from the definition, the Board has revised the definition to clarify that the term does not include persons whom the applicant reasonably believes are persons primarily associated with another registered public accounting firm. In addition, the Board has clarified that the definition does not cover persons engaged in only clerical or ministerial tasks. Finally, the word ''other'' has been eliminated before the terms ''professional employee'' and ''independent contractor'' to clarify that an employment or an independent contractor relationship with a public accounting firm is not required for a person to be covered by the definition. Commenters' concerns about this definition were related to their concerns about the scope of Parts V and VIII of the Form. As discussed below, Part V, and, for foreign public accounting firms, Part VIII of the Form are being modified in light of commenters' concerns.

Play a Substantial Role in the Preparation or Furnishing of an Audit Report

Rule 1001(p)(ii) defines the phrase ''play a substantial role in the preparation or furnishing of an audit report'' to mean ''(1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its audit report with respect to any issuer, or (2) to perform the majority of audit procedures with respect to a subsidiary or component of any issuer the assets or revenues of which constitute 20 percent or more of the consolidated assets or revenues of such issuer necessary for the principal accountant to issue an audit report'' on the issuer.

The first prong of this definition is based on language in section 106(b)(1) of the Act.[15] Note 1 to Rule 1001(p)(ii) explains that the term ''material services'' as used in this definition means services for which the engagement hours or fees constitute 20 percent or more of the total engagement hours or fees, respectively, provided by the principal accountant in connection with the issuance of all or part of its audit report with respect to any issuer.[16]

The second prong of this definition is based on a similar standard used in the Commission's auditor independence rules related to partner rotation.[17] As Note 2 to the rule indicates, the phrase ''subsidiary or component'' is meant to include any subsidiary, division, branch, office or other component of an issuer, regardless of its form of organization and/or control relationship with the issuer.

For both the definition of material services as well as the second prong of the overall definition, the Board believes that a quantitative, as opposed to a qualitative, test imposes less of a burden on firms in determining whether or not they fall into this category. The Board has included a threshold of 20 percent, since this threshold is consistent with accounting literature on ''significance'' tests.[18] Several commenters indicated their agreement with the 20 percent threshold.

Commenters raised several concerns about this proposed definition. One commenter expressed concern that the use of the phrase ''material services'' in the first prong could be read to include non-audit services, such as internal audit services, provided to non-audit clients when those services are relied upon by an auditor in issuing its audit report. Several accounting firms indicated that the first prong of the proposed definition would be difficult for non-affiliated foreign public accounting firms to comply with, since they would need access to the total engagement hours and fees, and therefore favored elimination of the first prong. Other commenters, however, raised concerns that the second prong of the definition might capture firms that perform relatively minor services such as routine observations of inventory test counts for a subsidiary or component of an issuer the assets or revenues of which constitute 20 percent or more of the consolidated assets or revenues of the issuer. Finally, commenters raised practical concerns about when and how the assets and revenues tests of the second prong of the definition should be administered.

After carefully considering the comments it received, the Board has decided to keep both prongs of the definition, but to modify both prongs slightly and to clarify the second prong's application. Specifically, the Board has decided to add a sentence to Note 1 to the rule to clarify that ''material services'' does not include non-audit services provided to a non-audit client. Second, to avoid capturing routine procedures on a significant subsidiary as part of an audit, the second prong has been limited to performing ''the majority of audit procedures * * * necessary for the principal accountant to issue an audit report on the issuer.'' Finally, the Board has addressed commenters' concerns about the implementation of the second prong by adding Note 3 to the rule, which clarifies that the 20 percent determination should be made at the beginning of the issuer's fiscal year using prior year information and should be made only once during the issuer's fiscal year.

Public Accounting Firm

Rule 1001(p)(iii) defines ''public accounting firm'' to mean a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports. The Board has adopted the same meaning of public accounting firm as used in section 2(a)(11)(A) of the Act. However, this definition is intended to include only legal entities, and not natural persons. An individual accountant that prepares or issues an audit report in his or her name would be a ''proprietorship'' and

[15] Section 106(b)(1) provides that foreign public accounting firms shall be deemed to have consented to produce audit workpapers and to be subject to the jurisdiction of the U.S. courts for purposes of enforcement of any request for such workpapers if the firm issues an opinion or ''otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in the audit report.''

[16] One commenter expressed concern that this test would be applied on an aggregated basis. This test would be administered on a firm-by-firm basis. In other words, if a public accounting firm does work for the principal accountant and individually does not meet the 20 percent of engagement hours or fees tests, the firm would not need to register solely because its work, when aggregated with other firms working on the same audit, would meet the 20 percent threshold.

[17] The Commission's adopting release provides that ''the lead partner on subsidiaries of issuers whose assets or revenues constitute 20% or more of the consolidated assets or revenues are included within the definition of 'audit partner.''' *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003).

[18] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003), note 139 (citing APB Opinion No. 18, ''The Equity Method of Accounting for Investments in Common Stock,'' and ARB No. 43, Chapter 7, ''Capital Accounts.'').

therefore fall under this definition. Under section 2(a)(11)(B) of the Act, the Board has the authority to expand this definition and designate by rule ''any associated person of any entity'' described in section 2(a)(11)(A) as a ''public accounting firm.'' The Board has not chosen to exercise this authority at this time.

State

Rule 1001(s)(iii) would define ''State'' to mean any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States. The Board has adopted the same definition of state as used in section 2(a)(16) of the Act. The idea of including this definition, and the definition itself, was suggested by a commenter.

Tax Services

Rule 1001(t)(i) defines ''tax services'' as ''professional services rendered for tax compliance, tax advice, and tax planning.'' This definition is based on, and meant to include the same group of services the fees for which would be disclosed as ''tax fees'' under the Commission's recently revised auditor independence disclosure rules.'' [19] More specifically, as set forth in the Commission's adopting release, ''tax compliance generally involves preparation of original and amended tax returns, claims for refund and tax payment planning-services'' and ''[t]ax planning and tax advice encompass a diverse range of services, including assistance with tax audits and appeals, tax advice related to mergers and acquisitions, employee benefit plans and requests for rulings or technical advice from taxing authorities.'' [20] This definition is discussed further below in connection with the discussion of Part II of the Form.

Rule 2100—Registration Requirements for Public Accounting Firms

Rule 2100(a) requires any public accounting firm that prepares or issues audit reports with respect to any issuer to register with the Board. In addition, Rule 2100(b) requires the registration of any public accounting firm that ''plays a substantial role in the preparation or furnishing of an audit report'' with respect to any issuer. These registration requirements implement section 102(a) of the Act, which provides that ''it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.''

By introducing the ''substantial role'' test (defined through the quantitative test in Rule 1001(p)(ii) as described above), the rule clarifies the phrase ''participate in the preparation or issuance of, any audit report with respect to any issuer'' used in section 102(a) of the Act. In so doing, the Board intends to create a bright-line test to make it easier for firms and others to determine which firms are required to register with the Board. Stated differently, a firm that does not prepare or issue audit reports with respect to any issuer, but that does ''participate'' in the preparation of such reports, is only required to register if that participation amounts to a ''substantial role,'' as defined in Rule 1001(p)(ii).

Rule 2100 does not exempt non-U.S. public accounting firms from registration. Therefore, a public accounting firm that is organized or that operates outside the United States must register if it prepares or issues an audit report on any issuer. In addition, such firms that play a substantial role in the preparation or furnishing of an audit report on any issuer must also register, even if the firm does not itself issue the audit report. Consistent with the Act, a Note to the rule provides that registration with the Board will not by itself provide a basis for subjecting a foreign public accounting firm to the jurisdiction of the U.S. federal or state courts, other than with respect to controversies between such firms and the Board.

Under Rule 2100, individual accountants that are associated with public accounting firms are not required to register. As noted above, the definition of the term ''public accounting firm'' includes proprietorships, and an individual accountant that prepares or issues, in his or her own name, an audit report on an issuer would be viewed as a sole proprietor and required to register.[21] Individual accountants that are associated with public accounting firms, however, are not required to register.

Under the Act, the registration requirement will be effective 180 days after the date on which the Commission makes its determination under section 101(d) of the Act that the Board is capable of carrying out its responsibilities under the Act. Since this determination was made on April 25, 2003, the rule will specify that domestic public accounting firms that wish to participate in or contribute to the preparation of audit reports must register by October 22, 2003. The Board has also decided to allow foreign public accounting firms an additional 180 days to register. Accordingly, the rule will provide that the mandatory registration date for these firms is April 19, 2004.

Several commenters suggested that the Board's proposed rules were unclear as to whether they required the registration of firms that do not plan to participate in audits of issuers after October 22, 2003, but that have issued audit reports for issuers covering periods prior to the mandatory registration date. These commenters noted that such a firm may be asked to issue a consent with respect to the use of its opinion for the prior period. To address this concern, the Board has added a note to the rule that provides that the issuance of a consent to include an audit report for a prior period by a public accounting firm, that does not currently have and does not expect to have an engagement with any issuer to prepare or issue, or to play a substantial role in the preparation or furnishing of an audit report with respect to any issuer, will not by itself require a public accounting firm to register under Rule 2100.

Rule 2101—Application for Registration

Rule 2101 requires public accounting firms applying for registration with the Board to complete and file an application for registration on Form 1. This rule is consistent with section 102(b) of the Act, which provides that ''a public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section.''

Rule 2101 further requires that, unless the Board directs otherwise, applications for registration and any exhibits to such applications must be filed electronically with the Board through the Board's Web-based registration system. The online registration mechanism is currently being developed and will be available in sufficient time for public accounting firms to register.

In addition, several commenters suggested that the Board should provide a procedure for applicants to withdraw their applications. In response to these comments, the Board has added a sentence to Rule 2101 providing that an applicant may withdraw its application for registration by written notice to the Board at any time before the approval or disapproval of the application. The Board will consider rules relating to the withdrawal from registration of

[19] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003) (footnotes omitted).

[20] *Id.*

[21] *See* Rule 1001(p)(iii).

registered public accounting firms at a later date.

Rule 2102—Date of Receipt

Rule 2102 defines the date of receipt of an application for registration as, unless the Board directs otherwise, the later of (a) the date on which the registration fee has been paid, or (b) the date on which the application is submitted to the Board through its Web-based registration system. Although the Board had initially planned to have its registration system scan applications for completeness before accepting them, this step has been eliminated for administrative reasons. Applications will not be deemed received, however, until the required registration fee has been paid.

Rule 2103—Registration Fee

Rule 2103 requires that each public accounting firm applying for registration with the Board pay a non-refundable registration fee. This rule is consistent with section 102(f) of the Act, which provides that ''[t]he Board shall assess and collect a registration fee * * * from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications * * *.''

The Board will publicly announce the registration fee amount and the payment procedure before the registration system is operational. The Board contemplates that the amount of an applicant's fee will be determined by formula and that fees will vary with the size of the applicant and the number of its issuer audit clients. Once the registration system is operational, the Board will, from time to time, announce (most likely by posting on its Web site or by a similar form of dissemination) the current registration fee for applicants. Several commenters made comments about the amount the Board should seek to recover in registration fees and the criteria the Board should use in allocating fees to applicants. The Board will consider these comments in connection with its setting of the registration fee.

Rule 2104—Signatures

Rule 2104 requires each person signing the application for registration (including any consents) to manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing of the application for registration. Such a document is required to be signed before the application is electronically filed with the Board through the Board's Web-based system. Further, consistent with the Act's provision on the retention of audit workpapers,[22] filers are required to retain the manually signed documents for seven years. In addition, under the rules, the Board or its staff may request a copy of any manually signed document retained pursuant to Rule 2104. The Board's rule tracks the Commission's requirement on signatures for electronic filings in Regulation S–T.[23]

Rule 2105—Conflicting Non-U.S. Laws

Rule 2105 provides that an applicant may withhold information from its application for registration when submission of the information to the Board would cause the applicant to violate non-U.S. laws. A number of commenters raised a concern that submitting information in connection with an application for registration could cause an applicant to have to choose between obeying the laws of a non-U.S. jurisdiction and completing the application. The Board has decided to allow applicants to withhold such information from an application for registration.

The rule further provides, however, that an applicant that claims that submitting information as part of its application would cause it to violate non-U.S. laws must identify, in accordance with the instructions on Form 1, the information that it claims would cause it to violate non-U.S. laws if submitted,[24] and include as exhibits to Form 1: (i) A copy of the relevant portion of the conflicting non-U.S. law; (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict. Like all other parts of the application, these exhibits must be submitted in English.

While the Board expects that this rule will mainly be used by non-U.S. applicants, the rule would also allow a U.S. applicant to withhold information that would cause it to violate non-U.S. laws if submitted to the Board. It should be noted that, for purposes of this rule, the term ''non-U.S. law'' does not include laws of any state, territory, or political subdivision of the United States.

Rule 2106—Action on Applications for Registration

Rule 2106 governs the Board's approval process. In general, under this rule, unless the applicant consents otherwise, the Board is required to take action on an application for registration not later than 45 days after the date of receipt of the application. Rule 2102 defines the date of receipt. Such action may consist of approval, issuance of a written notice of a hearing specifying the proposed grounds for disapproval, or a request for additional information. Rule 2106 is consistent with section 102(c)(1) of the Act, which provides that ''[t]he Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, a prospective registrant.'' An applicant that does not elect to treat a notice of hearing as a notice of disapproval will be deemed to have waived the provisions in section (b) of this rule and in section 102(c)(1) that require the Board to act on applications within 45 days.

Specifically, Rule 2106(a) provides that after reviewing the application for registration, and any additional information provided by the applicant or obtained by the Board, the Board will determine whether to approve the application. The Board will approve an application for registration if it determines that registration is consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. If the Board is unable to determine that this standard has been met, or if the Board concludes that the application may be materially inaccurate or incomplete, it will either request additional information from the applicant or provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings, to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds

[22] *See* section 103(a)(2)(A)(i); *see also* Commission Final Rule: Retention of Records Relevant to Audits and Reviews, Release No. 33–8180 (January 24, 2003) (requiring accounting firms to retain for seven years certain records relevant to their audits and reviews of issuers' financial statements).

[23] *See* Rule 302(b) of Regulation S–T, 17 CFR 232.302(b).

[24] The Board's Web-based registration system will include an option, next to each Item on the Form, for the applicant to indicate that it is withholding information based on a conflicting non-U.S. law.

for disapproval and may, at the applicant's election, be treated as a written notice of disapproval for purposes of section 102(c) of the Act.

If the Board requests additional information, a new 45-day review period will begin when the requested information is received. The Board may request additional information when an applicant has failed to complete fully Form 1, or when the information is otherwise necessary in order to make a determination on the application.[25] Rule 2106(c) provides that the Board will take action on such supplemented applications as soon as practicable, and not later than 45 days after receipt of the supplemented application.[26] If the applicant declines to provide the requested information, or fails to do so within a reasonable amount of time, the Board may deem the application incomplete (and disapprove it on that basis, pursuant to Rule 2106(b)(2)), may deem the application not to have been received in accordance with Rule 2102, or may take such other action as the Board deems appropriate.

Commenters raised several concerns with Rule 2106 as proposed by the Board. Some commenters suggested that the Board's standard for approval was too subjective or, at least, that the Board should provide more guidance on how it will be applied by the Board. Section 102 of the Act does not provide an explicit standard for the Board's determination to approve or disapprove an application for registration. At the same time, the Act clearly contemplates that the Board will apply some standard to applications for registration before deciding whether to approve or disapprove a completed application.[27] The standard in Rule 2106(a) is based on the Board's mandate under section 101(a) of the Act. The Board considered providing more specific criteria, but has decided that additional criteria would be inappropriate in light of the varied circumstances of public accounting firms that likely will be applying for registration. For instance, the Board considered providing that the failure of an applicant or its associated accountants to have all licenses and registrations required by governmental and professional organizations would be a basis for disapproval. In response to the Board's proposal to require applicants to represent that they have all such licenses, a number of commenters gave reasons why they could not provide such a representation. In addition, the Board considered providing that certain criminal and/or civil governmental actions would be a basis for disapproval. Actions against an accountant that might justify disapproval of the application of a sole proprietor might not warrant disapproval of the application of a large public accounting firm if the accountant was one of many employees of the firm, however. Accordingly, the Board has determined to retain the current standard and make an evaluation based on the facts and circumstances of whether each application meets the criteria in Rule 2106(a).

Several commenters suggested that applicants should have ''due process'' procedures through which they could seek and obtain review of a disapproval of their application within the Board. The Board has addressed these comments by changing the rule to provide that, if the Board is unable to determine that the statutory standard has been met, or if the Board concludes that the application may be materially inaccurate or incomplete, it will either request additional information from the applicant or provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings,[28] to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds for disapproval. Because the statute provides for the Board to make these decisions within 45 days and also provides for appeal to the Commission, the applicant may, at its election, treat the notice as a written notice of disapproval for purposes of section 102(c) of the Act. Under sections 102(c)(2) and 107(c) of the Act, a written notice of disapproval may be appealed to the Commission. Therefore, an election to treat a hearing notice as a disapproval will afford applicants an immediate opportunity to seek Commission review.

Rule 2300—Public Availability of Information Submitted to the Board: Confidential Treatment Requests

Rule 2300(a) provides that applications for registration will be publicly available as soon as practicable after the Board approves or disapproves the application. This is consistent with section 102(e) of the Act, which provides that applications for registration ''or such portions of such applications * * * as may be designated under the rules of the Board'' must be available for public inspection.

In order to prevent the disclosure of confidential information,[29] Rule 2300 also sets forth a procedure by which applicants can request confidential treatment of any information submitted to the Board in connection with their applications for registration. Under Rule 2300(b), an applicant for registration may request confidential treatment of any portion of an application that either (i) contains information reasonably identified by the public accounting firm as proprietary information, or (ii) is protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.

Rule 2300(c)(2) requires that confidential treatment requests contain a detailed explanation of the reasons that, based on the facts and circumstances of the particular case, the information for which confidentiality is sought meets the requirements in Rule 2300(b). Rule 2300(f) states that unless the applicant seeking confidential treatment consents otherwise, confidential treatment requests themselves will be afforded confidential treatment without the need for a request for confidential treatment. Rule 2300(d) provides that pending a determination by the Board as to whether to grant the request for confidential treatment, the information in question will not be made available to the public. Rule 2300(e) states that if the Board determines to deny a request, the applicant requesting confidential treatment will be notified of the Board's decision in writing and of the date on which the information in question will be made public.

Under Rule 2300(g), the information as to which the Board grants confidential treatment under Rule 2300 will not be made public. The Board anticipates that a notation in the application that is made publicly available will appear in the place of the information for which confidential treatment was granted. However, the granting of confidential treatment will not limit the Board's ability to provide this information to the Commission or to comply with any subpoena issued by

[25] Accordingly, the Board may request additional information regarding any of the applicant's responses contained in Form 1, as well as additional matters that have come to the Board's attention and that are relevant to the Board's decision on an application.

[26] This sentence was added to the Rule at the suggestion of a commenter that was concerned that the Board might take the full 45-day period notwithstanding that only relatively minimal supplemental information was involved.

[27] *See* section 102(c) of the Act.

[28] These rules will be the subject of a future Board rulemaking.

[29] Section 102(e) also states that the public availability of registration applications is subject to ''applicable laws relating to the confidentiality of proprietary, personal, or other information'' and directs the Board to ''protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.''

a court or other body of competent jurisdiction, nor will it prevent the Board from making use of this information in connection with the execution of its responsibilities under the Act. For example, the information may be used in the Board's inspection program and investigations, as well as in any resulting proceedings, subject to the applicant's right to seek a protective order in such a proceeding. In the event the Board receives a subpoena, the Board will notify the applicant of such subpoena to allow the applicant an opportunity to object to the subpoena. Finally, Rule 2300(h) delegates the Board's functions under this Rule to the Director of Registration and Inspection.

Commenters made several suggestions to improve the Board's proposed confidentiality rule. One commenter suggested the Board delegate the function of determining these requests and allow for appeal to the Board. Rule 2300(h) responds to this suggestion. Several commenters noted that the proposed rule did not specify when applications would be made available publicly and suggested that that should not take place until the applications had been approved or disapproved. Rule 2300(a) has been modified to reflect that applications will not be made available publicly until after the Board has approved or disapproved them. Commenters also suggested that the Board should provide notice to an applicant upon receiving a third-party subpoena seeking access to information the Board has granted confidential treatment and oppose such subpoenas. Rule 2300(g) now provides for such notice. While the Board does not believe it would be appropriate to provide in its rules that it will object to all such subpoenas, the Board will respond to such subpoenas in a manner consistent with its responsibilities under the Act, including its responsibility to protect proprietary information under section 102(e) of the Act. The confidential treatment requester will, of course, be free to protect its interests by seeking to participate in the proceeding from which the subpoena arose.

Form 1

The proposed rules also consist of instructions to PCAOB Form 1, which is the form to be used by public accounting firms to register with the Board. The Board plans to develop a Web-based form that will be available only electronically.

Form 1 consists of general instructions and nine parts, subdivided into various items requiring the disclosure of particular information concerning the applicant and its associated accountants, and the applicant's audit clients. The information these items call for is, in general, required by section 102(b) of the Act. To the extent that Form 1 calls for information in addition to that specified in section 102(b), the additional information is closely related to the statutory minimum requirements, and is, in the Board's judgment, reasonably related to the determination that the Board will make in deciding whether to approve or disapprove an application. The general instructions and each of the parts of the Form is explained in more detail below.

General Instructions

The general instructions to the Form contain basic information about the application and the application process. In general, these instructions are self-explanatory. General instructions 7, 9 and 10 were added in response to comments received on the Board's proposal.

Many non-U.S. commenters suggested that the disclosure of certain information required by the Form, as originally proposed, would violate non-U.S. laws, particularly related to confidentiality, data protection and privacy. In response to these comments, the Board added General Instruction 7, which allows an applicant to withhold information from its application where disclosure of the information would cause the applicant to violate non-U.S. laws. General Instruction 7 specifies that an applicant claiming that submitting information would cause it to violate non-U.S. laws must so indicate by making a notation under the relevant item number of the Web-based form, and furnish as exhibits: (i) A copy of the relevant portion of the conflicting non-U.S. law, (ii) a legal opinion supporting the applicant's position, and (iii) an explanation of the applicant's efforts to seek consents or waivers, if applicable, and a representation that the applicant was unable to obtain such consents to eliminate the conflict.

In addition, some commenters were concerned that it may be difficult to ensure that application information is current when submitted in light of the fact that, particularly for larger public accounting firms, it may take significant amounts of time to compile the information necessary to apply for registration. To address this concern, the Board has added General Instruction 9 to provide that where the Form seeks current information, applicants may submit the information as of a date not earlier than 90 days prior to submission of the application and that such information will be deemed current for purposes of the Form. General Instruction 10 specifies that information submitted as part of Form 1, including any exhibits to the Form, must be in English.

Part I—Identity of the Applicant

Part I of the Form calls for information about the identity of the applicant. This Part is generally intended to elicit basic information about the applicant and its operations and to facilitate the Board's interaction with the applicant. The seven specific items in this part require information about the applicant's name and identification number, contact information, primary contact with the Board, form of organization, offices, associated entities engaged in the practice of public accounting, and professional licenses or certifications.

In Item 1.1, applicants are required to state the legal name of the applicant and, if different, the name or names under which the applicant currently, or in the past five years, issues or has issued audit reports. This Item has been changed in two respects from the Board's proposal. First, this Item as proposed required applicants that have such a number to disclose their federal employer identification number (or comparable non-U.S. identifier), and, in the case of a sole proprietor, the applicant's social security number. In response to commenters' concerns about disclosure of confidential personal identifiers, the Board has eliminated the requirement for applicants to provide identifying numbers in response to this Item. Second, at least one commenter suggested that the Board clarify which predecessor entities constitute the applicant for purposes of the disclosure of names under which the applicant has issued audit reports in the last five years. The Board has sought to clarify this by modifying Item 1.1 to apply only to those predecessors for which the applicant is the successor in interest with respect to the entity's liabilities.

Items 1.2 and 1.3 ask for basic contact information from the applicant. These Items are unchanged from the Board's proposal, except that the Board has added a requirement to Item 1.2 that applicants state their Web site address, if available.

Item 1.4 asks for the applicant's legal form of organization and the jurisdiction under the law of which the applicant is organized or exists. Under the Board's registration system, organizations, and not natural persons, are required to apply for registration. Accordingly, among the examples given of legal forms of organizations are ''proprietorship'' and ''partnership.'' This Item

contemplates that natural persons practicing accounting under their own name and that are not organized as a legal entity will apply as a ''proprietorship.'' Likewise, groups of natural persons practicing accounting that are not organized as another legal entity should apply as a ''partnership,'' whether a partnership has been legally formed or not.

Item 1.5 requires applicants with more than one office to furnish, as an exhibit, the physical address (and, if different, mailing address) of each of the applicant's offices. Item 1.6 requires applicants to list the name and address of their ''associated entities'' that engage in the practice of public accounting or preparing or issuing audit reports or comparable reports prepared for clients that are not issuers. The term ''associated entities'' is defined in the Board's rules in a manner consistent with the term's use in the Commission's auditor independence rules.[30]

One commenter suggested that Item 1.5 be limited to offices that issue audit reports, as that term is defined in the Act and the Board's rules. In addition, several commenters suggested that Item 1.6 be limited to only associated entities that issue audit reports or that the term ''associated entities'' be defined differently or limited to entities within one particular country. After considering these comments, the Board has decided to leave these Items as proposed. The Board chose the term ''associated entities'' to capture certain entities that are related to the applicant, but that are not necessarily in a control relationship with the applicant. The term is presumably one public accounting firms are familiar with because of its use in the Commission's auditor independence rules. The instruction makes clear that individual accountants associated with the applicant should not be listed in responding to this Item. The Board believes that obtaining information on all the applicant's offices and those associated entities of the applicant that engage in the practice of public accounting or preparing or issuing audit reports, or comparable reports prepared for clients that are not issuers, strikes the appropriate balance between the Board's need for information about the applicant's operations and the need to avoid overburdening applicants for registration.

Item 1.7 requires applicants to list every license or certification number issued to the applicant authorizing it to engage in the business of auditing or accounting, and the name of the issuing authority. This Item does not require applicants to list the license numbers of individual associated accountants within the firm (these are required by Item 7.1), nor does it require applicants to furnish information on business licenses required of entities engaged in businesses other than accounting or auditing.

As proposed, Item 1.8 would have required applicants to state if the firm and all individual accountants associated with the firm who participate in or contribute to the preparation of audit reports have all required licenses and certifications. This Item was intended to ensure that public accounting firms applying for registration have the requisite governmental and professional licenses and certifications to audit issuers. Although one commenter supported and suggested expanding this Item, a number of both large and small public accounting firms suggested that, for various reasons, they could not affirmatively answer this question despite their good faith efforts to ensure that the firm and all its associated accountants maintained all required licenses. In light of these concerns, and because information on the applicant's and its associated accountants' licenses or certifications is still required through Items 1.7 and 7.1, the Board has decided to eliminate Item 1.8.

Part II—Listing of Applicant's Public Company Audit Clients and Related Fees

As required by Section 102(b)(2)(A) and (B) of the Act, Part II of the Form requires disclosure of the names of all issuers for which the applicant has prepared or issued audit reports during the previous calendar year, and for which the applicant expects to prepare or issue audit reports during the current calendar year, and the annual fees received by the applicant from these issuers for audit services, other accounting services, and non-audit services. Part II implements this directive through four specific items.

The first three items require disclosures about the applicant's issuer audit clients, including their names, identifying information, and disclosures about the fees billed the issuer by the applicant. The contours of the required fee disclosures are specified through definitions of the terms ''audit services,'' ''other accounting services,'' and ''non-audit services.''[31]

To capture different time periods, these disclosures are divided into three items. Item 2.1 covers issuers for which the applicant prepared or issued any audit report during the previous calendar year. Item 2.2 covers issuers for which the applicant prepared or issued any audit report during the current calendar year. Item 2.3 covers issuers for which the applicant expects to prepare or issue any audit report during the current calendar year. Items 2.1 and 2.2 require the same information: the issuer's name, business address, the date of the audit report, and the total amount of fees billed for audit services, other accounting services, and non-audit services. Because Item 2.3 refers to a future period, it only asks for the issuer's name and business address. A Note to Items 2.3 and 2.4 clarifies when an applicant can ''expect to prepare or issue'' an audit report for an issuer.

Finally, Item 2.4 seeks information from applicants that did not prepare or issue an audit report dated during the preceding or current calendar year, and that do not expect to prepare or issue an audit report during the current calendar year. Specifically, this Item seeks information about the issuers for which these applicants played, or expect to play, a substantial role in the preparation of an audit report during the preceding or current calendar year. For these issuers, the applicant must disclose the issuer's name, business address, the name of the public accounting firm that issued, or is expected to issue, the audit report, the date (or expected date) of the audit report, and the type of substantial role played by the applicant with respect to the audit report.

Commenters expressed a number of practical concerns about compiling the necessary information to respond to Part II of the Form as proposed. In particular, a number of commenters suggested that the fee disclosures track the categories used in the SEC's revised auditor independence disclosure rules and pointed out that a number of issuers that will be required to disclose fees in those categories have not previously been required to publicly report these fees.

In response to these comments, the Board has modified the definitions of ''audit services,'' ''other accounting services,'' and ''non-audit services'' to make clear that, once the revised SEC rules are effective, the Board intends to use these categories for the fee

[30] *See* Rule 2–01(f)(2) of Regulation S–X, 17 CFR 210.2–01(f)(2).

[31] A Note to Items 2.1 and 2.2 explains that, consistent with the Commission's proxy disclosure rules, only fees billed by the principal accountant need be disclosed in response to this item. The Note also explains how disclosures are to be made for issuers that are investment companies. The treatment is based on and is consistent with the Commission's disclosure rules.

disclosures required by Part II of the Form.

The Board understands that fee information in these categories has not been collected historically and that public accounting firms are in the process of putting in place systems to track information in these categories. Nonetheless, section 102(b)(2)(B) of the Act specifically requires applications for registration to include disclosure of fees for ''audit services,'' ''other accounting services'' and ''non-audit services.'' Accordingly, until such time as the SEC's revised rules are effective, the Board has, to the extent permissible under the Act, used categories from the existing SEC proxy disclosure rules that were adopted in November 2000 for the disclosures required by this Part of the Form.

Specifically, until December 15, 2003, the term ''audit services'' will be defined to mean the same category of services for which fees are required to be disclosed as ''audit fees'' pursuant to the Commission's 2000 proxy disclosure rules.[32] Section 102(b)(2)(B) of the Act specifically requires applicants to disclose fees for ''other accounting services,'' which are not required to be disclosed under the existing proxy disclosure rules. Accordingly, the Board has defined ''other accounting services'' by reference to concepts from the SEC's revised auditor independence disclosure rules. As explained in greater detail above in connection with the discussion of the definition of ''other accounting services,'' until December 15, 2003, this term will include two categories of services: (1) services the fees for which are to be disclosed as ''audit fees'' under the Commission's revised rules, but that were not previously disclosed as ''audit fees,'' and (2) services the fees for which are to be disclosed as ''audit-related fees'' under the Commission's revised rules.

While fee disclosures are not currently being made in these categories, these categories of fees have been defined with some precision through the SEC's rulemaking process. In addition, some issuers and public accounting firms may be in the process of developing systems to track fees in these categories since disclosures of these amounts will be required under the SEC's revised rules, effective for filings after December 15, 2003.

Under the existing proxy disclosure rules, fees must also be disclosed for financial information systems design and implementation, as defined in Rule 2–01(c)(4)(ii) of Regulation S–X, 17 CFR 2–01(c)(4)(ii), and all other services (*i.e.*, services the fees for which are not disclosed as audit fees or financial information systems design and implementation fees). Until December 15, 2003, the term ''non-audit services'' will be defined to include these two categories of services. After December 15, 2003, applicants will be required to disclose fees for the category of services the fees for which are disclosed as ''all other fees'' under the Commission's revised auditor independence rules.

The Board understands that not all issuers are subject to these requirements and that companies subject to the requirements currently are not required to disclose fees for ''other accounting services,'' as specifically required by section 102(b)(2)(B) of the Act. To address commenters' concerns about the difficulty of accurately compiling this information in these situations, the Board added a Note to Items 2.1 and 2.2 that provides that, to the extent these fee amounts have not previously been disclosed or otherwise known by the applicant, estimated amounts may be used in responding to these Items of the Form. The Board does not intend to penalize applicants that use good faith efforts to estimate the fees for ''other accounting services'' during this time. Consistent with these changes, applicants will not be separately required to disclose fees for ''tax services,'' as had been proposed. The Board may choose, once the SEC's revised rules are effective, to require disclosure of ''tax services'' as part of registered public accounting firms' annual reports. The contents of these reports will be the subject of a future Board rulemaking.

In response to other comments received, the Board has simplified and clarified Part II of the Form in several other respects. First, the Board has eliminated the requirement to provide the issuer's standard industry code (''SIC''). Second, the Board has slightly modified the wording of Items 2.1 through 2.3 to make clear that the disclosure requirements pertain to audit reports *dated* during the relevant time period. Third, the Board has added language to the Notes to Items 2.2 and 2.3 to further clarify when applicants can ''expect to prepare or issue'' an audit report for an issuer. Specifically, those Notes now provide that an applicant may presume that it is expected to prepare or issue an audit report for an issuer (i) if it has been engaged to do so, or (ii) if it issued an audit report during the preceding calendar year for an issuer, absent an indication from the issuer that it no longer intends to engage the applicant.

Fourth, in response to some commenters' concerns about the burden of making the necessary determinations to comply with Item 2.4, the Board has limited this Item to those applicants that did not prepare or issue an audit report dated during the preceding or current calendar year, and that do not expect to prepare or issue an audit report dated during the current calendar year. In other words, as the Note to this Item explains, applicants that disclose the name of an issuer in response to any of Items 2.1–2.3 need not respond to this Item. Finally, the requirement in Item 2.4 to explain the applicant's role in the audit has been modified to require only identification of the type of substantial role played by the applicant with respect to the audit report. To enable applicants to comply with this instruction, it is contemplated that the Web-based Form will contain a ''pull-down menu'' with a list of types of substantial roles, including an option to check ''other.''

The Board will consider issuing additional guidance on the fee disclosures required by Part II of the Form as the date for registration to begin nears.

Part III—Applicant's Financial Information

Section 102(b)(2)(C) of the Act provides that the Board may require applicants to submit ''such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request.'' Consistent with this provision of the Act, the Board proposed that applicants disclose fees received by the applicant during its most recently completed fiscal year for: audit services, other accounting services, tax services, and all other products and services, whether the fees were received from ''issuers'' or from their other clients.

A number of commenters stated that they are not currently tracking revenues in these categories for all their clients and that compiling this information in this form would be impractical or at least very burdensome. In light of these comments, the Board has decided not to require this information as part of public accounting firms' registration applications at this time. The Board does, however, intend to require applicants to submit information in these categories as part of their annual reports with the Board under section 102(d) of the Act. Although the contents of the annual and periodic reports will be the subject of a future Board rulemaking, the Board encourages

[32] *See* Schedule 14A, Item 9(e)(1), 17 CFR 240.14a–101; *see also* Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33–7919 (November 21, 2000).

public accounting firms planning to register with the Board to begin collecting fee information in these four categories for all their clients in order to be able to report revenue in this format on an ongoing basis in the future.

Part IV—Statement of Applicant's Quality Control Policies

As required by section 102(b)(2)(D) of the Act, Part IV requires the applicant to provide, as an exhibit, a narrative, summary description of its quality control policies for its accounting and auditing practices, including procedures to monitor compliance with independence requirements. GAAS requires accounting firms to have quality controls for their audit practices.[33]

A few commenters suggested that this Part of the Form should be limited to a representation about the firm's quality control policies complying with applicable standards. The Board does not believe that this approach would be consistent with the statutory directive. Several other commenters sought clarification of the parameters of the description called for by this Part of the Form. As explained in the proposing release, the description should be in a clear, concise, and understandable format and should convey the scope and the key elements of the applicant's quality controls for its accounting and auditing practice. A description that addresses all of the elements of quality control covered by the professional quality control standards the firm is subject to will be sufficient. Technical descriptions and detailed explanations of procedures are not required. Absent unusual circumstances, the Board does not contemplate granting confidential treatment requests for this Item.

Part V—Listing of Certain Proceedings Involving the Applicant

As required by section 102(b)(2)(F) of the Act, Part V calls for information about criminal, civil, or administrative or disciplinary proceedings against the applicant or its associated persons. While the Act only requires applicants to submit information about pending proceedings related to audit reports, the Form requires information about certain additional proceedings that may reflect on the applicant's fitness for registration, even though the proceedings may no longer be pending or do not relate to audit reports.

As proposed, this Part of the Form was divided into six specific items that sought disclosure of different types of proceedings involving different persons for different periods of time. Many commenters expressed concerns about both the scope and the complexity of the disclosures required of applicants by this Part of the Form.[34] Accordingly, the Board has sought both to simplify and to narrow its request for information in this Part of the Form, while still preserving the information necessary to decide whether to approve or disapprove registration applications.

Specifically, this Part now contains three Items. Item 5.1 would, in general, require applicants to disclose whether the applicant or any associated person of the applicant is currently a defendant or respondent (or was a defendant or respondent in a proceeding that resulted in an adverse finding against the applicant or person during the previous five years) in three types of proceedings:

1. Any pending criminal proceeding;
2. Any pending civil (or alternative dispute resolution) proceeding initiated by a governmental entity arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer; and
3. Any pending administrative or disciplinary proceeding arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer.

The third part of this Item further specifies what types of proceedings qualify as ''administrative or disciplinary proceedings'' and provides that investigations that have not resulted in the commencement of a proceeding need not be included. At least one commenter specifically suggested that, if the Board required disclosure of more than pending proceedings, the look-back period should be limited to five years since this period is consistent with the disclosure requirements for past proceedings against officers and directors of public companies.[35]

Item 5.2 would require applicants to disclose pending civil proceedings (or ADR proceedings) against the applicant or its associated persons initiated by a private (*i.e.*, non-governmental) entity that involve conduct in connection with an audit report or a comparable report prepared for a client that is not an issuer. This Item is largely required by section 102(b)(2)(F) of the Act. For each proceeding listed in response to Items 5.1 and 5.2, applicants are asked to provide basic information about the proceeding, the parties, the allegations, and the proceeding's outcome.

The phrase ''a comparable report prepared for a client that is not an issuer,'' as used in these Items, is meant to capture reports of audits performed for clients that are not issuers. Notes to Items 5.1 and 5.2 provide that, for these Items, foreign public accounting firm applicants need only disclose such proceedings for the applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least 10 hours of audit services for any issuer during the last calendar year. This is the same group of persons within foreign public accounting firms that must be listed in response to Part VII of the Form and for which consents must be obtained under Part VIII of the Form.

Finally, Item 5.3, permits, but does not require, applicants to include an exhibit describing any proceeding listed in response to this Part and giving the reasons that, in the applicant's view, such proceeding should not be a basis for the denial of its application for registration. The failure to file such an exhibit with respect to a particular proceeding will not raise any inference concerning the applicant's view of the impact of that proceeding on its application. The Board will consider any information provided pursuant to this Item in its approval process.

Part VI—Listing of Filings Disclosing Accounting Disagreements with Public Company Audit Clients

As required by section 102(b)(2)(G) of the Act, Part VI requires applicants to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in Commission filings. For each such instance in the preceding or current calendar year, the applicant is required to disclose the name of the issuer, the name and date of the filing, and to submit, as exhibits, copies of the identified filings. Disagreements under this Part are specified by reference to the provisions of Regulation S–K that require such disclosures.

To clarify an issue raised by a few commenters, an applicant is only required to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in such issuers' Commission filings. Therefore, if an issuer did not disclose a disagreement in a

[33] *See* SAS No. 25; AU § 161; *see also* Statements on Quality Control Standards (''SQCS'') No. 2; AICPA SEC Practice Section (''SECPS'') Membership Requirements, Appendix K, SECPS sec. 1000.45.

[34] In particular, a number of non-U.S. accounting firms and professional associations expressed concern that proposed Item 5.5 would require applicants to familiarize themselves with, and analogize to, a number of provisions of the U.S. Code. This Item has been eliminated from the Form.

[35] Item 401 of Regulation S–K. 17 CFR 229.401(f).

Commission filing or if such disclosure is not required by a Commission filing,[36] the applicant of that issuer audit client need not disclose such disagreement in Form 1.

Several commenters suggested that the Board obtain information required by Part VI from the Commission's Edgar system or require applicants to provide only a hyperlink to or a Central Index Key (''CIK'') number for a particular filing, as opposed to providing copies of the actual filings. While the Board recognizes that the information requested in this Item is or will be publicly available through Edgar, section 101(b)(2)(G) of the Act specifically requires that an applicant submit ''as part of its application for registration * * * copies of periodic or annual disclosure filed by an issuer with the Commission * * *.'' Moreover, this information is not organized by the public accounting firms involved in the disclosed disagreements in the Commission's Edgar system.

Part VII—Roster of Associated Accountants

As required by section 102(b)(2)(E) of the Act, Part VII requires applicants to submit information about the accountants associated with the firm who participate in or contribute to the preparation of audit reports. The scope of this requirement is different for foreign firms than for domestic firms. Domestic applicants must list all accountants who are ''persons associated with the applicant'' and provided at least 10 hours of audit services for any issuer during the last calendar year. Foreign public accounting firms applying for registration must list all accountants who are a proprietor, partner, principal, shareholder, officer, or manager of the applicant and who provided at least 10 hours of audit services for any issuer during the last calendar year.

For each accountant listed, applicants must provide the person's name and all license or certification numbers (and name of issuing authority) authorizing the person to engage in the business of auditing or accounting.

In addition, both domestic and non-U.S. applicants are required to disclose the total numbers of accountants and CPAs (or accountants with comparable licenses from non-U.S. jurisdictions) employed with the applicant, and the total number of personnel employed by the applicant.

Many commenters indicated that the disclosure required by Items 7.1 and 7.2, as originally proposed, was administratively burdensome and suggested that the Board narrow the scope of the roster and clarify which accountants would be covered by the roster. To address these concerns, the Board has limited the roster reporting requirements for domestic applicants to accountants who are ''persons associated with the applicant'' and provided at least 10 hours of audit services for any issuer during the last calendar year, and the requirements for non-U.S. applicants to partners or managers who provided at least 10 hours of audit services for any issuer during the last calendar year.[37] In addition, as noted above, by excluding from its definition of the term ''accountant'' persons who are engaged in only clerical or ministerial tasks, the Board has further limited the disclosure required in Part VII of the Form, as originally proposed.

Further, in light of privacy and confidentiality concerns expressed by commenters, the Board has also eliminated the requirement to disclose the social security number (or comparable non-U.S. identifier) of each accountant listed on the roster.

Also, at least one commenter requested clarification of the time frame for reporting the information required by Part VII. To address this concern, the Board has added an instruction to the Form that specifies that applicants may submit information as of a date not earlier than 90 days prior to the submission of the application and that such information will be deemed current for purposes of the Form.

Part VIII—Consents of Applicant

As required by section 102(b)(3) of the Act, Part VIII of the Form requires applicants to furnish, as an exhibit to their applications, consents related to the applicant's and its associated persons' cooperation and compliance with any request for testimony or the production of documents made by the Board. Note 1 to the instruction makes clear that the consent and the language in the instruction (except for insertion of the applicant's name) must be verbatim. The note also specifies that the consents from the applicant's associated persons required by paragraph (b) of the Item must be secured by the applicant no later than 45 days after submitting the application or, for persons who become associated persons of the firm subsequent to the submission of the application, at the time of the person's association with the firm. The consents must be signed in accordance with Rule 2104, which, among other things, requires the manually signed version of the statement to be retained for seven years.

Many commenters indicated that compliance with Part VIII, as originally proposed, would cause an applicant to violate certain non-U.S. laws. In response to this concern, the Board has added Rule 2105 and corresponding instructions in the Form, which allow an applicant to withhold information from its application for registration, including the firm and associated person consents required by Part VIII, where disclosure of the information would cause the applicant to violate non-U.S. laws.

Further, to accommodate privacy restrictions related to employment in certain non-U.S. jurisdictions, the Board has added Note 3 to this Item, which narrows the scope of ''associated persons'' from whom non-U.S. applicants are required to secure consents. As revised, for non-U.S. applicants, the term ''associated persons'' as used in this item covers only those accountants who are partners or managers and who provided at least 10 hours of audit services for any issuer during the last calendar year.

In addition, some commenters noted that Part VIII, as originally proposed, did not specify the language to be used in the consents that the applicant is required to secure from its associated persons. In response to this comment, the Board has added Note 2 to this item, which sets forth the exact language to be used in the associated persons' consents. Moreover, in response to the suggestion that the Board extend the 45-day deadline for securing consents from associated persons in order to ease the administrative burden for larger firms, the Board has clarified that applicants must secure such consents not later than 45 days after submitting their applications. In other words, an applicant does not have to wait until its application is submitted to the Board to secure such consents, but can begin obtaining these consents as soon as possible. Further, many commenters objected to the blanket consent used in Part VIII and suggested that the Board amend its proposal to include a reservation in the consent form, to only require applicants to use their best efforts to secure the associated person consents, to clarify that the consent would only apply prospectively to

[36] For instance, currently annual reports for foreign private issuers on Forms 20–F and 40–F do not require this type of disclosure.

[37] The Board has used the term ''manager'' in Parts V, VII and VIII of the Form because of the term's use in, and familiarity to, the accounting profession. The term is intended to capture the highest level of supervisory position below the partner level of the firm.

independent contractors, and/or to limit the consents to cover only reasonable, and not simply any, requests by the Board. Section 102(b)(3) of the Act,[38] however, specifies the scope and contents of the consents, and the Board therefore has decided not to modify this item to include these suggested qualifications.[39] Some commenters expressed concern about the amount of work involved in securing, gathering and maintaining written consents from each of their associated persons in accordance with Rule 2104. While the Board is requiring that the applicant's consent and the associated persons' consents be manually signed and that such manually signed documents be retained for seven years in accordance with Rule 2104, the Board leaves it to the individual applicants to determine other details as to how such consents will be obtained and maintained internally.

Part IX—Signature of Applicant

Part IX requires an authorized partner or officer of the applicant to sign the application in accordance with Rule 2104 and to certify the application's completeness and accuracy. Incomplete and inaccurate applications are subject to possible disapproval under Rule 2106(b)(2).

Part X—Exhibits

Part X lists the exhibits that must accompany the application and includes instructions on the format for exhibits with multiple pages. The nature of each exhibit is described in the corresponding items, Rule 2105 or Rule 2300.

2. Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Under the proposed rules, all public accounting firms must register with the Board if they wish to prepare or issue audit reports on issuers, as that term is defined in the Act and the Board's rules, or to play a substantial role in the preparation or issuance of such reports. In general, the information required to complete the Board's registration application is specifically required to be a part of those applications by section 102(b) of the Act. To the extent that Form 1 calls for information in addition to that specified in section 102(b), the additional information is closely related to the statutory minimum requirements, and is, in the Board's judgment, either necessary to facilitate the Board's responsibilities or reasonably related to the determination that the Board will make in deciding whether to approve or disapprove an application.

Moreover, to the extent permissible under the Act and consistent with the Board's responsibilities, the Board has sought to base the contents of the application on information public accounting firms currently collect, in part to avoid imposing any undue burden on applicants that could have a disproportionate effect on smaller public accounting firms. In addition, the proposed rules provide a mechanism for applicants to seek confidential treatment of any proprietary information included in their application that should not be publicly available. The Board has also allowed public accounting firms that do not currently prepare or issue audit reports, or play a substantial role in the preparation or issuance of audit reports, but that wish to enter this business, to register with the Board. Further, the Board has announced that registration fees will vary based on the size of the applicant and the number of its issuer audit clients.

Several commenters suggested that requiring foreign public accounting firms to register with the Board could discourage smaller foreign public accounting firms, and foreign public accounting firms that are not affiliated with large international networks of firms, from auditing issuers. The Board has given careful consideration to the impact of its registration rules on non-U.S. firms and has taken a number of steps to minimize any such effect. In particular, as described in Section II.A above, the Board has crafted certain changes to its original proposal to minimize, where permissible under the statute and consistent with the Board's responsibilities, the burdens on foreign public accounting firms applying for registration. Given these modifications, the Board believes that the cost and effort for smaller firms to register with the Board will not be significantly disproportionate to that for larger firms,[40] and therefore would not have a significant impact on competition. Moreover, the Board believes that the 180-day deferral of registration for non-U.S. firms should also minimize the administrative burden for smaller non-U.S. firms, also diminishing any anti-competitive effect.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board released its registration system proposal for public comment on March 7, 2003. The Board received 46 written comment letters relating to its proposal. In addition, on March 31, 2003, the Board convened a public roundtable to discuss special issues raised by registration and oversight of non-U.S. firms, at which 14 representatives of foreign governments, non-U.S. public accounting firms and professional organizations, and U.S. institutional investors participated.[41]

The Board has carefully considered all comments it has received. In response to the written comments received and remarks made at the roundtable, the Board has clarified and modified certain aspects of its proposed

[38] Section 102(b)(3) specifically requires that ''each application * * * include * * * a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board * * * and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm.''

[39] While commenters did not identify any state laws that conflict with the required consents, one commenter suggested that the Board make explicit that the Board's rules, as approved by the Commission, requiring the consents would preempt any contrary state law. The Board's rules implement Congress' determination in the Act that applicants for registration must agree to ''secure and enforce [such] consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with the firm.'' Accordingly, any otherwise applicable state or local law that conflicts with this requirement or stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress would be preempted. *See Crosby* v. *National Foreign Trade Council,* 530 U.S. 363, 372–73 (2000); *City of New York* v. *FCC,* 486 U.S. 57, 64 (1988).

[40] In general, under the Board's registration system, non-affiliated foreign public accounting firms will be required to respond to the same information requests as affiliated foreign public accounting firms applying for registration. Because much of the information requested in Form 1 is focused on the applicant's practice of auditing ''issuers,'' as that term is defined in the Act and the Board's rules, foreign public accounting firms with more issuer audit clients will necessarily be requested to provide more information to apply for registration than foreign public accounting firms with smaller practices auditing issuers.

[41] The following governments, firms and organizations participated in the public roundtable meeting: European Commission; U.K. Department of Trade and Industry; Embassy of Switzerland; Embassy of Australia; Financial Services Agency (Japan); Canadian Public Accountability Board; Wirtschaftspruferkammer (German Chamber of Accountants); Fédération des Experts Comptables (FEE); Ernst & Young (Brussels, Belgium); PricewaterhouseCoopers (Toronto, Canada); Deloitte Touche Tohmatsu (Santiago, Chile); KPMG (London); Pennsylvania Public Employees' Retirement System; and the State of Wisconsin Investment Board.

rules and form instructions. The changes made to the proposed rules and form instructions in response to these comments are summarized in Section II.A.1. above.

In addition, under section 106(c) of the Act, the Board and the Commission each have the authority to ''exempt any foreign public accounting firm'' from any provision of the Act as ''necessary or appropriate in the public interest or for the protection of investors.'' The Board received numerous comments in letters from public accounting firms, foreign governments and foreign professional accounting associations, requesting such exemptions from the Board's registration requirements, as well as its inspections and disciplinary programs.[42]

Some commenters expressed concerns about registration of non-U.S. public accounting firms, including that the Board's registration of non-U.S. public accounting firms (1) would be duplicative of existing or planned home-country auditor oversight programs, (2) would require information, the disclosure of which would violate foreign laws on confidentiality, data protection and privacy, (3) would require information that does not have clear equivalents in non-U.S. jurisdictions, (4) would require accumulation of information not already compiled and not readily available, and (5) would lessen competition among public accounting firms by discouraging some firms from registering.

In response to the concern that registration of non-U.S. public accounting firms would be duplicative of existing or planned auditor oversight programs, as an initial step, the Board sought, as part of its roundtable meeting, to gather information about existing or planned oversight bodies outside the United States. The Board has also commenced dialogue with non-U.S. oversight bodies in order to achieve its objectives generally, as well as to try to find ways to reduce administrative burdens and to provide for coordination in areas where there is a common programmatic interest, such as annual reporting, inspection and discipline.

Many commenters suggested that registration of non-U.S. firms would require information, the disclosure of which would violate non-U.S. laws, particularly those related to confidentiality, data protection and privacy. In response to this concern, the Board added Rule 2105 and corresponding instructions in Form 1, which allow applicants to withhold information from its application for registration where disclosure of the information would cause the applicant to violate non-U.S. laws. Also, in order to allow firms time to give full consideration to the potential conflict of law issues, the Board has afforded non-U.S. firms an additional 180 days to register.

Furthermore, in light of concerns with respect to conflicts with confidentiality, data protection, and privacy laws, the Board has eliminated or narrowed the scope of information required by Form 1, as originally proposed. Specifically, any requirements to provide Social Security numbers, taxpayer numbers, and comparable non-U.S. tax identifiers have been eliminated. In part to address concerns with respect to the confidentiality of information on criminal, civil and administrative proceedings in Part V, the Board has significantly narrowed the disclosure required for non-U.S. applicants. Also, the list of accountants associated with a non-U.S. firm has been narrowed. In particular, as revised, Form 1 requires non-U.S. accounting firms to list only those accountants who are proprietors, partners, principals, shareholders, officers or managers of the applicant and who each provide at least 10 hours of audit services for any issuer during the last calendar year. Finally, to accommodate privacy restrictions related to employment in certain non-U.S. jurisdictions, the scope of ''associated persons'' from whom the applicant is required to secure consents has been narrowed to cover only those accountants identified on the list of accountants. As discussed above, to the extent that a non-U.S. law would prohibit disclosure of information that is still required, new Rule 2105 permits a firm to withhold the information and submit instead (i) a copy of the conflicting non-U.S. law, in English, (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law, and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict.

The Board has eliminated or modified certain disclosure requirements where determining a non-U.S. equivalent may be particularly burdensome, in an effort to address concerns that registration would require information that does not have clear equivalents in non-U.S. jurisdictions. For example, in response to a comment that the term ''undergraduate degree'' was not meaningful in a non-U.S. context, the Board revised the educational reference in its originally proposed definition of accountant to ''a college, university or higher professional degree.'' The Board has also eliminated the requirement from its original proposal to disclose a ''violation of a substantially equivalent non-U.S. statute'' to certain provisions of the United States Code.

In response to concerns that registration of non-U.S. firms would require accumulation of information not already compiled and not readily available, the Board has allowed an additional 180 days for firms to compile information and to obtain any necessary consents or waivers from associated persons to provide the information requested by the form. Further, the Board has significantly modified and in some cases eliminated disclosure requirements, the information for which commenters noted, would be burdensome to gather. For example, Part III of Form 1, which as proposed required disclosure of information on firm revenues, has been eliminated. Moreover, with respect to Part II in Form 1, the Board has modified the disclosure categories for audit, non-audit, and other accounting services to track more closely those used by the Commission. As a practical matter, at the time when non-U.S. firms are required to be registered with the Board (*i.e.*, by April 19, 2004), the disclosure categories in effect will be those used in the Commission's recently revised auditor independence disclosure rules, with which foreign private issuers will be required to comply for periodic annual reports filed after December 15, 2003.

In addition, the Board has tried to facilitate the reporting in Part II by allowing applicants to use estimates to the extent that such information has not been previously disclosed or is not known. Finally, in an effort to minimize the administrative burden of compiling information for the registration process, the requirements in Form 1 to provide accountant names and license numbers, consents to cooperate with Board inspections and investigations, and information about certain legal proceedings, as applied to non-U.S. firms, have been significantly narrowed to include only partners and managers who participate in or contribute to the preparation of audit reports for issuers.

[42] The Board also received comment letters against such exemptions, for example on the grounds that ''[i]ncluding foreign auditors under the purview of the new Public Company Accounting Oversight Board would, thus, add a much-needed element of auditor oversight for firms reviewing corporations trading in U.S. markets.'' *See* Letter from Senator Carl Levin dated March 21, 2003 (in PCAOB Docket No. 1 public file).

Several commenters raised concerns that registration of non-U.S. firms would lessen competition among public accounting firms by discouraging some firms from registering. As described above, the Board has eliminated and modified many of the disclosure requirements originally proposed. Given these modifications, the Board believes that the cost and effort for smaller firms to register with the Board will not be significantly disproportionate to that for larger firms and therefore would not have a significant impact on competition. Moreover, the Board believes that the 180-day deferral of registration for non-U.S. firms should also minimize the administrative burden for smaller non-U.S. firms, also diminishing any anti-competitive effect.

While the Board believes that it must require registration of non-U.S. firms, it also recognizes that it must be flexible about how registration operates in the case of those firms and that it may not be practical to treat foreign accounting firms as if they were, for purposes of the Board's regulation, in all respects the same as U.S.-based firms. The Board is prepared to work with its foreign counterparts to find ways to accomplish the goals of the Act without subjecting foreign firms to unnecessary burdens or conflicting requirements. Where possible, the Board will seek to build compliance with its requirements on compliance with foreign regulatory regimes. The proposed 180-day deferral of foreign firm registration will afford the Board the opportunity to explore ways of accomplishing that goal with non-U.S. accounting oversight bodies.

In addition, the nature of the oversight to be exercised over registered foreign public accounting firms is a matter the Board has yet to resolve. The Board is aware that several countries have adopted or proposed corporate reforms that include new regulatory oversight of the auditing profession, and many countries have already adopted or planned programs to register, inspect and discipline accounting firms that prepare and issue audit reports for filing in those respective jurisdictions. The Board expects that the various reforms being considered in other jurisdictions will continue to improve the quality of audit reports prepared by firms worldwide. In this regard, the Board has already commenced dialogue with other oversight bodies outside the United States in order to achieve its objectives generally, as well as to try to find ways to reduce administrative burdens and to provide for coordination in areas where there is a common programmatic interest, such as annual reporting, inspection, and discipline.

III. Date of Effectiveness of the Proposed Rules 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 Board consents, the Commission will:

(A) By order approve such proposed rules; or

(B) Institute proceedings to determine whether the proposed rules 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 rules are consistent with the Act or as necessary or appropriate in the public interest or for the protection of investors. 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 rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the PCAOB. All submissions should refer to File No. PCAOB–2003–03 and should be submitted by July 2, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14715 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

DIA–DIAMONDS®
QQQ —Nasdaq—100® Index Tracking Stock
SPY—SPDRs®
BHH–B2B Internet HOLDRs™
BBH–Biotech HOLDRs
BDH—Broadband HOLDRs

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47974; File No. SR–Amex–2003–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the Suspension of Transaction Charges for Certain iShares Funds

June 4, 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 June 2, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until June 30, 2003 the suspension of Exchange transaction charges for specialist, Registered Trader, and broker-dealer orders for the iShares Lehman 1–3 year Treasury Bond Fund and the iShares Lehman 7–10 year Treasury Bond Fund. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

Amex Equity Fee Schedule

I. Transaction Charges

No change.

II. Regulatory Fee

No Change.

Notes:

1. and 2. No change.

3. Customer transaction charges for the following Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts have been suspended:

IVV—iShares S&P 500
MDY—MidCap SPDRs
XLY—Select Sector SPDR—Consumer Discretionary

XLP—Select Sector SPDR—Consumer Staples
XLE—Select Sector SPDR—Energy
XLF—Select Sector SPDR—Financial
XLV—Select Sector SPDR—Health Care
XLI—Select Sector SPDR—Industrial
XLB—Select Sector SPDR—Materials
XLK—Select Sector SPDR—Technology
XLU—Select Sector SPDR—Utilities

EKH—Europe 2001 HOLDRs
IAH—Internet Architecture HOLDRs
HHH—Internet HOLDRs
IIH—Internet Infrastructure HOLDRs
MKH—Market 2000+HOLDRs
OIH—Oil Service HOLDRs
PPH—Pharmaceutical HOLDRs
RKH—Regional Bank HOLDRs
RTH—Retail HOLDRs
SMH—Semiconductor HOLDRs
SWH—Software HOLDRs
TTH—Telecom HOLDRs
UTH—Utilities HOLDRs
WMH—Wireless HOLDRs
SHY—iShares Lehman 1–3 Year Treasury Bond Fund
IEF—iShares Lehman 7–10 Year Treasury Bond Fund
TLT—iShares Lehman 20+ Year Treasury Bond Fund
LQD—IShaores GS $ InvesTop Corporate Bond Fund
[TFT—Treasury 1 FITR ETF
TOU—Treasury 2 FITR ETF
TFI—Treasury 5 FITR ETF
TTE—Treasury 10 FITR ETF]

Customer transaction charges for the iShares S&P 100 Index Fund are $.0015 per share ($.15 per 100 shares), capped at $100 per trade.

Until [May 31] *June 30,* 2003, transaction charges also have been suspended in SHY[,] *and* IEF[,] [TFT, TOU, TFI and TTE] for specialist, Registered Trader and broker dealer orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is extending until June 30, 2003 the suspension of transaction charges in iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY) and iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF) for specialist, Registered Trader and broker-dealer orders. The Exchange previously filed a suspension of such charges until November 30, 2002,[3] December 31, 2002,[4] January 31, 2003,[5] February 28, 2003,[6] March 31, 2003,[7] April 30, 2003,[8] and May 31, 2003.[9]

The fee suspension contained in the previous filings also applied to transactions in four Treasury FITR ETFs—the Treasury 10 FITR ETF (Symbol: TTE); Treasury 5 FITR ETF (Symbol: TFI); Treasury 2 FITR ETF (Symbol: TOU); and Treasury 1 FITR ETF (Symbol: TFT). The ETF Advisors Trust determined to liquidate the portfolios of these funds on or about May 27, 2003. Trading in these ETFs was halted on the Exchange on May 22, 2003, and they are no longer listed or traded on the Exchange. The amendment to the fee schedule, therefore, deletes reference to these funds.

The Exchange believes that a suspension of fees for the SHY and IEF is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to section 19(b)(3)(A) of the 1934 Act.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[11] in general, and furthers the objectives of section 6(b)(4)[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)[13] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its

[3] *See* Securities Exchange Act Release No. 46765 (November 1, 2002), 67 FR 68893 (November 13, 2002) (SR–Amex–2002–91).

[4] *See* Securities Exchange Act Release No. 46996 (December 13, 2002), 67 FR 78264 (December 23, 2002) (SR–Amex–2002–98).

[5] *See* Securities Exchange Act Release No. 47141 (January 8, 2003), 68 FR 2090 (January 15, 2003) (SR–Amex–2002–115).

[6] *See* Securities Exchange Act Release No. 47361 (February 13, 2003), 68 FR 8534 (February 21, 2003) (SR–Amex–2003–04).

[7] *See* Securities Exchange Act Release No. 47455 (March 6, 2003), 68 FR 12111 (March 13, 2003) (SR–Amex–2003–15).

[8] *See* Securities Exchange Act Release No. 47668 (April 11, 2003), 68 FR 19241 (April 18, 2003) (SR–Amex 2003–22).

[9] *See* Securities Exchange Act Release No. 47858 (May 14, 2003), 68 FR 27872 (May 21, 2003) (SR–Amex 2003–40).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 17 CFR 240.19b–4(f)(6).

intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that fee suspensions for the exchange-traded funds that are the subject of this filing have been previously filed with the Commission.[14] Further, extension of the fee suspension for specialist, Registered Trader, and broker-dealer orders will permit the fee suspensions to continue uninterrupted. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–57 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14641 Filed 6–10–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47983; File No. SR–Amex–2003–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Standard & Poor's 500 Stock Index

June 4, 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 May 14, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 28, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 30, 2003, the Exchange filed 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 and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under Section 107A of the Amex Company Guide (''Company Guide''), notes linked to the performance of the Standard & Poor's 500 Index (''Index'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[5] The Amex proposes to list for trading under Section 107A of the Company Guide notes, the performance which is linked to the Index (the ''Accelerated Return Notes'' or ''Notes'').[6] The Index is determined, calculated and maintained solely by S&P.[7] The Notes will provide for a multiplier of any positive performance

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[14] *See supra* notes 3–9.

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 27, 2003. Amendment No. 1, corrects the formulas for determining payment at maturity of the Notes.

[4] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 28, 2003. Amendment No. 2, replaces in its entirety Amendment No. 1.

[5] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[6] Credit Suisse First Boston (USA), Inc. (''CSFB'') and Standard & Poor's Corporation (''S&P'') have entered into a non-exclusive license agreement providing for the use of the S&P 500 by CSFB and certain affiliates and subsidiaries in connection with certain securities including these Notes. S&P is not responsible and will not participate in the issuance and creation of the Notes.

The Exchange stated that the Index value will be disseminated at least once every fifteen seconds throughout the trading day. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and Hong-Anh Tran, Special Counsel, Division, Commission, dated May 27, 2003.

[7] The Index is a broad-based stock index, which provides an indication of the performance of the U.S. equity market. The Index is a capitalization-weighted index reflecting the total market value of 500 widely held component stocks relative to a particular base period. The Index is computed by dividing the total market value of the 500 stocks by an Index divisor. The Index Divisor keeps the Index comparable over time to its base period of 1941–1943 and is the reference point for all maintenance adjustments. The securities included in the Index are listed on the Amex, New York Stock Exchange, Inc. (''NYSE'') or traded through the Nasdaq Stock Market, Inc. (''Nasdaq''). The Index reflects the price of the common stocks of 500 companies without taking into account the value of the dividend paid on such stocks.

of the Index during such term subject to a maximum payment amount or ceiling.

The Notes initially conform to the listing guidelines under Section 107A [8] and continued listing guidelines under Sections 1001–1003 [9] of the Company Guide. The Notes are senior non-convertible debt securities of CSFB. The Notes will have a term of not less than one, nor more than ten years. CSFB will issue the Notes in denominations of whole units (a ''Unit''), with each Unit representing a single Note. The original public offering price will be $1000 per Unit. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the Index. At maturity, if the value of the Index has increased over the term of the Notes, a beneficial owner will be entitled to receive a payment on the Notes equal to three (3) times the amount of that percentage increase, not to exceed a maximum payment (the ''Capped Amount'') to be determined at the time of issuance of the Notes. The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. Accordingly, the Notes are not ''principal protected,'' and are fully exposed to any decline in the level of the Index.[10] The Notes are also not callable by the Issuer.

The payment that a holder or investor of a Note will be entitled to receive (the ''Redemption Amount'') depends entirely on the relation of the average of the values of the Index at the close of the market on five (5) business days shortly before maturity of the Notes (the ''Final Level'') and the closing value of the Index on the date the Notes are priced for initial sale to the public (the ''Initial Level'').

If the Final Level is greater than the Initial Level, the Redemption Amount per Unit will equal:

$$\$1000 + \left[3 \times \$1000 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}}\right)\right], \text{ subject to Capped Amount.}^{11}$$

If the Final Level is less than the Initial Level, the Redemption Amount per Unit will equal:

$$\$1000 \times \left(\frac{\text{Final Level}}{\text{Initial Level}}\right)^{12}$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Index. The Notes are designed for investors who want to participate or gain exposure to the Index, subject to a cap, and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the Index.[13]

As of May 12, 2003, the market capitalization of the securities included in the Index ranged from a high of $289.537 billion to a low of $0.353 billion. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 64.214 million shares to a low of 7.503 million shares [14] and from a high of 3.446 million shares to a low of 0.046 million shares respectively.

Because the Notes are issued in $1,000 denominations, the Amex's existing floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[15] Second, even though the Exchange's debt trading rules apply, the Notes will be subject to the equity margin rules of the Exchange.[16] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, CSFB will deliver a prospectus in connection with the initial sales of the Notes.

[8] The initial listing standards for the Notes require: (1) A market value of at least $4 million; and (2) a term of at least one year. Because the Notes will be issued in $1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 shareholders do not apply. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[9] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[10] A negative return of the Index will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment.

[11] *See* Amendment No. 2, supra note 4.

[12] *See* Amendment No. 2, supra note 4.

[13] *See* Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the Index); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the Index); 45160 (December 17, 2001) 66 FR 66485 (December 26, 2001) (approving the listing and trading of notes based on the Balanced Strategy Index); and 46882 (November 21, 2002), 67 FR 71219 (November 29, 2002) (approving the listing and trading of notes based on the Select Fifty Index.

[14] Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, to Hong-Anh Tran, Special Counsel, Division, Commission, dated May 27, 2003.

[15] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[16] *See* Amex Rule 462.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [17] in general, and furthers the objectives of section 6(b)(5),[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Amex–2003–45 and should be submitted by July 2, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto

After careful consideration, 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, and, in particular, with the requirements of section 6(b)(5) of the Act.[19] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[20] Accordingly, the Commission finds that the listing and trading of the Notes based on the Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[21]

As described more fully above, at maturity, the holder of a Note will receive an amount based upon the percentage change of the Index. Specifically, at maturity, the holder of a Note will be entitled to receive a payment equal to three times the amount of that percentage increase, not to exceed a certain maximum payment, if the value of the Index has increased over the term of such Note. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate or gain exposure to the Index, subject to a cap.

The Commission notes that the Notes are not-leveraged, non-principal protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the Index. The Notes do not have a minimum principal amount that will be repaid at maturity, and the payments of the Notes prior to or at maturity may be less than the original issue price of the Notes. Thus, if the value of the Index has declined at maturity, the holder of the Note will receive less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced and based upon the performance of an index of securities, because the Notes are debt instruments that do not guarantee a return of principal, and because investors' potential return is limited by the Capped Amount, if the value of the Index has increased over the term of such Note, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes that the Exchange's proposal adequately addresses the concerns raised by this type of product.

First, the Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Exchange will require members, member organizations and employees thereof recommending a transaction in the Securities to: (1) determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics, and bear the financial risks, of such transaction. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that CSFB will deliver a prospectus in connection with the initial sale of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedure governing equities, which have been deemed adequate under the Act. Moreover, the Commission also notes that the Exchange has a general policy that prohibits the distribution of

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Securities Exchange Act Release Nos. 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of non-principal protected notes linked to the DJIA); 46882 (November 21, 2002), 67 FR 71219 (November 29, 2002) (approving the listing and trading of non-principal protected notes linked to the Select Fifty Index); 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Balanced Strategy Index); and 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select Ten Index).

[21] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

material, non-public information by it employees.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index of 500 companies listed on Nasdaq, the NYSE, and the Amex. The Commission notes that the Index is determined, calculated, and maintained by S&P. As of May 12, 2003, the market capitalization of the securities included in the Index ranged from a high of $289.537 billion to a low of $0.353 billion. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 64.214 million shares to a low of 7,503 million shares and from a high of 3.446 million shares to a low of 0.046 million shares, respectively.

Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and trading of the Notes that are linked to the Index should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Exchange equity margin rules and debt trading rules will apply to the Securities. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that the Exchange has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Notes, the Commission believes that the potential from manipulation of the underlying securities is minimal, thereby protecting investors and the public interest. The Commission further notes that the Index is managed by the S&P, an entity independent of both the Exchange and the Issuer, and thus, a factor which the Commission believes should act to minimize the possibility of manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, CSFB. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have a market value of at least $4 million.[22] In any event, financial information regarding CSFB, in addition to the information on the 500 common stocks comprising the Index, will be publicly available.[23]

The Commission also has a systemic concern, however, that a broker-dealer such as CSFB, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[24] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of CSFB.

Finally, the Commission notes that the value of the Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[25] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes there is good cause, consistent with section 6(b)(5) and 19(b)(2) of the Act,[26] to approve the proposal, as amended, on an accelerated basis.

[22] *See* Company Guide Section 107A.

[23] The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[24] *See* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq–100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[25] *See* supra note 20.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Amex–2003–45), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[28]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14646 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

[26] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47957; File No. SR–CBOE–2003–20]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Marketing Fee Procedures

May 30, 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 May 13, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change by the CBOE, which relates to marketing fee procedures. At the same time, the Commission is adopting the proposed rule change as a pilot program on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE hereby proposes to adopt, on a pilot basis, a new Interpretation and Policy .12 to CBOE Rule 8.7 specifying the procedures by which a trading crowd may determine whether to participate in the CBOE's marketing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

fee program.[3] The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE 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

Effective August 1, 2001, the CBOE suspended its $.40 per contract marketing fee.[4] As described in SR–CBOE–2003–19,[5] the CBOE has determined to reinstate its marketing fee program, and proposes to adopt the procedures set forth in proposed new Interpretation and Policy .12 to CBOE Rule 8.7 to specify how a trading crowd determines whether or not to participate in the marketing fee program. The CBOE proposes to institute these procedures on a pilot basis to expire one year after Commission approval. The Exchange has requested that the Commission approve the pilot program on an accelerated basis so that it can compete effectively with other exchanges that have marketing fee programs.

As described in SR–CBOE–2003–19, the marketing fee will be assessed only on those market-maker transactions (including DPMs) resulting from orders from customers of payment-accepting firms with which the DPM has agreed to pay for that firm's order flow. In the instant filing, the CBOE proposes that after the marketing fee initially has been in effect for three consecutive calendar months with respect to the option classes located at a particular trading station, the members of a trading crowd may determine not to continue participating in this marketing fee program pursuant to the procedures proposed to be set forth in Interpretation .12 to CBOE Rule 8.7, as described below. The CBOE asserts that these procedures are substantially the same as the procedures contained in Interpretation and Policy .03 to CBOE Rule 8.95. These procedures were utilized by trading crowds in 1999 to indicate that they no longer wish to trade an option class opened for trading prior to May 1, 1987.[6]

The Exchange states that two procedural aspects of the administration of the trading crowd vote are embodied in proposed Interpretation and Policy .12 to CBOE Rule 8.7: (i) To define which trading crowd[7] members are entitled to participate in the vote; and (ii) to adopt voting procedures to be used for purposes of determinations made under the rule. The CBOE states that proposed Interpretation and Policy .12 provides that eligible trading crowd members are those market-makers in the subject trading crowd who have transacted at least 80% of their market-maker contracts and transactions in each of the three immediately preceding calendar months in option classes traded at that trading crowd's station, and who continue to be present in the trading crowd in the capacity of a market maker at the time of the vote.[8] According to the CBOE, this assures that only those members who are currently engaged as market makers in that trading crowd, and who have concentrated their activity in that trading crowd over the last three months, participate in the vote.

Process To Request a Vote

The CBOE asserts that the DPM or any eligible trading crowd member may request that a vote be held by submitting a written request to that effect to the Secretary of the Exchange. The Exchange will provide at least ten calendar days' posted notice to the trading crowd of the time and date of the vote. The Secretary of the Exchange will verify that the member requesting a vote is an eligible trading crowd member and will keep the identity of such individual confidential.

Trading Crowd Participating in Marketing Fee Program

The CBOE states that after a trading crowd has participated in the marketing fee program for the initial three consecutive calendar month period, the trading crowd may determine to opt-out of the program. Proposed Interpretation and Policy .12 to CBOE Rule 8.7 provides that a trading crowd will be deemed to have indicated that it does not wish to continue participating in the marketing fee program only if: (i) The question is put to a vote of the eligible trading crowd members;[9] (ii) a majority of the eligible trading crowd members participate in the vote; and (iii) a majority of the votes cast are in favor of not participating in the marketing fee program. In the event the vote of the members of the trading crowd is tied, the marketing fee program will remain in effect in that trading crowd for the next three consecutive months.

Trading Crowd Not Participating in Marketing Fee Program

According to the Exchange, twenty days after a trading crowd votes not to participate in the marketing fee program, any eligible trading crowd member may then request that another vote be held to determine whether the trading crowd should participate in the marketing fee program.[10] In this case, if a majority of the votes cast are in favor of participating in the marketing fee program, the trading crowd will be deemed to have indicated that it wishes to participate in the marketing fee program and the marketing fee program will be in effect in that trading crowd for the next three consecutive months. In the event that the vote of the members of the trading crowd is tied, the trading crowd will be deemed to have indicated that it does not wish to participate in the marketing fee program.

The CBOE asserts that these voting procedures are substantially similar to

[3] The CBOE recently reinstated its payment for order flow program. *See* Exchange Act Release No. 47948 (May 30, 2003) (SR–CBOE–2003–19).

[4] *See* Exchange Act Release No. 44717 (August 16, 2001), 66 FR 44655 (August 24, 2001), (SR–CBOE–2001–43).

[5] *See* Exchange Act Release No. 47948 (May 30, 2003), (SR–CBOE–2003–19).

[6] *See* Exchange Act Release No. 41641 (July 22, 1999), 64 FR 41477 (July 30, 1999), granting immediate effectiveness to SR–CBOE–99–31.

[7] CBOE Rule 8.8.01 provides that the term ''trading crowd'' is synonymous with the term trading ''station.'' That rule defines ''station'' as ''a location on the trading floor, at which classes of option contracts are traded, which classes of options compose all or part of a market maker appointment. An appointment must at least include all of the classes of options traded at one station.'' The same definition of ''trading crowd'' applies to proposed Interpretation and Policy .12 to CBOE Rule 8.7.

[8] The CBOE represents that it routinely monitors market maker trading activity for purposes of determining compliance with CBOE Rule 8.7.03 appointment and in-person trading requirements. Additionally, the CBOE represents that it has committed to monitor market maker trading activity for purposes of determining compliance with the electronic quoting requirements proposed in CBOE–2002–05 (the Hybrid Trading System). As such, the CBOE believes that it has the capability to determine who constitutes an eligible trading crowd member for purposes of this rule filing.

[9] The DPM is considered an eligible trading crowd member and, as such, may (but is not required to) participate in the vote. The DPM entity is entitled to only one vote regardless of the number of nominees or representatives it employs in the trading crowd.

[10] The CBOE notes that actual votes may only be held once every thirty days. Because there is a ten calendar day notice period prior to a vote, however, an eligible trading crowd member may request a vote twenty days after the preceding vote.

the procedures set forth in CBOE Rule 8.95.03 and the procedures set forth in CBOE Rule 2.40(d) concerning recommendations of a market-maker surcharge under that rule. In other respects, a marketing fee oversight committee of the CBOE shall determine administrative procedures for conducting the vote. If a payment accepting firm materially changes its execution status or a DPM transfers its DPM appointment to a separate organization pursuant to CBOE Rule 8.89, any member of the eligible trading crowd may then request that a vote be held to determine whether or not the trading crowd should participate in the marketing fee program by conducting a vote pursuant to the above procedures.

2. Statutory Basis

The CBOE believes that proposed Interpretation .12 to CBOE Rule 8.7 will provide fair and orderly procedures for the administration of the marketing fee program that the CBOE has determined to reinstate, and thus is consistent with and in furtherance of the objectives of Section 6(b)(5) of the Act [11] to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE neither solicited nor received written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–2003–20 and should be submitted by July 2, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change as a Pilot Program

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[12] and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission believes that this proposal, which allows the appropriate trading crowd to determine after a three-month period whether to continue to participate in the Exchange's marketing fee program, promotes member participation in the procedures of the Exchange. Further, the Commission notes that the contemplated voting procedures are substantially similar to the voting procedures contained in CBOE Rules 8.95.03 and 2.40(d), which have previously been reviewed by the Commission.

Finally, the Commission notes that the Exchange is proposing to institute these procedures as a pilot program that will expire one year after Commission approval, or such earlier time as the Commission has approved the procedures on a permanent basis.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[14] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.**

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14643 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47978; File No. SR–DTC–2003–02]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Concerning Requests for Withdrawal of Certificates by Issuers

June 4, 2003.

I. Introduction

On February 3, 2003, The Depository Trust Company filed with the Securities and Exchange Commission (''Commission'') and on February 11, 2003, amended proposed rule change SR–DTC–2003–02 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on February 22, 2003.[2] Eighty-nine comment letters were received.[3] For the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47365, (February 13, 2003), 68 FR 8535 (February 21, 2003).

[3] Letters from H. Glenn Bagwell, Jr., Esq. (March 6, 2003); Bruce Barrett (March 4, 2003); Bruce M. Barrett (March 19, 2003); Cristy Barrett (March 13, 2003); Jake Barrett (March 13, 2003); Robert D. Becker, Senior Vice President, National City Bank (March 18, 2003); Lester Bianco, Director, Ingalls & Snyder LLC (April 4, 2003); Pete Bowman, Managing Director, First Clearing Corporation (March 18, 2003); Michael R. Brennan, Vice President and Managing Director of Operations, Ameritrade, Inc. (April 28, 2003); Earl D. Bukolt, Managing Director and Chief Operating Officer, Sterne, Agee & Leach, Inc. (April 21, 2003); Leonard W. Burningham, Esq. (March 21, 2003); Leonard W. Burningham, Esq. (March 22, 2003); Leonard W. Burningham, Esq. (March 24, 2003); Neil C. Carfora, Senior Vice President, State Street Corporation (March 11, 2003); Mark Cashion (March 6, 2003); David L. Cermak, Senior Vice President and Director of Operations, RBC; Dain Rauscher (April 21, 2003); Frank M. Ciavarella, Cashiers Division, Prudential Securities Incorporated (April 3, 2003); John Cirrito, Senior Managing Director and Chief Operating Officer, ING Financial Markets LLC (March 17, 2003); Kevin Cundy (March 6, 2003); Richard J. Curran, Director, Credit Suisse First Boston LLC (April 14, 2003); Dennis Dejose (March 8, 2003); Patricia Dowd, Patricia Dowd Inc. (March 5, 2003); Paul A. Ebeling (March 11, 2003); Harry Filowitz, Vice President, Mizuho Trust & Banking Co. (USA) (April 7, 2003); Mary L. Forgy, Chairperson, Bank Depository User Group (March 14, 2003); Mary L. Forgy, Union Planters Trust & Investment Group (March 13, 2003); Susan A. Gessman, Assistant Vice President of Operations, Raymond James and Associates (April 25, 2003); Russell Godwin, President, Medinah Minerals Inc. (March 13, 2003); Jeff Hamel, President, Cashiers' Association of Wall Street, Inc. (March 18, 2003); Edward Hazel, Managing Director, Spear, Leeds & Kellogg (April 9, 2003); James Hendricks (March 8, 2003); Joseph Hoofnagel, Jr. (March 8, 2003); Gordon D. House (March 6, 2003); Tom Ittner, Director, National Financial Services LLC (March 17, 2003); Kent N. Jacobson, President and Chief Executive Officer, James Barclay Alan Inc. (March 7, 2003); Peter Johnston, Managing Director, Goldman, Sachs & Co. (March 24, 2003); Jack

Continued

reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Recently a number of issuers of securities have independently requested that DTC withdraw from the depository all securities issued by them.[4] Generally, these issuers have also advised DTC that they will not allow their securities to be reregistered in the name of DTC or its nominee, Cede & Co. The securities of these issuers generally became eligible for DTC services at the request of DTC's participants so that they could utilize DTC's services, including its book-entry transfer system. The securities are held by DTC in its nominee name for the benefit of its participants. DTC has stated that, in its opinion, these issuers have no legal or beneficial interest in the securities they are requesting to be withdrawn from DTC.

DTC's current rules and procedures provide for participants to submit withdrawal requests if they wish to withdraw their securities from DTC.[5] However, DTC's current rules and procedures do not provide for DTC to comply with a withdrawal request from an issuer without also receiving instructions from its participants.

DTC's proposed rule change provides that upon receipt of a withdrawal request from an issuer, DTC will take the following actions: (1) DTC will issue an Important Notice notifying its participants of the receipt of the withdrawal request from the issuer and reminding participants that they can utilize DTC's withdrawal procedures if they wish to withdraw their securities from DTC; and (2) DTC will process withdrawal requests submitted by participants in the ordinary course of business but will not effectuate withdrawals based upon a request from the issuer.

DTC stated in its filing that the application of its procedures is not affected by any purported approval of the request by the shareholders or board of directors of the issuer.[6]

III. Comment Letters

The Commission received 89 comment letters regarding the proposed rule change.[7] Forty-seven commenters submitted fifty-two comment letters opposing the proposed rule change.[8] Thirty-five commenters submitted thirty-six comment letters supporting the proposed rule change.[9] DTC submitted a letter in response to certain issues raised by comment letters opposing the rule change.

A. Comment Letters Opposing DTC's Proposed Rule Change

A majority of the forty-seven commenters opposed to DTC's filing believe that approval of the proposed rule change would allow DTC to continue to facilitate, either directly or indirectly, short selling in the over-the-counter securities market in violation of DTC's obligation to promote the prompt and accurate clearance and settlement of securities transactions.[10] Seven of these commenters characterized DTC's current settlement process as aiding and abetting illegal short selling or as creating an environment that permits unregistered securities offerings.[11]

At least twenty-six commenters contended that an issuer should have a

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Kennedy (March 8, 2003); Will Kernen (March 8, 2003); Patrick Kirby, Director, Salomon Smith Barney (March 14, 2003); Donald D. Kittell, Executive Vice President, Securities Industry Association (March 11, 2003); Jeremy D. Kraus, Valesc Medical Specialists (March 4, 2003); Philip Lanz, Managing Director, Bear, Stearns Securities Corp. (April 11, 2003); Arthur Lee, Vice President, Banc of America Securities LLC (March 18, 2003); Joseph M. Liguori, Vice President, JP Morgan Securities, Inc. (April 14, 2003); Erick Lihme (March 8, 2003); Luiz Lima, Director, Americas Regional Service Center, Citibank North America, Inc. (April 22, 2003); Lori Livingston, President and Chief Operating Officer, Transfer Online, Inc. (March 5, 2003); Richard Mangiarelli, President and Chief Operating Officer, Cybertel Communications Corporations (March 5, 2003); John Masse, Executive Director, Morgan Stanley (May 21, 2003); Thomas J. Mazzarisi, Executive Vice President and General Counsel, JAG Media Holdings, Inc. (March 14, 2003); Joseph Meuse (March 5, 2003); Michael Moran, First Vice President, National Investor Services Corp. (March 11, 2003); Lawrence Morillo, Managing Director, Pershing LLC (April 3, 2003); John O'Brien (March 11, 2003); Thomas J. O'Hara, Department Leader, Edward Jones (April 15, 2003); John M. Osmanski (March 4, 2003); David E. Patch (March 4, 2003); Dave Patch (March 6, 2003); D. Patch (March 15, 2003); John L. Petersen, Esq., Petersen & Fefer, on behalf of Blue Industries, Inc. (March 12, 2003); Ernest A. Pittarelli, USB Warburg LLC (April 24, 2003); Robert M. Post (March 8, 2003); James E. Pratt, Esq., on behalf of Composite Holdings, Inc. (March 27, 2003); Joe Raia (March 11, 2003); Richard Reincke, Chief Operating Officer, Aegis Assessments, Inc. (March 3, 2003); Peter Richardson (March 8, 2003); John Rideout (March 12, 2003); Rodney J. Roncaglio (April 29, 2003); Robert S. Rondeau (May 20, 2003); Greg Rotman (March 14, 2003); David Salk (March 6, 2003); Henry F. Schlueter, Esq., Schlueter & Associates, P.C. (March 12, 2003); Robert J. Scott, President and Chief Operating Officer, The Auxer Group, Inc. (March 20, 2003); Joseph J. Selinger, Esq., Tobin, Carberry, O'Malley, Riley & Selinger, P.C. (March 14, 2003); Marshal Shichtman, Esq., Marshal Shichtman & Associates, P.C. (March 11, 2003); Scott Sieck (March 5, 2003); Steven Simonyi-Gindele, President and Chief Executive Officer, ID Superstore (March 17, 2003); Maurisa Sommerfield, Executive Vice President, Charles Schwab & Co., Inc. (April 15, 2003); Michael Sondow (March 4, 2003); Chris Spencer, Chief Executive Officer, Wizzard Software Corporation (March 11, 2003); Roger J. Steffensen (March 8, 2003); SuperVP (March 20, 2003); Kristie Thompson, President, SIA Customer Account Transfer Division (April 4, 2003); Larry E. Thompson, Managing Director and Deputy Chief Counsel, The Depository Trust Company (March 27, 2003); Leon Urbaitel, Chief Operating Officer, StockTransfer.com (March 6, 2003); Brian Urkowitz, Merrill Lynch (April 23, 2003); C. Michael Viviano, BNY Clearing (April 4, 2003); Geoffrey F. Walsh, Chief Operating Officer, Solution Capital (March 7, 2003); and William J. Winter, Senior Vice President, A.G. Edwards & Sons, Inc. (March 14, 2003).

[4] As explained in further detail by many of the commenters opposing DTC's proposal, the issuers making these requests have alleged that their securities have been the target of manipulative short sellers.

[5] *See, e.g.*, Rules 2, 6, 9(A), and 9(B) of DTC's Rules.

[6] DTC's current procedures and this proposed rule filing do not apply to withdrawal requests submitted by issuers in situations where an issue which should not have been made eligible and deposited at DTC was inadvertently made eligible and deposited (*e.g.*, securities restricted pursuant to Rule 144 or Rule 145 under the Securities Act of 1933). In such situations, DTC will continue its practice of working with the issuer and its participants to exit the security from DTC.

[7] *Supra* note 3.

[8] Letters from Aegis Assessments, Inc., H. Glenn Bagwell, Bruce Barrett, Bruce M. Barrett, Cristy Barrett, Jake Barrett, Blue Industries, Inc., Leonard W. Burningham (three letters), Composite Holdings, Inc., Kevin Cundy, Cybertel Communications Corporations, Dennis Dejose, Patricia Dowd Inc., Paul A. Ebeling, James Hendricks, Joseph Hoofnagle, Jr., Gordon D. House, ID Superstore, James Barclay Alan Inc., Jack Kennedy, Will Kernen, Erick Lihme, JAG Media Holdings, Inc., Medinah Minerals Inc., Joseph Meuse, John O'Brien, John M. Osmanski, David E. Patch, Dave Patch, David Patch, Robert M. Post, Joseph Raia, Peter Richardson, Rodney J. Roncaglio, Robert S. Rondeau, Greg Rotman, David Salk, Henry F. Schlueter, Robert J. Scott, Joseph J. Selinger, Marshal Shichtman, Scott Sieck, Solution Capital, Michael Sondow, Roger J. Steffenson, StockTransfer.com, SuperVP, Transfer Online, Inc., Valesc Medical Specialists, and Wizzard Software Corporation.

[9] Letters from A.G. Edwards & Sons, Inc., Ameritrade, Inc., Banc of America Securities LLC, Bank Depository User Group, BNY Clearing, Cashiers' Association of Wall Street, Inc., Mark Cashion, Charles Schwab & Co., Inc., Citibank North America, Inc., Credit Suisse First Boston LLC, Edward Jones, First Clearing Corporation, Goldman, Sachs & Co., Ingalls & Snyder LLC, ING Financial Markets LLC, JP Morgan Securities, Inc., Merrill Lynch, Mizuho Trust & Banking Co. (USA), Morgan Stanley, National City Bank, National Financial Services LLC, National Investor Services Corp., Pershing LLC, Prudential Securities Incorporated, Raymond James and Associates, RBC Dain Rauscher, John Rideout, Salomon Smith Barney, Securities Industry Association, Securities Industry Association Customer Account Transfer Division, Spear, Leeds & Kellogg, State Street Corporation, Stearns Securities Corp., Sterne, Agee & Leach, Inc., Union Planters Trust & Investment Group, and USB Warburg LLC.

[10] In addition to alleging that DTC facilitates abusive short selling, some of these commenters took issue with the Commission's regulation of DTC, broker-dealers, and other entities that the commenters believe are responsible for the problems associated with naked short selling.

[11] Several of these commenters characterized the imbalance between the number of shares trading through short selling and the number of shares outstanding as an unregistered securities offering. Others characterized this imbalance as ''counterfeiting securities.'' Letters from H. Glenn Bagwell, Blue Industries, Inc., James Henricks, ID Superstore, Scott Sieck, Solution Capital, and Michael Sondow.

choice as to whether the company's securities are eligible for deposit at DTC,[12] particularly, as some of these commenters argued, when making the securities eligible for deposit at DTC requires the issuer's consent.[13] Most of the twenty-six commenters stated that issuers should have the right to withdraw their securities from DTC in order to protect their shareholders and their share price from the alleged negative consequences of naked short selling by broker-dealers.[14] These commenters believe that by requiring certification and by prohibiting ownership by nominees, including depositories, issuers will better be able to track, address, or preclude naked short selling.[15]

Ten commenters raised a number of concerns regarding the legal basis for the proposal.[16] Seven of the ten commenters stated that DTC's refusal to honor issuers' withdrawal requests or to allow issuers the option of not having securities deposited at DTC conflicts with state law and that state corporation laws, not DTC rules, govern whether a company can restrict securities so that all positions must be certificated or so that just custody-only trading is allowed.[17] Further, they contend that state law determines the conditions that must be met for the proper transfer of securities. One commenter argued that a transfer agent is the agent of the issuer and that unless the issuer has elected to make its securities eligible at DTC, its transfer agent is not subject to DTC rules and regulations or operational arrangements but rather is subject to Commission and NASD rules and regulations.[18] Another of these commenters stated that if transfer agents, which are agents of issuers and as such generally have a duty to follow issuers' instructions including any restrictions imposed by the issuer's by-laws or articles of incorporation, have obligations to both the issuer and to DTC, transfer agents will be effectively ''frozen,'' and the parties will be forced to litigate their disputes.[19]

Four of the seven commenters questioned the need for the filing and in particular questioned DTC's statement that it was only clarifying its existing rules and procedures rather than promulgating a new rule.[20] Some of these commenters said that if this were true, DTC would have either not filed at all or would have filed a rule interpretation pursuant to Section 19(b)(3) of the Act,[21] which would not have required Commission approval. One of the seven commenters observed that while DTC stated that its rules do not provide for issuers' requests to withdraw their securities, DTC did not cite to any rule prohibiting honoring such requests.[22]

Three commenters believe that the manner in which DTC handled this ''policy change'' was arbitrary, capricious, and detrimental to companies, particularly in light of the fact that DTC has worked with some companies to withdraw their securities but has refused to assist other companies to withdraw their securities.[23] Several commenters also stated they did not understand how at least one company, such as AT&T, could have the right to determine that its stockholders must hold their stock in book-entry form but other issuers do not have the right to determine that their stockholders must hold their stock in certificated form.[24]

Eight commenters took issue with the fact that DTC does not effectively work to protect the interest of the issuer or the issuer's shareholders but rather works in the interest of its participants, the same entities that profit from naked short selling.[25] One of these commenters suggested that this conflict of interest should disqualify DTC from deciding whether an issuer could withdraw its securities.[26]

Finally, eight commenters suggested that the Commission should deny approval of DTC's proposal until the Commission or DTC can investigate and consider appropriate regulation to address naked short selling or until the public is given an opportunity to more fully comment on the proposal.[27] Some of these commenters argued that DTC's current course of action (*i.e.,* filing a proposed rule change) does not sufficiently provide a vehicle for in-depth analysis or meaningful public comment. Several of these commenters suggested that alternatives to DTC such as issuers or transfer agents operating their own book-entry system or a certificated, custody-only system, are available and could be used in lieu of DTC.

B. Comment Letters Supporting DTC's Proposed Rule Change

A majority of the thirty-five commenters supporting DTC's proposed rule change expressed concern that permitting issuers to withdraw their securities from DTC undermines the securities industry's long-term efforts to streamline securities processing, settlement, custodianship in the U.S. market, to achieve straight-through-processing (''STP''), and to ultimately shorten settlement cycles. Twenty-four of these commenters contended that one of the major stumbling blocks to achieving STP involves the difficulties related to processing certificates, which is primarily a manual process.[28] The

[12] Letters from Aegis Assessments, Inc., H. Glenn Bagwell, Blue Industries, Inc., Bruce Barrett, Cybertel Communications Corporations, Dennis Dejose, James Hendricks, Gordon D. House, JAG Media Holdings, Inc., James Barclay Alan Inc., Eric Lihme, Medinah Minerals Inc., Joseph Meuse, John O'Brien, John M. Osmanski, David E. Patch, Joseph Raia, Peter Richardson, Henry F. Schlueter, Robert J. Scott, Joseph J. Selinger, Marshall Shichtman, Michael Sondow, Super VP, Transfer Online, Inc., and Valesc Medical Specialists.

[13] Letters from Henry F. Schlueter, Joseph J. Selinger, and Marshal Shichtman.

[14] Letters from Aegis Assessments, Inc., H. Glenn Bagwell, Blue Industries, Inc., Cybertel Communications Corporations, Dennis Dejose, James Hendricks, Gordon D. House, JAG Media Holdings, Inc., James Barclay Alan Inc., Erick Lihme, John O'Brien, John M. Osmanski, David E. Patch, Joseph Raia, Peter Richardson, Henry F. Schlueter, Robert J. Scott, Joseph J. Selinger, Marshall Shichtman, Michael Sondow, Transfer Online, Inc., and Valesc Medical Specialists.

[15] Some commenters refer to allowing the transfer of certificated positions registered only in the name of the final beneficial owner as ''custody-only trading.''

[16] Letters from H. Glenn Bagwell, Jr., Bruce M. Barrett, JAG Media Holdings, Inc., John M. Osmanski, David E. Patch, Greg Rotman, Henry F. Schlueter, Joseph J. Selinger, Marshal Shichtman, and Solution Capital.

[17] Letters from Bruce M. Barrett, JAG Media Holdings, Inc., David E Patch, Henry F. Schlueter, Joseph J. Selinger, Marshal Shichtman, and Greg Rotman.

[18] Letter from Henry F. Schlueter.

[19] Letter from Marshal Shichtman. The commenter did not explain why he believed the transfer agent has an obligation to DTC.

[20] Letters from H. Glenn Bagwell, Jr., JAG Media Holdings, Inc., John M. Osmanski, and David E. Patch.

[21] Letters from JAG Media Holdings, Inc., John M. Osmanski, and David E. Patch.

[22] Letter from Joseph J. Selinger.

[23] Letters from JAG Media Holdings, Inc., David E. Patch, and Henry F. Schlueter.

[24] Letters from JAG Media Holdings, Inc., David E. Patch, and Solution Capital.

[25] Letters from Cristy Barrett, Jake Barrett, Joseph Meuse, David Patch, Joseph Raia, Joseph J. Selinger, StockTransfer.com, and Wizzard Software Corporation.

[26] Letter from Joseph J. Selinger.

[27] Letters from Aegis Assessments, Inc., Leonard W. Burningham, David E. Patch, David Salk, Joseph J. Selinger, Marshall Shichtman, StockTransfer.com, and Transfer Online, Inc.

[28] Letters from Ameritrade, Inc., Banc of America Securities LLC, Bank Depository User Group, Cashiers' Association of Wall Street, Inc., Mark Cashion, Citibank North America, Inc., Credit Suisse First Boston LLC, Edward Jones, ING Financial Markets LLC, JP Morgan Securities, Inc., Merrill Lynch, Mizuho Trust & Banking Co. (USA), National Financial Services LLC, National Investor Services Corp., Pershing LLC, Prudential Securities Incorporated, RBC Dain Rauscher, Salomon Smith Barney, Stearns Securities Corp., Securities Industry Association, Securities Industry Association Customer Account Transfer Division State Street Corporation, Sterne, Agee & Leach, Inc., USB Warburg LLC, and Union Planters Trust & Investment Group. Several commenters referred to dematerialization or immobilization as a ''building

Continued

industry, these commenters believe, has achieved success in significantly reducing risk in the trading markets and in enhancing processing efficiencies within the securities infrastructure supporting book-entry clearance and settlement. In their view, much of the success can be attributed to immobilizing stock certificates and mandating book-entry settlement among financial institutions and their financial intermediaries. Accordingly, many of the commenters claimed that a move to certificated securities is a step backwards in the development of the modern securities processing system and will hinder the industry's efforts to reduce risk, cost, and inefficiencies for all parties involved in securities transactions.[29]

Fourteen commenters specifically raised concerns that an increase in the use of certificates will raise costs and cause significant inconveniences for investors.[30] They believe that increased costs associated with transfers, lost certificates, custody, and trading delays will ultimately be borne by investors. One commenter stated that the withdrawal from DTC might require customer securities to be held in the broker's vault in order to meet the customers' needs and will increase costs associated with transactions, including transfer costs, which are currently ranging from $50.00 to $100.00 per certificate.[31] This commenter claims that these costs are hard to justify to shareholders when the shareholder did not request a certificate.

Ten commenters contended that operating outside the DTC environment would undermine the ability of broker-dealers to effectively complete transactions on behalf of their customers.[32] Forced withdrawals of customer positions held in street name would prevent shareholders from fully participating in services provided by their broker, such as margin accounts, automated dividend payments or reinvestments, asset management, proxy services, account transfers, and prompt processing of corporate actions (particularly where old securities need to be exchanged for new securities as required, for example, in mergers and tender offers). Seven of the ten commenters also indicated that such an action would result in an increase in trading delays and trade failures, which would increase risk in the system.[33]

Three commenters believe that the final decision regarding custody and registration should reside with the beneficial owners or their appointed agents and not with the issuers of such securities.[34] These commenters objected to imposing registration restrictions on beneficial owners, because such registration restrictions would be disruptive to market practices, would impose costs on investors, and would cause inefficiencies in the market. Further, nine commenters noted that the direct registration system (''DRS'')[35] was specifically designed by the industry to give shareholders an alternative to either holding a certificate or holding in street name registration.[36] Several commenters pointed to AT&T's decision to dematerialize its securities as further support of the industry's initiatives to dematerialize.[37]

Four commenters stated they believe DTC's proposed rule change complies with its obligation under section 17A of the Act to promote the prompt and accurate settlement of securities transactions.[38] In fact, one of these commenters stated that honoring issuers' request to withdraw from DTC was inconsistent with section 17A.[39] One commenter expressed surprise that DTC's filing on this issue was necessary because of the ability of an owner of a negotiable security to register the securities in whatever name it wished has existed for a long time under the Uniform Commercial Code and therefore should not be restricted by the issuer.[40]

With regard to the naked short selling issue, one commenter indicated that the withdrawal of securities from DTC would not have any material or effective impact on the short selling concerns of issuers.[41] Another contended that short selling is vital to ensuring the asset price reflects the underlying fundamentals of the asset and thereby facilitates a more efficient market.[42] This commenter noted that as a result of the additional costs and trade delays associated with certificate-only securities, some brokers are refusing to conduct trades in issues that have been withdrawn from DTC, which has resulted in an illiquid market for those securities.

C. DTC's Response Letter to Opposing Comment Letters

DTC emphasizes in its response letter that the proposed rule change does not constitute a departure from DTC's existing rules and procedures approved by the Commission. Those rules, DTC contends, govern requests to make shares eligible and enable participants to withdraw shares on behalf of themselves or their customers from the DTC system through DTC's withdrawal-by-transfer mechanism.[43]

Further, DTC states that issuers do not have continuing ownership rights in shares they have sold into the marketplace and therefore cannot control the disposition of shares already registered in DTC's nominee name by directing that those shares be surrendered to the transfer agent or by restricting their eligibility for book-entry

block'' to achieving STP or shorter settlement cycles.

[29] Letters from A.G. Edwards & Sons, Inc., Ameritrade, Inc., Banc of America Securities LLC, Bank Depository User Group, BNY Clearing, Cashiers' Association of Wall Street, Inc., Citibank North America, Inc., Edward Jones, Ingalls & Snyder LLC, ING Financial Markets LLC, JP Morgan Securities, Inc., Merrill Lynch, Mizuho Trust & Banking Co. (USA), Morgan Stanley, National City Bank, National Financial Services LLC, National Investor Services Corp., Pershing LLC, Prudential Securities Incorporated, John Rideout, Salomon Smith Barney, Securities Industry Association, Securities Industry Association Customer Account Transfer Division, Spear, Leeds & Kellogg, State Street Corporation, Stearns Securities Corp., Sterne, Agee & Leach, Inc., Union Planters Trust & Investment Group, and USB Warburg LLC.

[30] Letters from Ameritrade, Inc., Mark Cashion, Citibank North America, Inc., First Clearing Corporation, Merrill Lynch, Mizuho Trust & Banking Co. (USA), National Investor Services Corp., Pershing LLC, RBC Dain Rauscher, John Rideout, Salomon Smith Barney, Securities Industry Association Customer Account Transfer Division, Stearns Securities Corp., and Union Planters Trust & Investment Group.

[31] Letter from Raymond James and Associates. According to this comment letter, Raymond James recently initiated a client certificate transfer fee as a disincentive to requesting a certificate. This fee, the commenter claims, has reduced certificate requests by 67% over the past two years.

[32] Letters from Ameritrade, Inc., BNY Clearing, Mark Cashion, First Clearing Corporation, Mizuho Trust & Banking Co. (USA), National City Bank, National Investor Services Corp., RBC Dain Rauscher, John Rideout, and Union Planters Trust & Investment Group.

[33] Letters from Ameritrade, Inc., BNY Clearing, Mizuho Trust & Banking Co. (USA), National City Bank, First Clearing Corporation, RBC Dain Rauscher, and Union Planters Trust & Investment Group.

[34] Letters from First Clearing Corporation, Mizuho Trust & Banking Co. (USA), and John Rideout.

[35] DRS allows a shareholder to hold a book-entry position in his or her own name on the books of the issuer. As a result, shareholders can enjoy the benefits of both holding their securities in a book-entry system and being a ''named'' shareholder on the issuer's record.

[36] Letters from Banc of America Securities LLC, Edward Jones, Merrill Lynch, Pershing LLC, Prudential Securities Incorporated, RBC Dain Rauscher, Securities Industry Association Customer Account Transfer Division, Stearns Securities Corp., and Sterne, Agee & Leach, Inc.

[37] Letters from Edward Jones, Pershing LLC, RBC Dain Rauscher, and Stearns Securities Corp.

[38] Letters from A.G. Edwards & Sons, Inc., Banc of America Securities LLC, Prudential Securities Incorporated, and Securities Industry Account Customer Account Transfer Division.

[39] Letter from Prudential Securities Incorporated.

[40] Letter from A.G. Edwards & Sons, Inc.

[41] Letter from Citibank North America, Inc.

[42] Letter from John Rideout.

[43] *See e.g.* Rules 2, 6, and 9 of DTC's Rules.

transfer at DTC.[44] DTC contends that attempts by issuers to control their publicly traded securities are improper and may constitute conversion. DTC states that by purporting to exercise the rights of the shareholders, issuers are interfering with the legal and beneficial rights of DTC and its participants with respect to securities deposited at DTC and with DTC's obligations under section 17A of the Act.

DTC disagreed with the commenters' contention that it had an obligation to take action to resolve the issues associated with naked short selling because those issues arise in the context of trading and not in the book-entry transfer of securities. DTC pointed out that if beneficial owners believe that their interests are best protected by not having their shares subject to book-entry transfer at DTC, then they can instruct their broker-dealer to execute a withdrawal-by-transfer, which will remove the securities from DTC and transfer them to the shareholder in certificated form.

Finally, DTC contested certain commenters' assertion that issuers cause their shares to become eligible at DTC and therefore have the right to withdraw from DTC eligibility. DTC states that most shares are made eligible at the request of participants and not issuers. But regardless of how the shares are made eligible, DTC believes it continues to own and hold the shares for the convenience and at the request of its participants. DTC believes that if it were to exit shares upon demand of an issuer, there is no mechanism to ensure that the shares entrusted to DTC by its participants would be returned to their rightful owners. This, DTC contended, would be inconsistent with its obligations under section 17A.

IV. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[45] For the reasons described below, the Commission finds that the rule change is consistent with section 17A of the Act.

Pursuant to section 17A of the Act, Congress set forth its finding that the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and safeguarding of securities and funds related to clearance and settlement activities, is necessary for the protection of investors and those acting on behalf of investors.[46] Inefficient clearance and settlement procedures, Congress found, impose unnecessary costs on investors and those acting on their behalf.[47] Congress vested with the Commission the authority and responsibility to regulate, coordinate, and direct the operations of all persons involved in processing securities transactions toward the goal of establishing a national system for the prompt and accurate clearance and settlement of transactions in securities (''National Clearance and Settlement System'') in an effort to increase efficiency and reduce risk.[48] The Commission's approval of DTC's registration as a clearing agency constituted an important step in its efforts to facilitate the development of a National Clearance and Settlement System and a significant step in achieving the goals established by Congress.[49]

As a registered clearing agency, DTC has adopted rules under section 19(b) of the Act to act as a depository that operates a centralized system for the handling of securities certificates through book-entry movements.[50] Generally, those rules, including adoptions, deletions, or changes to DTC's constitution, articles of incorporation, bylaws, rules, or stated policies, practices, and interpretations, must be filed with the Commission and must be approved by the Commission if the Commission finds the rule change consistent with the Act.[51] Furthermore, DTC can only act in accordance with its rules. DTC has adopted rules that permit deposits of securities into DTC by participants [52] and rules that permit withdrawals from DTC by participants and pledgees.[53] However, DTC has not adopted rules that permit issuers to withdraw securities from DTC. Accordingly, a procedure allowing issuers to withdraw securities from DTC would have to be filed and approved by the Commission. DTC has not filed such a rule change.

In accordance with its rules, DTC accepts deposits of securities from its participants (*i.e.*, broker-dealers and banks), credits those securities to the depositing participants' accounts, and effects book-entry movements of those securities.[54] The securities deposited with DTC are registered in DTC's nominee name, Cede & Co. (making DTC's nominee the registered owner of the securities) and are held in fungible bulk. Each participant or pledgee having an interest in securities of a given issue credited to its account has a pro rata interest in the securities of that issue held by DTC. Among other services it provides, DTC provides facilities for payment by participants to other participants in connection with book-entry deliveries of securities, collects and pays dividends and interest to participants for securities, and provides facilities for the settlement of institutional trades. By centralizing and automating securities settlement, by reducing the movement of publicly traded securities in the U.S. markets, and by facilitating the prompt and accurate settlement of securities transactions, DTC serves a critical function in the National Clearance and Settlement System.

DTC's rules also accommodate withdrawal requests from participants or under certain conditions, from pledgees.[55] Securities credited to a participant's or pledgee's account may be withdrawn in certificated form (if the issue is not dematerialized).[56] DTC's rules, both prior to and after the approval of the clarification which is the subject of this rule filing, obligates and allows DTC to take instructions only from its participants.

Some commenters opposing DTC's proposed rule change contend that issuers should have a choice as to whether their securities are made

[44] DTC also noted that none of the securities where the issuer is attempting to restrict the transferability of its shares bear any legend, conspicuous or otherwise, noting the restrictions.

[45] 15 U.S.C. 78q–1(b)(3)(F).

[46] 15 U.S.C. 78q–1(a)(1)(A).

[47] 15 U.S.C. 78q–1(a)(1)(B).

[48] 15 U.S.C. 78q–1(a)(1)(A)(i). Congress expressly envisioned the Commission's authority to extend to every facet of the securities handling process involving securities transaction within the United States, including activities by clearing agencies, depositories, corporate issuers, and transfer agents. *See* S. Rep. No. 75, 94th Cong., 1st Sess. at 55 (1975).

[49] Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983).

[50] As a registered clearing agency, DTC is a self-regulatory organization and as such, must file with the Commission any proposed rule or rule change pursuant to section 19 of the Act. 15 U.S.C. 78s(b).

[51] Section 3(a)(27) of the Act defines the term ''rules of a clearing agency.'' The Commission's role in the approval of such rules is described in section 17A and section 19(b) of the Act. 15 U.S.C. 78q–1 and 15 U.S.C. 78s.

[52] DTC has informed the Commission that issuers of book-entry-only securities (*i.e.*, some corporate debt and most municipal securities) enter into a contract with DTC whereby the issuer deposits their securities into DTC and DTC then credits the securities to the accounts of participants. *See* also note 55 infra and accompanying text.

[53] *See e.g.* Rules 2, 6, and 9 of DTC's Rules.

[54] *See e.g.* Rule 6 of DTC's Rules. All deposits, whether made by a participant or, in the case of book-entry-only securities, by an issuer must be credited to a participant's account at DTC.

[55] *See e.g.* Rules 2, 6, and 9 of DTC's Rules.

[56] *See e.g.* Rule 6 of DTC's Rules, By-Laws and Organization of Certificate.

eligible for deposit at DTC. [57] In this way, these commenters argue, issuers would be better able to protect their shareholders from the negative effects naked short selling has on their securities' share price.[58] Securities deposited at DTC are registered in the name of Cede & Co. and are held beneficially for DTC participants, who in turn may hold the securities beneficially for their customers.[59] Since DTC participants and their customers, not issuers, have ownership interest in the securities, DTC participants and their customers have the authority to determine whether to deposit securities with DTC or not. Participants deposit certificates with DTC in order to avail themselves of the efficiencies and safeguards provided by DTC. It would not be consistent with DTC rules to allow issuers to withdraw securities which they have not deposited at DTC or have no ownership interest.

Furthermore, the issues surrounding naked short selling are not germane to the manner in which DTC operates as a depository registered as a clearing agency. Decisions to engage in such transactions are made by parties other than DTC. DTC does not allow its participants to establish short positions resulting from their failure to deliver securities at settlement. While the Commission appreciates commenters' concerns about manipulative activity, those concerns must be addressed by other means.[60]

Several commenters claim that DTC is acting arbitrarily by permitting some issuers to withdraw their securities while prohibiting others from withdrawing their securities because DTC did accommodate a few earlier requests from issuers in the belief that they were unusual circumstances. However, DTC only withdrew these securities based upon instructions made by participants pursuant to DTC's rules and procedures. DTC bore the substantial expense resulting from coordinating the communications and actions among DTC participants, the transfer agent, and the issuer in order to accommodate each issuer's request. When it became clear to DTC that many more issuers intended to attempt to withdraw their securities from DTC, it decided that it would no longer bear the substantial additional cost and expense of time in accommodating such requests. In none of the situations where DTC assisted an issuer in having its securities withdrawn did DTC act on an issuer's instructions. DTC facilitated the issuer by having DTC participants issue instructions to withdraw the securities.

With regard to commenters' contention that state law permits companies to adopt certain restrictions on publicly traded securities, this filing does not address the validity of such restrictions since the securities that are the subject of this filing are securities which are registered in the name of (*i.e.*, legally owned) Cede & Co. prior to the imposition of any restrictions. The securities of issuers, such as the ones that recently attempted to withdraw their securities from DTC, were issued without restrictions or notice of an adverse claim, and no restrictions were imposed on or claims made against the securities when DTC participants deposited the securities at DTC or when the transfer agent registered them in the name of Cede & Co.

While not a direct subject of this rule filing, we note that actions by some issuers of publicly traded securities to require transfer only by certificate [61] and to restrict ownership of the securities by a depository or financial intermediary could result many of the inefficiencies and risks sought to be avoided when Congress promulgated section 17A of the Act.[62] We also note in this connection that section 17A(e) directs the Commission to use its authority ''to end the physical movement of the securities certificate in connection with settlement among brokers and dealers of securities transactions by means of the mails or other means or instrumentalities of interstate commerce.'' [63] Consistent with this directive, the Commission has encouraged the use of alternatives to holding securities in certificated form in an effort to improve efficiencies and decrease risks associated with processing securities certificates. Among other things, the Commission has approved the rule filings of self-regulatory organizations that require their members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities [64] and require that, before any security can be listed for trading, it must have been made depository eligible if possible.[65] More recently the Commission has approved the implementation and expansion of DRS.[66]

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[57] Some commenters argued that because some issuers sign an Operating Agreement or Letter of Representation with DTC in order to make their shares eligible at DTC, they should retain the right to withdraw their securities. DTC has informed the Commission that as a general rule only those issuers who issue in ''book-entry-only'' form (*i.e.*, certain debt and municipal securities where no certificate is available) sign an Operating Agreement with DTC. Furthermore, DTC's Underwriting Service Guide, which describes DTC's eligibility requirements and deposit process, makes clear that generally only issuers of book-entry-only securities must execute a Letter of Representation to make the securities eligible for deposit. Since most equity securities make certificates available, participants make most deposits of securities into DTC.

[58] A short sale is generally a sale of a security that the seller does not own or as effectuated by the delivery of borrowed securities within the required settlement timeframe. Although the Commission notes that a ''naked short sale'' is not a defined term, it generally refers to where a seller sells a security without owning or borrowing the security and does not deliver when delivery is due.

[59] DTC participants holding securities on behalf of a customer are generally obligated to act pursuant to their customers' instructions.

[60] *See* Rhino Advisors, Inc. and Thomas Badian: Lit. Rel. No. 18003 (February 27, 2003); *See also SEC* v. *Rhino Advisors, Inc. and Thomas Badian,* Civ. Action No. 03 civ 1310 (RO) (Southern District of New York).

[61] One commenter questioned how AT&T could choose to dematerialize but other issuers cannot choose to issue in certificated form only. AT&T is incorporated in the State of New York and trading on the New York Stock Exchange (''NYSE''). New York law permits companies to issue in book-entry-only and NYSE rules permit listed companies to not offer certificates provided the issuer is participating in DRS pursuant to NYSE rules. However, prior to AT&T dematerializing, the vast majority of AT&T's stock was immobilized at DTC in order to facilitate book-entry transfers at DTC. Only individuals holding certificates were practically effected by AT&T's decision to dematerialize.

[62] We note that in the late 1960s and early 1970s, the securities industry experienced a ''Paperwork Crisis'' that nearly brought the industry to a standstill and directly or indirectly caused the failure of large number of broker-dealers. This crisis primarily resulted from increasing trade volume coupled with inefficient, duplicative, and extensively manual clearance and settlement systems particularly with securities certificates, poor records, and insufficient controls over funds and securities. Securities and Exchange Commission, Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. No. 231, 92nd Cong., 1st Sess. 13 (1971). Congress held extensive hearings to investigate the problems and ultimately enacted the Securities Acts Amendments of 1975. Securities Acts Amendments of 1975: Hearings on S. 3412, S. 3297, S. 2551 Before the Subcomm. On Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 92nd Cong., 2nd Sess. (1972).

[63] 15 U.S.C. 78q–1(e). *See also supra* note 46 and accompanying text.

[64] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993) (order approving rules requiring members, member organizations, and affiliated members of the New York Stock Exchange, National Association of Securities Dealers, American Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary).

[65] Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995) (order approving rules setting forth depository eligibility requirements for issuers seeking to have their shares listed on the exchange).

[66] DRS provides an investor with the ability to register her securities in her own name on the issuer's records and to efficiently transfer by book-entry movements her securities positions to her broker. Using DRS, an investor can register a position directly with the issuer and can electronically move the position to a broker of choice for disposition within the current settlement

The use of certificates can result in significant delays and expenses in processing securities transactions and can raise safety concerns associated with lost, stolen, and forged certificates. The concerns associated with lost certificates was dramatically demonstrated during the September 11, 2001, tragedy when tens of thousand of certificates maintained in broker-dealers' vaults either were destroyed or were unavailable for transfer.

Accordingly, for the reasons stated above the Commission finds that the rule change, which clarifies that DTC's rules only permit it to honor its participants' requests to withdraw securities, is consistent with section 17A of the Act.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations thereunder. *It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2003–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[67]

J. Lynn Taylor,

Assistant Secretary.

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timeframes as well as within any future shortened settlement cycle.

[67] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47982; File No. SR–NASD–2003–80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to Codify the Policy of the Nasdaq Market Operations Review Committee With Respect to Review Panels

June 4, 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 May 6, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On June 2, 2003, Nasdaq filed 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 30, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq added cross-references to proposed new IM–11890–2 to the text of related rules. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on June 2, 2003, when Amendment No. 1 was filed.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to codify the policy of the Nasdaq Market Operations Review Committee with respect to the use of review panels. Below is the text of the proposed rule change. New text is in *italics.*

* * * * *

4612. Primary Nasdaq Market Maker Standards

(a)–(h) No change.

Cross Reference—IM–11890–2, Review by Panels of the MORC

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a)–(e) No change.

Cross Reference—IM–11890–2, Review by Panels of the MORC

* * * * *

4620. Voluntary Termination of Registration

(a)–(d) No change.

Cross Reference—IM–11890–2, Review by Panels of the MORC

* * * * *

4710. Participant Obligations in NNMS

(a)–(e) No change.

Cross Reference—IM–11890–2, Review by Panels of the MORC

* * * * *

11890. Clearly Erroneous Transactions

(a)–(d) No change.

IM–11890–*1*. Refusal to Abide by Rulings of a Nasdaq Officer or the MORC

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to take any action that is necessary to effectuate a final decision of a Nasdaq officer or the MORC under Rule 11890.

IM–11890–2. Review by Panels of the MORC

For purposes of Rule 11890 and other NASD rules that permit review of Nasdaq decisions by the MORC, a decision of the MORC may be rendered by a panel of three or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to codify the existing practice of the Market Operations Review Committee (the ''MORC'') with respect to convening panels of its members to undertake reviews of Nasdaq decisions that are subject to review by the MORC. The MORC is a standing committee selected by the Nasdaq Board of Directors. Under the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (the ''Delegation Plan''), however, no more than 50 percent of the MORC's members may be directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues. At this time, five members of the MORC are market maker representatives under the standard established by the Delegation Plan, while the remaining nine members of the MORC are not. Currently, the MORC's primary function is to review Nasdaq's decisions to nullify or modify clearly erroneous

transactions under Rule 11890. In addition, the MORC reviews Nasdaq decisions (i) to deny a market maker's request for an excused withdrawal of quotations, or to impose conditions upon its reentry, under Rule 4619; and (ii) to deny a market maker's request for reinstatement following a voluntary termination of its registration as a market maker under Rule 4620 or a withdrawal of quotations under Rule 4710(b)(5).[4]

According to Nasdaq, the MORC has generally rendered decisions by convening panels of its members, usually consisting of three members.[5] All panels must satisfy the same compositional requirements as the MORC itself (*i.e.*, no more than 50 percent of the members of a panel may be directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues). As the Commission has noted, an expeditious resolution of disputes relating to transactions that are alleged to be clearly erroneous benefits market participants and helps to ensure the accuracy of transactional information disseminated to investors.[6] Consistent with this view, Nasdaq and the MORC concluded that the use of panels was necessary for the MORC to provide an expeditious resolution of matters presented to it. It is not practical to require all members of the MORC to adjudicate each matter presented for its review. MORC members are generally market or legal professionals who must take time out of their schedules to participate in MORC adjudications, which may occur whenever a member requests a review of a staff determination by the MORC. In 2002, there were 51 appeal hearings conducted by the MORC; hearings are scheduled as soon as possible, and almost always on the same day as the decision being appealed. It would simply not be possible to convene a meeting of all MORC members each time that an appeal to the MORC is made, nor would it be fair to MORC members to require them to participate in each adjudication. Accordingly, if the practice of using panels were not used, it is likely that appeals could only be heard at regularly scheduled intervals, rather than at the time of the decision being appealed. Under such an arrangement, timely resolution of disputed transactions would be impossible, and Nasdaq believes that it would have more difficulty in finding qualified persons to serve as members of the MORC.

Nasdaq has concluded, however, that in the interest of clarity, the use of MORC panels should be explicitly reflected in NASD rules. Accordingly, Nasdaq is submitting this filing to codify the existing policy with respect to the administration of Rule 11890 and all other rules that allow review of Nasdaq decisions by the MORC. For purposes of such rules, a decision of the MORC may be rendered by a panel of three or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[7] in general, and with section 15A(b)(6) of the Act,[8] in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest. The proposed rule change will promote the fair and efficient resolution of disputes involving clearly erroneous transactions and other matters that are subject to review by the MORC.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[9] and subparagraph (f)(1) of Rule 19b–4 thereunder because it is designated as a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

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 Nasdaq. All submissions should refer to File No. NASD–2003–80 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

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[4] Under Rule 4612, the operation of which is currently suspended (*see* Securities Exchange Act Release No. 46999 (December 13, 2002), 67 FR 78534 (December 24, 2002)), the MORC would also have authority to review denial of a request for reconsideration of a decision to withhold designation as a primary market maker.

[5] The practice of using panels to render decisions was noted in Securities Exchange Act Release No. 32349 (May 21, 1993), 58 FR 30836, n.4 (May 27, 1993) (SR–NASD–93–31).

[6] Securities Exchange Act Release No. 39550 (January 14, 1998), 63 FR 4333, 4336 (January 28, 1998) (SR–NASD–96–51). Likewise, Nasdaq believes that speedy resolution of market maker's disputes under Rules 4619, 4620, and 4710 concerning their rights and obligations with respect to posting quotes is important to ensure equitable treatment of market makers.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

[11] *See supra* note 3. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on June 2, 2003, when Amendment No. 1 was filed.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47984; File No. SR–NYSE–2003–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc.; Adding Rules 60, 124(A), 130, 407A, 411(b), 440I, and 445(4) to the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A''

June 4, 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 May 5, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 revise the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A'' for imposition of fines for minor violations of rules and/or policies (''List'') by adding to the List failure to comply with the provisions of NYSE Rules 60, 124(A), 130, 407A, 411(b), 440I, and 445(4). The Exchange believes it is appropriate to make the failure to comply with the provisions of the cited rules subject to the possible imposition of a fine under NYSE Rule 476A procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 476A provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules. The purpose of the NYSE Rule 476A procedure is to provide a meaningful sanction for a rule violation when the initiation of a disciplinary proceeding under NYSE Rule 476 would be more costly and time-consuming than would be warranted given the minor nature of the violation, or when the violation calls for a stronger regulatory response than an admonition letter would convey. NYSE believes that NYSE Rule 476A preserves due process rights, and further states that it identifies those rule violations which may be the subject of summary fines, and includes a schedule of fines. In SR–NYSE–84–27,[3] which initially set forth the provisions and procedures of NYSE Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of NYSE Rule 476A as experience with it was gained.

The Exchange is seeking approval to add failure to comply with the provisions of NYSE Rules 60, 124(A), 130, 407A, 411(b), 440I, and 445(4) to the List subject to imposition of fines under NYSE Rule 476A procedures.

NYSE Rule 60 pertains to the dissemination of quotations for reported securities.

NYSE Rule 124 relates to prohibited odd-lots, the unbundling of round-lot orders, failure to aggregate odd-lot orders into round-lot orders, the entry of both buy and sell odd-lot limit orders for the purpose of capturing the spread in the stock, and order entry practices intended to circumvent the round-lot market.

NYSE Rule 130 pertains to the submission of trade data required for overnight comparison of transactions effected on the Exchange.

NYSE Rule 407A requires members to report and update information to the Exchange regarding certain accounts in which they have an interest.

NYSE Rule 411(b) requires persons entering multiple odd-lot orders in the same stock, which aggregate to 100 shares or more, to aggregate the orders into round-lots, where possible, for execution in the round-lot auction market.

NYSE Rule 440I requires the maintenance of certain compensation records by members and member organizations.

NYSE Rule 445(4) requires the designation and identification to the Exchange of a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of Anti-Money Laundering Programs.

The NYSE states that the purpose of the proposed change to the list is to facilitate the Exchange's ability to induce compliance with all aspects of the cited rules. The Exchange believes failure to comply with the requirements of the cited rules should be addressed with an appropriate sanction and seeks Commission approval to add violations of these requirements to the List so as to have a broad range of regulatory responses available. The Exchange believes that this would more effectively encourage compliance by enabling a prompt, meaningful and heightened regulatory response (*e.g.,* the issuance of a fine rather than an admonition letter) to a minor violation of NYSE Rules 60, 124(A), 130, 407A, 411(b), 440I, and 445(4).

The Exchange wishes to emphasize the importance it places upon compliance with the NYSE Rules. While the Exchange, upon investigation, may determine that a violation of any of these rules is a minor violation of the type which is properly addressed by the procedures adopted under NYSE Rule 476A, in those instances where investigation reveals a more serious violation of the NYSE Rules, the Exchange will provide an appropriate regulatory response. This includes the full disciplinary procedures available under NYSE Rule 476.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with the requirements of Section 6(b)(6)[4] of the Act, which provides that members and persons associated with its members shall be appropriately disciplined for violation of the provisions of this title, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being

[3] *See* Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985) (SR–NYSE–84–27).

[4] 15 U.S.C. 78f(b)(6).

associated with a member, or any other fitting sanction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2003–14 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14712 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47985; File No. SR–NYSE–2003–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend the Fine Schedule for Individuals and Member Organizations Who Commit Minor Rule Violations Under Rule 476A

June 4, 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 28, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 seeks to amend the fine schedule for individuals and member organizations who commit minor rule violations under NYSE Rule 476A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of NYSE Rule 476A is to provide an efficient and effective way by which the Exchange may encourage full compliance with NYSE rules by its members, member organizations, allied members, approved persons and registered and non-registered employees of member organizations. The rule permits the Exchange to impose a fine (not to exceed $5,000), in lieu of commencing a disciplinary proceeding before a Hearing Panel, for a rule violation which the NYSE determines to be minor in nature, but which the NYSE nevertheless believes requires the imposition of a meaningful sanction. Fines imposed pursuant to NYSE Rule 476A are not required to be reflected on a member or member organization's Form BD.

The person against whom the fine is sought to be imposed under NYSE Rule 476A is served with a written statement indicating the specific rule that has been violated, the act or omission constituting the violation, and the fine. The written statement also indicates the date by which the fine must be paid, or the person must submit a written response contesting the Exchange's determination to impose the fine. If the person against whom a fine is sought to be imposed under NYSE Rule 476A chooses to contest the fine and submits a written answer within the time allowed, the matter becomes a ''disciplinary proceeding'' subject to NYSE Rule 476, including review by an Exchange Hearing Panel, with the usual right of appeal to the Board of Directors. The NYSE believes that the freedom of the person charged to contest the fine and seek a full hearing on the charges in accordance with established procedures provides that person with his full ''due process'' rights and prevents misuse of NYSE Rule 476A.

Currently, the fine schedule is as follows:

Fine amount	Individual	Member organization
First Time Fined	$500	$1,000
Second Time Fined**	1,000	2,500
Subsequent Fines**	2,500	5,000

** Within a ''rolling'' 12-month period.

The purpose of the fine procedure is to deter violations of Exchange rules through the imposition of a meaningful sanction. The current fine schedule was

originally adopted in 1985,[3] and has not been revised since it was first introduced. The Exchange believes that it is appropriate at this time to increase the amounts of certain of the fines that may be imposed pursuant to NYSE Rule 476A to ensure that the fine program for minor rule violations continues to be a meaningful deterrent to violative behavior.

The NYSE is proposing to amend NYSE Rule 476A to establish only two levels of fines for member organizations by raising the first time fine for member organizations to $2,500, and all subsequent fines to $5,000. For individuals, the first fine would be $1,000, the second fine would be $2,500, and subsequent fines would be $5,000.

The proposed schedule is as follows:

Fine amount	Individual
First Time Fined	$1000
Second Time Fined**	2500
Subsequent Fines**	5000

Fine amount	Member organization
First Time Fined	2,500
Subsequent Fines**	5,000

** Within a ''rolling'' 12-month period

The NYSE notes that the procedures authorized by NYSE Rule 476A are not mandatory. Under the rule, the Exchange may, in any case where it does not consider the rule violation to be minor, proceed to bring charges and commence a formal disciplinary proceeding under NYSE Rule 476.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The NYSE further believes that the proposed rule will also advance the objectives of Section 6(b)(6)[5] of the Act in that it will permit Exchange members and persons associated with members to be ''appropriately disciplined'' for violation of Exchange rules. In addition, the Exchange believes that it also supports Section 6(b)(7)[6] of the Act in that it provides a fair procedure for the disciplining of members and persons associated with members. Finally, the Exchange believes that it also advances the objectives of Section 6(b)(1)[7] of the Act in that it allows the Exchange to enforce compliance with its rules by its members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2003–13 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14713 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 22415 (Sept. 17, 1985), 50 FR 38600 (Sept. 23, 1985) (SR–NYSE–84–27).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(6).

[6] 15 U.S.C. 78f(b)(7).

[7] 15 U.S.C. 78f(b)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47992; File No. SR–NYSE–2003–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Implementation Date To Establish a Six-Month Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Provided Portable Telephone on the Exchange Floor

June 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on May 27, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the implementation date for the six-month pilot program that would permit a Floor broker to use an Exchange authorized and provided portable telephone on the Exchange Floor to begin no later than June 23, 2003, instead of on or about May 1, 2003, as originally adopted with the approval of SR–NYSE–2002–11.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) (''Original Order'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In the Original Order, the Commission approved the Exchange's amendment to NYSE Rule 36 to permit a Floor broker to use an Exchange authorized and provided portable telephone on the Floor to be implemented as a six-month pilot beginning on or about May 1, 2003. The Exchange also committed in the Original Order to complete a study of communications on the Exchange Floor within three months of implementation of the portable telephone pilot program, which would have been on or about August 1, 2003.[4] In addition, the Exchange committed to notify the Commission's Office of Compliance, Inspections & Examinations (''OCIE''), the Division of Market Regulation (''Division''), and the Exchange's membership within one week prior to the actual implementation date.

The Exchanges states that the implementation date in the Original Order (on or about May 1, 2003) was delayed pending the finalization of several contract issues with the provider of portable phone service. The Exchange now proposes to implement the six-month pilot program no later than June 23, 2003, with a commitment to complete the above-mentioned study no later than September 23, 2003. In addition, the Exchange reiterates its commitment to notify the Commission's OCIE, the Division, and the Exchange's membership one week prior to the actual implementation date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change, as amended, (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange requests that the Commission waive the 30-day delayed operative date of Rule 19b–4(f)(6)(iii).[9] The Exchange believes that waiver of this period will allow the Exchange to immediately implement the use of Exchange authorized and provided portable telephones on the Floor.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective.[10] The Commission believes that the waiver of the 30-day operative delay will allow the NYSE to immediately notify the public of the general timeframe to implement its proposal to allow Exchange provided and authorized portable telephones on the Floor, consistent with the protection of investors and the public interest.[11]

The Commission also reiterates its expectation from the Original Order that the NYSE complete, within three months of implementation of the portable telephones, a study of communications on the Exchange Floor, pursuant to a recommendation of an Independent Consultant retained by the Exchange,[12] and to provide notice to NYSE members, the Division, and OCIE one week prior to the pilot program's implementation. In addition to the study, the Commission, as noted in the Original Order, requests that the Exchange report any problems, surveillance or enforcement matters associated with the Floor brokers' use of an Exchange authorized and provided portable telephone on the Floor. If the NYSE decides to request permanent approval or an extension of the pilot, we would expect, in addition to the report due in three months, that the NYSE submit information documenting the usage of the phones, any problems that have occurred, and any advantages or disadvantages that have resulted.[13]

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

[4] *See infra* note 12.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] As previously stated in the Original Order, the Commission notes that should the NYSE be unable to implement the filing by June 23, 2003, it would have to submit a rule proposal under Section 19(b) of the Act to change the date.

[12] *See In the Matter of New York Stock Exchange,* 70 S.E.C. Docket 106, Release No. 41574, 1999 WL 430863 (June 29, 1999).

[13] This information along with any proposal to extend, or permanently approve, the pilot should be submitted at least two to three months prior to the expiration of the six-month pilot.

statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2003–19 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14714 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47977; File No. SR–Phlx–2003–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Delete the Prohibition Against the Delivery of Electronically Generated Orders Via AUTOM

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on May 19, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the 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 delete Phlx Rule 1080(i), which prohibits the delivery of electronically generated orders delivered via AUTOM.[3] The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it 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 enable the Exchange to compete for order flow by allowing electronically generated orders to be delivered via AUTOM.

In September 2000, the Exchange adopted Phlx Rule 1080(i), which restricts the entry of certain options orders that are created and communicated electronically, without manual input, into AUTOM.[4] At the time, the Exchange represented that allowing electronically generated and communicated customer orders to be routed directly to AUTOM and AUTO–X would give customers with such electronic systems a significant advantage over Exchange specialists and Registered Options Traders (''ROTs''), who are responsible for the maintenance of fair and orderly markets on the Exchange, and who provide liquidity on the Exchange.

Since the time the Exchange adopted Phlx Rule 1080(i), the Exchange has modified its AUTOM and AUTO–X system in several significant respects. For example, in September and October 2002, the Exchange incorporated a new software program into its Auto-Quote [5] system that enables the Exchange to disseminate a firm quotation size of at least the sum of limit orders at the Exchange's disseminated price.[6] The Exchange has also expanded the eligible order types [7] and delivery sizes [8] eligible for AUTOM delivery and automatic execution via AUTO–X.

Based on the significant changes to the Exchange's AUTOM System since the time the Exchange adopted Phlx Rule 1080(i), the Exchange believes that it has developed systems that have narrowed the gap with respect to any actual or perceived advantage an off-floor customer or broker-dealer could have over a specialist or ROT in sending electronically generated orders to the Exchange via AUTOM. The Exchange represents that it will continue to surveil for, and enforce, compliance with other rules that help specialists and ROTs in managing their risk while making markets on the Exchange.[9]

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic option order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[4] *See* Securities Exchange Act Release No. 43376 (September 28, 2000), 65 FR 59488 (October 5, 2000) (SR–Phlx–00–79).

[5] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. Specialists may submit their own quotations by establishing a specialized connection by-passing the Exchange's Auto-Quote system, which is known as a Specialized Quote Feed (''SQF'').

[6] *See* Securities Exchange Act Release No. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002), (SR–Phlx–2002–15).

[7] In October 2002, the Commission permanently approved an Exchange pilot that allowed orders for the account(s) of broker-dealers to be delivered via AUTOM, and to be eligible for automatic execution via AUTO–X. *See* Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR–Phlx–2002–50). The Exchange then adopted rules providing for automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist, on an issue-by-issue basis. *See* Securities Exchange Act Release No. 46886 (November 22, 2002), 67 FR 72015 (December 3, 2002) (SR–Phlx–2002–39). Most recently, the Exchange adopted rules providing an equal firm quotation size and equal AUTO–X guaranteed size for both customer and broker-dealer orders. *See* Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 17976 (April 14, 2003) (SR–Phlx–2003–18).

[8] In March 2003, the Exchange adopted rules to increase the eligible AUTOM order delivery size for off-floor broker dealer orders from 200 contracts to 1,000 contracts for all options. At the same time, the Exchange determined to allow the delivery Immediate or Cancel orders via AUTOM. *See* Securities Exchange Act Release No. 47543 (March 20, 2003), 68 FR 14737 (March 26, 2003) (SR–Phlx–2003–11).

[9] For example, the Exchange will continue to surveil for, and enforce, compliance with Phlx Rule 1080(c)(ii), which sets forth the obligations of an Exchange Order Entry Firm, defined as a member organization of the Exchange that is able to route orders to AUTOM, and a User, defined as any person or firm that obtains access to AUTO–X through an Order Entry Firm. Specifically, the rule requires Order Entry Firms to comply with all applicable Exchange options trading rules and procedures; provide written notice to all Users regarding the proper use of AUTO–X; and neither enter nor permit the entry of multiple orders in call options and/or put options in the same option issue within any 15-second period for an account or accounts of the same beneficial owner.

Accordingly, the Exchange is proposing to delete the prohibition against the delivery of electronically generated orders via AUTOM in order to attract additional order flow. The Exchange expects to monitor the effects of the deletion of this prohibition in order to readily ascertain its effects on the risk management activities of on-floor members and member organizations. In the event that the Exchange determines that such effects are detrimental to the risk management activities of on-floor members and member organizations, the Exchange expects to take appropriate action, including the filing of appropriate rules and/or systems changes, in order to address such a situation.

The Exchange believes that allowing the delivery of electronically generated orders in an increasingly competitive marketplace, given the Exchange's technological advances since the time Phlx Rule 1080(i) was adopted, and continued surveillance and enforcement of compliance with rules concerning AUTOM Order Entry Firms and Users, should enable the Exchange to compete for an additional type of order flow.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act [10] in general, and furthers the objectives of section 6(b)(5) of the Act [11] in particular, in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by enhancing efficiency by allowing the delivery via AUTOM of electronically generated orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such 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–2003–37 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14644 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: The FMCSA announces that 41 individuals were denied exemptions from the Federal vision standards applicable to interstate truck drivers and the reasons for the denials. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions does not provide a level of safety that will equal or exceed the level of safety maintained without the exemptions for these commercial drivers.

FOR FURTHER INFORMATION CONTACT: Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (MC–PSD), 202–366–2987, Department of Transportation, FMCSA, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption. (49 CFR 391.41(b)(10))

Accordingly, FMCSA evaluated 41 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria established to demonstrate that granting an exemption is likely to achieve an equal or greater level of safety that exists without the exemption. Each applicant has, prior to this notice, received a letter of final disposition on his/her individual exemption request. Those decision letters fully outlined the basis for the denial and constitute final agency action. The list published today summarizes the agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reason for denials.

The following 25 applicants lacked sufficient recent driving experience over three years: Becotte, Richard; Bodiford, Jr., Cecil; Cavendar, David; Clegg, Jr., Henry; Davidson, Donald; Day, Larry; Floyd, Jack; Harper, Norman; Herrboldt, Nathan; Johnson, Robert; Jones, Joe; Longcrier, Michael; McCandless, Jr., William; Petersen, Christian; Petty, Clarence; Phipps, Gary; Reed, Donna; Rosborough, Franklin; Russell, Michael; Shanks, Jr., Willis; Shaw III, Sam; Sheibley, Thomas; Wehner, Peter; Winters, Johnny; Young, Ronald.

Three applicants, Mr. Randall Benson, Ms. Darrlyn Price, and Mr. Steven Risley, do not have experience operating

a commercial motor vehicle (CMV) and therefore presented no evidence from which FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

The following 6 applicants do not have 3 years of experience driving a CMV on public highways with the vision deficiency: Dean, Joseph; DiPasqua III, Louis; Kirkland, Willie; Osborne, Hudson; Pittman, Larry; Storm, Stacey.

Four applicants do not have 3 years recent experience driving a CMV with the vision deficiency: Gerdes, Donald; Webb, William; Moates, Tommy; Thompson, Ronald.

One applicant, Mr. Robert Aurandt, had more than two CMV moving violations during a 3-year period or while the application was pending. Each applicant is only allowed two moving citations.

One applicant, Mr. William Whitson, license was suspended during the 3-year period because of a moving violation. Applicants do not qualify for an exemption with a suspension during the 3-year period.

One applicant, Mr. Kenneth Walker, had two serious CMV violations within the 3-year period. Each applicant is allowed a total of two moving citations, of which only one can be serious.

Issued on: June 6, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator for Policy and Program Development.

[FR Doc. 03–14696 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–03–15122; Notice 1]

Pipeline Safety: Petition for Waiver; Duke Energy Gas Transmission Company

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; petition for waiver for extension of time.

SUMMARY: Duke Energy Gas Transmission Company (DEGT) petitioned the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) for a 12-month extension of time to comply with the provisions of 49 CFR 192.611(d), which require pipeline operators to confirm or revise the maximum allowable operating pressure within 18 months after a class location change.

DATES: Persons interested in submitting written comments on the waiver proposed in this notice must do so by July 11, 2003. Late-filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov.*

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov,* click on ''Comment/Submissions.'' You can also read comments and other material in the docket at *http://dms.dot.gov.* General information about our pipeline safety program is available at *http://ops.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James Reynolds by phone at 202–366–2786, by fax at 202–366–4566, by mail at DOT, RSPA, OPS, 400 Seventh Street, SW., Washington, DC, 20590, or by e-mail at *james.reynolds@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: DEGT petitioned RSPA/OPS for a waiver from compliance with 49 CFR 192.611(d) for selected gas transmission pipeline segments in Pennsylvania. DEGT is asking for an additional 12 months beyond the 18 months allowed by § 192.611(d) to present, discuss, and have RSPA/OPS review alternative actions to maintain an equal or higher level of safety.

Section 192.611(d) requires an operator to complete a class location change study whenever it believes an increase in population density may have caused a change in class location as defined in § 192.5. The operator must complete a study and confirm or revise its maximum authorized operating pressure within 18 months of the class location change. The operator is required to either reduce pressure or replace the pipe with thicker-walled pipe to lower pipe wall stress to acceptable percentages of specified minimum yield strength.

DEGT's waiver request for an extension of time is specific to four pipeline segments on Line 12 and Line 19, which are part of its Texas Eastern Pipeline System in the state of Pennsylvania. These segments are located in the towns of Entriken, Perulack, Bernville, and Bechtelsville. The pipelines are 24-inch and 30-inch in diameter and the class locations have changed from Class 1 to Class 2.

When these pipelines were built between 1954 through 1963, they were hydrotested to at least 100% of the pipe's specified minimum yield strength (SMYS) with the exception of 10 feet of pipe on the Bechtelsville discharge line, which was tested to 90% SMYS.

DEGT has internally inspected each of these pipelines. DEGT first inspected the pipelines in 1986 using Tuboscope's conventional magnetic flux leakage (MFL) tool. Between 1996 and 2002, DEGT performed a second inspection of these lines using Tuboscope's conventional MFL tool and Tuboscope's high resolution MFL tool.

During the same years, DEGT also inspected and evaluated the condition of the coal tar enamel pipeline coatings and evaluated the cathodic protection current demands on each of the pipelines. DEGT reported that the coatings were in good condition and that the cathodic protection systems were not experiencing excessive current demands.

Because DEGT has internally inspected its pipelines and performed other tests in excess of the minimum requirements of 49 CFR part 192, RSPA/OPS will consider granting DEGT a 12-month extension from the requirements of § 192.611 (d).

DEGT further seeks to present an alternative technical proposal for permanent waiver of compliance with § 192.611 by September 2003. RSPA/OPS will determine if the alternative will yield an equal or higher level of safety than that required by the regulation. If RSPA/OPS decides that the alternative will yield an equal or higher level of safety, we will issue a **Federal Register** notice by December 2003 announcing the proposed technical waiver of § 192.611. The notice will provide an opportunity for public comment. If RSPA/OPS does not believe DEGT's proposal will yield an

equal or higher level of safety, DEGT will be required to fully comply with § 192.611 by September 2004.

Authority: 49 App. U.S.C. 60118(c) and 2015; and 49 CFR 1.53.

Issued in Washington, DC on June 5, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–14695 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34351]

Sierra Railroad Company—Acquisition of Control Exemption—Yolo Shortline Railroad Company

Sierra Railroad Company (SRC) and Yolo Shortline Railroad Company (YSL), Class III rail carriers, have jointly filed a verified notice of exemption for SRC to acquire control of YSL through stock purchase of YSL's parent, Midland Railroad Enterprises Corporation.[1]

The transaction is expected to be consummated by June 30, 2003.

SRC and YSL state that: (i) The railroads do not connect; (ii) the transaction is not part of a series of anticipated transactions that would connect these railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

[1] In addition to this acquisition, the parties plan a corporate reorganization. To obtain necessary Board authorization for this subsequent transaction, on June 3, 2003, the parties filed a notice of exemption under 49 CFR 1180.2(d)(3) in STB Finance Docket No. 34360, *Sierra Railroad Company—Corporate Family Merger Exemption—Yolo Shortline Railroad Company.*

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34351, 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: Michael G. Hart, 220 Sierra Avenue, Oakdale, CA 95361 and David Magaw, 341 Industrial Way, Woodland, CA 95776.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 5, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14728 Filed 6–10–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Application For Transfer of Spirits and/or Denatured Spirits in Bond.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristi Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application For Transfer of Spirits and/or Denatured Spirits in Bond.

OMB Number: 1513–0038.

Form Number: TTB F 5100.16.

Abstract: TTB F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. TTB uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond. Records are kept as long as the approved application remains in effect.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Total Annual Burden Hours: 300.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14554 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants Warehousing Records and Reports.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plants Warehousing Records and Reports.

OMB Number: 1513–0039.

Form Number: TTB F 5110.11.

Recordkeeping Requirement ID Number: TTB REC 5110/02.

Abstract: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis. The record retention period is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 230.

Estimated Total Annual Burden Hours: 5,520.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14555 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants—Excise Taxes.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plants—Excise Taxes.

OMB Number: 1513–0045.

Recordkeeping Requirement ID Number: TTB REC 5110/06.

Abstract: The collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 133.

Estimated Total Annual Burden Hours: 3,458.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14556 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau

within the Department of the Treasury is soliciting comments concerning the Formula For Distilled Spirits Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Formula For Distilled Spirits Under the Federal Alcohol Administration Act.

OMB Number: 1513–0046.

Form Number: TTB F 5110.38.

Abstract: TTB F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made and restrictions to the label and/or manufacturing process. The form is used by TTB to ensure that a product is made and labeled properly and to audit distilled spirits operations. Records are kept indefinitely for this information collection.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Total Annual Burden Hours: 4,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14557 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plant (DSP) Denaturation Records and Reports.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plant (DSP) Denaturation Records and Reports.

OMB Number: 1513–0049.

Form Number: TTB F 5110.43.

Recordkeeping Requirement ID Number: TTB REC 510/04.

Abstract: This information collection is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning. The record retention requirement for this information collection is 4 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 98.

Estimated Total Annual Burden Hours: 1,176.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14558 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the

Distilled Spirits Plant (DSP)—Transaction and Supporting Records.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plant (DSP)-Transaction and Supporting Records.

OMB Number: 1513–0056.

Recordkeeping Requirement ID Number: TTB REC 5110/5.

Abstract: Transaction records provide the source data for accounts of distilled spirits in all DSP operations. They are used by TTB to verify those accounts and consequent tax liabilities. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 278.

Estimated Total Annual Burden Hours: 6,060.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14559 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Equipment and Structures.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Equipment and Structures.

OMB Number: 1513–0080.

Recordkeeping Requirement ID Number: TTB REC 5110/12.

Abstract: Marks, signs, and calibrations are necessary on equipment and structures at a distilled spirits plant for the identification of major equipment and of the accurate determination of contents. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 281.

Estimated Total Annual Burden Hours: One (1).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14560 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Formula and/or Process For Articles Made With Specially Denatured Spirits.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650

Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Formula and/or Process For Articles Made With Specially Denatured Spirits.

OMB Number: 1513–0011.

Form Number: TTB F 5150.19.

Abstract: TTB F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. TTB uses the information provided on the form to insure the manufacturing formulas and processes conform to the requirements of U.S.C. 5273.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,683.

Estimated Total Annual Burden Hours: 2,415.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14704 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Users' Report of Denatured Spirits.

DATES: Written comments should be received on or before August 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Users' Report of Denatured Spirits.

OMB Number: 1513–0012.

Form Number: TTB F 5150.18.

Abstract: TTB F 5150.18 is submitted annually by holders of permits to use specially denatured spirits to summarize their manufacturing activities during the preceding year. The information is used by TTB to pinpoint unusual activities that could indicate a threat to the Federal revenue or possible dangers to the public. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,765.

Estimated Total Annual Burden Hours: 830.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14705 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Certification of Tax Determination—Wine.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form(s) and instructions should be directed to Kristy Colon, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Certification of Tax Determination—Wine.

OMB Number: 1513–0029.

Form Number: TTB F 5120.20

Abstract: Refund of tax on wine that has been manufactured, produced, bottled or packaged in bulk containers in the U.S. and then exported. TTB F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact taxpaid.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 500.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14706 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Registration and Records of Vinegar Vaporizing Plants.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristi Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Registration and Records of Vinegar Vaporizing Plants.

OMB Number: 1513–0081.

Recordkeeping Requirement ID Number: TTB REC 5110/9.

Abstract: Data is necessary to identify persons producing and using distilled spirits in the manufacture of vinegar and to account for spirits so produced and used. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: One (1).

Estimated Total Annual Burden Hours: One (1).

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14707 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Alternate Methods or Procedures and Emergency Variations From Requirements For Exports of Liquors.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Methods or Procedures and Emergency Variations From Requirements For Exports of Liquors.

OMB Number: 1513–0082.

Recordkeeping Requirement ID Number: TTB REC 5170/7.

Abstract: When an exporter seeks to use an alternate method or procedure or

an emergency variation from regulatory requirements of 27 CFR Part 252, such exporter requests a variance by letter, following the procedure in 27 CFR 252.20. TTB uses the information to determine if the requested variance is allowed by statute and does not pose a jeopardy to the revenue. The applicant is informed of the approval or disapproval of the request. TTB also uses the information to analyze what changes should be made to existing regulations. Records must be maintained only while the applicant is using the authorization.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 200.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14708 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau is soliciting comments concerning the Labeling of Sulfites in Alcoholic Beverages.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, 650 Massachusetts Ave., NW., Washington, DC 20226; (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Labeling of Sulfites in Alcoholic Beverages.

OMB Number: 1513–0084.

Abstract: In accordance with our consumer protection responsibilities, as mandated by law, TTB requires label disclosure statements on all alcoholic beverage products released from U.S. bottling premises or customs custody that contain 10 parts per million or more of sulfites. Sulfiting agents have been shown to produce allergic-type responses in humans, particularly asthmatics, and the presence of these ingredients in alcohol beverages may have serious health implications for those who are intolerant of sulfites. Disclosure of sulfites on labels of alcohol beverages will minimize their exposure to these ingredients.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4,787.

Estimated Total Annual Burden Hours: 3,159.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14709 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Recordkeeping Requirements for Importers of Tobacco Products.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping Requirements for Importers of Tobacco Products.

OMB Number: 1513–0106.

Abstract: Importers of tobacco products are required to maintain records of physical receipts and disposition of tobacco products to be able to prepare TTB F 5220.6, Importers Monthly Report. The records will be maintained to allow TTB officers to trace tobacco product transactions and determine that tax liabilities have been accurately determined and discharged by the importers. The record retention requirement for this information collection 3 years. There is no estimated time required of the respondent as these recordkeeping requirements involve usual and customary business records.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,500.

Estimated Total Annual Burden Hours: One (1).

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14710 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 23

AGENCY:
TREASURY.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 23, Application for Enrollment to Practice Before the Internal Revenue Service.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Enrollment to Practice Before the Internal Revenue Service.

OMB Number: 1545–0950.

Form Number: 23.

Abstract: Form 23 must be completed by those who desire to be enrolled to practice before the Internal Revenue Service. The information on the form will be used by the Director of Practice to determine the qualifications and eligibility of applicants for enrollment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and the Federal government.

Estimated Number of Respondents: 2,400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14786 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

[FI–255–82]

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulations, FI–255–82 (TD 7852), Registration Requirements With Respect to Debt Obligations (§ 5f.103–1(c)).

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Registration Requirements With Respect to Debt Obligations.

OMB Number: 1545–0945.

Regulation Project Number: FI–255–82.

Abstract: These regulations require an issuer of a registration-required obligation and any person holding the obligation as a nominee or custodian on behalf of another to maintain ownership records in a manner which will permit examination by the Internal Revenue Service in connection with enforcement of the Internal Revenue laws.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations and, state, local or tribal governments.

Estimated Number of Recordkeepers: 50,000.

Estimated Time Per Recordkeeper: 1 hour.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14787 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–34

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–34, Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

OMB Number: 1545–1538.

Notice Number: Notice 99–34.

Abstract: Notice 97–34 provides guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 3,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: June 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14788 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8860

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8860, Qualified Zone Academy Bond Credit.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified Zone Academy Bond Credit.

OMB Number: 1545–1606.

Form Number: 8860.

Abstract: Under Internal Revenue Code section 1397E, a qualified zone academy bond is a taxable bond issued after 1997 by a state or local government, with the proceeds used to improve certain eligible public schools. In lieu of receiving interest payments from the issuer, an eligible holder of the bond is generally allowed an annual income tax credit. Eligible holders of qualified zone academy bonds use Form 8860 to figure and claim this credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for profit organizations and state, local or tribal governments.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 7 hours., 40 min.

Estimated Total Annual Burden Hours: 383.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14789 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8844

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8844, Empowerment Zone Employment Credit. DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Empowerment Zone Employment Credit.

OMB Number: 1545–1444.

Form Number: 8844.

Abstract: Employers who hire employees who live and work in one of the eleven designated empowerment zones can receive a tax credit for the first $15,000 of wages paid to each employee. The credit is applicable from the date of designation through the year 2004.

Current Actions: The order of Part II, Tax Liability Limit, was revised for this form. Section 501 of Public Law 106–170 extended the provision that allows individuals to offset the regular tax liability in full for personal credits. Previously filers were allowed to claim credits to the extent that the regular tax liability exceeded the tentative minimum tax. For tax years beginning in 2000 and 2001, personal nonrefundable credits may offset both the regular tax and the minimum tax. Also, the computation was changed in Part II to reflect and to conform to changes that were made to the tax computation on Form 1040. A new line 13 was added to show the sum of the regular tax before credits and the alternative minimum tax. Also, because the alternative minimum tax is added to the regular tax (line 13), we no longer need to differentiate how the credit is

applied against income tax and alternative minimum tax. Therefore, lines 24 and 25 were eliminated. In addition, the instructions were revised to include two new urban empowerment zones, Cleveland, OH, and Los Angeles, CA.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms and non-profit institutions.

Estimated Number of Respondents: 40,000.

Estimated Time Per Response: 15 hours., 40 minutes.

Estimated Total Annual Burden Hours: 586,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14790 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

DATE/TIME: Thursday—June 19, 2003 (11 a.m.–9 p.m.), Friday—June 20, 2003 (9 a.m.–6 p.m.).

LOCATION: Carter Hall Conference Center, 255 Carter Hall Lane, Millwood, Virginia 22646.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: June 2003 Board Meeting; Approval of Minutes of the One Hundred Ninth Meeting (March 20, 2003) of the Board of Directors; Chairman's Report; President's Report; Review, Discussion and Approval of Solicited Topics for Grants; Selection of National Peace Essay Contest Winners; Committee Reports; Discussion of Strategic Plan; Other General Issues.

FOR MORE INFORMATION CONTACT: Mr. John Brinkley, Director, Office of Public Outreach, Telephone: (202) 457–1700.

Dated: June 3, 2003.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 03–14900 Filed 6–9–03; 3:04 pm]

BILLING CODE 6820–AR–M

Federal Register

Wednesday,

June 11, 2003

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 375 and 377

Transportation of Household Goods; Consumer Protection Regulations; Interim Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 375 and 377

[Docket No. FMCSA–97–2979]

RIN 2126–AA32; formerly RIN 2125–AE30

Transportation of Household Goods; Consumer Protection Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: FMCSA is amending its regulations governing the interstate transportation of personal effects or property used, or to be used, in a private residence (household goods). Our regulations specify how motor carriers who transport household goods by motor vehicle in interstate commerce (movers) must assist their individual customers who ship household goods. We are updating the regulations to make them easier to understand and have made several changes designed to assist consumers. We seek additional public comment on the information collection requirements for this interim final rule. We will not enforce the information collection requirements of this interim final rule until we obtain approval for them from the Office of Management and Budget (OMB).

DATES: *Effective Date:* This interim final rule is effective on September 9, 2003.

Compliance Date: Mandatory compliance with this interim final rule must begin on March 1, 2004.

Comment Date: You must submit comments concerning the *information collection requirements* of this interim final rule on or before August 11, 2003.

If you submit copies of your comments to the Office of Management and Budget (OMB) concerning the *information collection requirements* of this document, your comments to OMB will be most useful if received at OMB by July 11, 2003. The OMB prefers to receive them by July 11, 2003, but you can submit them to OMB until August 11, 2003.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–1997–2979 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). This statement is also available at *http://dms.dot.gov.*

Comments to OMB: If you submit copies of comments to the OMB concerning the *information collection requirements* of this document, you should mail, hand deliver, or fax a copy of your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503, fax: (202) 395–6566.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel Jackson, Household Goods Enforcement Team Leader, (202) 385–2423, Insurance Compliance Division (MC-ECI), FMCSA, Suite 600, 400 Virginia Avenue, SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

Background

In 1999 Congress authorized FMCSA to regulate household goods carriers engaged in interstate operations for individual shippers in the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106–159, December 9, 1999, 113 Stat. 1749). The Interstate Commerce Commission (ICC) administered household goods regulations from 1940 to 1995. In the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88), Congress terminated the ICC and transferred the household goods program to the Federal Highway Administration (FHWA) effective January 1, 1996. The FHWA administered the household goods program through its Office of Motor Carrier and Highway Safety. The regulations governing interstate household goods transportation are in 49 CFR part 375.

The FHWA published a notice of proposed rulemaking (NPRM) on May 15, 1998 (63 FR 27126) requesting comments on its proposal to update the household goods regulations. These regulations set forth regulatory requirements for moving companies who provide transportation for individual shippers. An individual shipper is generally a retired person or someone changing jobs. The individual shipper uses for-hire truck transportation services infrequently and may have little or no information about the regulations movers must follow and how they operate. This information may be essential in enabling a shipper to make informed decisions in selecting a mover and ensuring a satisfactory move.

On March 5, 2001, the General Accounting Office (GAO) released its report to Congressional Committees, ''Consumer Protection: Federal Actions Are Needed to Improve Oversight of the Household Goods Moving Industry,'' No. GAO–01–318. Section 209 of the MCSIA directed that GAO study the effectiveness of DOT's consumer protection activities for the interstate household goods moving industry and identify alternative approaches for providing consumer protection in the industry. A copy of the report is in the docket. The GAO findings on the FMCSA's household goods program included the following: (1) The Department of Transportation has done little to oversee the Household Goods moving industry; (2) Consumer education activities have been minimal; (3) The Department does not know the extent to which it has examined carriers' compliance with Household Goods rules; and (4) The Department

has not determined whether its level of enforcement is appropriate.

These regulations represent FMCSA's effort to provide a reasonable level of protection to consumers of household goods moves. Comments to the NPRM and FMCSA enforcement actions have established the need to address weaknesses in the system for movement of household goods. Given the volume and scope of household goods movements each year, FMCSA acknowledges that it cannot intervene in individual cases to assure consumers their desired result. With these regulations, FMCSA attempts to establish parameters of fair dealing for household goods movers and a reasonable level of protection for consumers. The agency seeks to equip consumers with information adequate to make informed decisions about moving their household goods.

Interim Final Rule: Request for Comments on Information Collection Requirements

When the FHWA published the NPRM on May 15, 1998 (63 FR 27126) requesting comments on its proposal to update the household goods regulations, it failed to send the package separately to OMB for its review of the information collection requirements. Because of this error, it is necessary to publish this document as an Interim Final Rule, rather than a Final Rule, to allow OMB time to complete its review and to allow the public additional time to submit comments on the information collection requirements. As described above under ''**DATES:** *Comment Date:*'' OMB allows 60 days for public comment, but the rule becomes effective September 9, 2003, allowing time for FMCSA and OMB to resolve any concerns about the information collection requirements in this Interim Final Rule. For more information on FMCSA's analysis of the paperwork impact, see ''Paperwork Reduction Act'' later in this preamble.

Docket Comments

In response to the NPRM, the agency received 53 letters from 48 different individuals or entities. Twenty-four (24) letters did not comment on any specific aspect of the NPRM. Each of these 24 letters told of alleged abuses the authors had suffered in past moves of their own household goods. Each supported in general terms the goals of the NPRM to protect individual shippers.

The docket received substantive responses from the following entities:

Action Scale & Weighing Systems, Inc. (Action)
Air Weigh
The American Moving and Storage Association, Inc. (AMSA)
As a combined comment, the Attorneys General of Alabama, Arkansas, Arizona, Florida, Hawaii, Iowa, Idaho, Illinois, Indiana, Kansas, Massachusetts, Maryland, Missouri, New Jersey, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Washington, Wisconsin, and West Virginia (25AG)
The Attorney General of Connecticut (AGCT)
Cat Scale Company (Cat)
The Commonwealth of Pennsylvania's Department of Agriculture
Deskin Scale Company, Inc. (Deskin)
The National Association of Consumer Agency Administrators (NACAA)
The Oklahoma Corporation Commission (OCC)
Sisson Scale and Equipment Co., Inc. (Sisson)
Starving Students
The State of California's Department of Agriculture
The State of Colorado's Department of Agriculture
The State of Idaho's Department of Agriculture
The State of Michigan's Department of Agriculture
The State of New Hampshire's Department of Agriculture
The State of Oregon's Department of Agriculture
The State of New York's Department of Transportation (NYDOT)
The University of Minnesota's Student Legal Services
Weighing Consultants, Inc. (WCI)

FMCSA will discuss each of the substantive comments in relation to the specific sections they addressed.

Section 375.101 Who Must Follow These Regulations?

AMSA objected to the use of the term ''motor common carrier engaged in the transportation of household goods'' in this section and Appendix A. AMSA notes the ICCTA deleted reference to ''common'' carriers. It refers to section 13102(12) of the ICCTA. AMSA believes the part 375 regulations should reflect the terms used in the ICCTA and we should strike the word ''common'' wherever it appears in connection with ''motor carrier(s).''

Response to Comments

Although the ICCTA no longer includes a definition of ''common carrier,'' FMCSA is still registering household goods carriers subject to these regulations as ''common'' carriers, under the transitional rule of 49 U.S.C. 13902(d). However, FMCSA, in implementing the Uniform Carrier Registration System required by 49 U.S.C. 13908 expects to eventually eliminate the distinction between common and contract carriers in registering motor carriers. Consequently, we are adopting AMSA's suggestion by applying the regulations to for-hire motor carriers engaged in the interstate transportation of household goods for individual shippers.

Section 375.103 What Are the Definitions of Terms Used in this Part?

AMSA comments that the term ''advertisement'' is defined as ''any communication to the public in connection with an offer or sale of any interstate transportation service.'' It believes we should define this term more accurately in the context of part 375 by adding the words ''household goods'' before the word ''transportation.'' The revised definition would read as follows:

''Advertisement'' means any communication to the public in connection with an offer or sale of any interstate household goods transportation service.

The AGCT comments that the proposed definition of ''transportation of household goods'' should include handling of a shipper's goods by the carrier or his agent, while loading at the point of pickup, unloading at the point of delivery, and all handling in between, whether in storage or in transit.

AMSA believes that FMCSA should change the regulatory definition ''Transportation of household goods'' by eliminating subparagraph (2), reading ''Another party arranges and pays for the transportation of household goods.'' AMSA believes this recommended change is also consistent with the clear intention of the original 49 CFR part 1056 (1995) regulations that restricted their application to transportation paid for by the householder, specifically referencing 49 CFR 1056.1(b)(1) (1995). AMSA comments that we should change the definition to read as follows:

''Transportation of household goods'' means the householder (an individual shipper) arranges and pays for the transportation of household goods. This may include transportation from a factory or store when the individual shipper purchases the household goods with the intent to use the goods in his or her dwelling.

AMSA comments on the AGCT's comments, stating that it believes that such a change is not necessary. The definition of ''Transportation'' contained in 49 U.S.C. 13102(19) includes each of the services enumerated in the AGCT's recommendation and, for purposes of

these regulations, the statutory definition is controlling.

AMSA also comments about this section's definition of an ''individual shipper or householder,'' contending that it does not correspond to the definition of an individual shipper contained in 49 U.S.C. 13102(10)(A). It provides, in addition to owning the goods being transported, the individual shipper is also the party paying for the move. This ''arranged and paid for by the householder'' provision serves to distinguish moves on behalf of individual shippers from those paid for by national accounts ''corporations'' for their employees as identified in 49 U.S.C. 13102(10)(B). AMSA states that national account shippers differ from individual shippers in that orders for service are not required (purchase orders or other similar documents are frequently issued in lieu of orders for service). National accounts also often have relocation policies that conflict with or supersede certain requirements of the existing regulations. Since this is an important distinction, AMSA believes, it suggests we change the wording of this provision to accurately define an individual shipper as follows:

> ''Individual shipper or householder'' means any person who is the consignor or consignee of a household goods shipment identified as such in the bill of lading contract, who also owns the goods being transported and pays the moving charges.

AMSA believes the agency should modify the definition of ''reasonable dispatch'' to make it clear that shippers are liable for charges related to additional services they request or require, as follows:

> For example, if you deliberately withhold any shipment from delivery after an individual shipper offers to pay the binding estimate or 110 percent of a non-binding estimate, plus the costs for additional services that were performed en route or at destination which were necessary to complete the transportation, you have not transported the goods with reasonable dispatch.

Response to Comments

We agree with AMSA's suggestion to eliminate proposed subparagraph (2) from the definition of ''transportation of household goods.'' In the interim final rule we have combined the definitions for ''household goods'' and ''transportation of household goods.'' This is consistent with 49 U.S.C. 13102(10). We believe the AGCT recommendation regarding ''transportation of household goods'' could have an unintended consequence for many individual shippers. If the agency were to adopt its recommendation, a mover may be able to convince an individual shipper that a mover or its agents, and only a mover or its agents, could handle the shipper's goods for loading at the point of pickup, unloading at the point of delivery, and all handling in between whether in storage or in transit. Depending on how the individual shipper contracts for moving services, other companies or the shipper herself may perform the other services.

Movers and their agents perform many services, including what AMSA states on page 36 of its comments as ''the precise requirements necessary to properly remove the contents of a residence, secure them in an over-the-road vehicle and effect delivery at the new residence'' that ''can result in additional services which, in turn, require the assessment of additional charges.''

The individual shipper may determine he/she wants to perform the additional services or have another party do them. Adopting the AGCT's comments may have the unintended consequence of having a disreputable mover claim to be the only entity that can handle the shipper's goods. FMCSA does not question that reputable movers and their reputable agents perform these extra services with value to the shipper, but the shipper may be on a tight budget, and the shipper may choose not to have the mover perform those ''precise requirements necessary to properly'' effect delivery.

We do not agree with AMSA's suggested change to the definition of ''reasonable dispatch'' because the change would imply that carriers could demand payment for additional services before delivery. Under this interim final rule, the most that a carrier could demand before delivery is 100 percent of a binding estimate or 110 percent of a non-binding estimate.

The agency has adopted AMSA's comments regarding the definition of ''advertisement'' and ''individual shipper.'' We also removed the exclusion of advertisements on radio and television from the definition and clarified that Yellow Pages advertising is included in the definition. FMCSA also has chosen to keep the definitions for ''Commercial shipper'' and ''Government bill of lading shipper'' the same as in the current rules. We are moving the definition of ''Certified scale'' from proposed § 375.507 to this section. Finally, we are adding new definitions to explain the terms ''Tariff'' and ''Surface Transportation Board.''

Section 375.201 What Is My Normal Liability for Loss and Damage When I Accept Goods From an Individual Shipper?

The AGCT recommended the title of the section should be changed from ''loss and damage'' to ''loss or damage'' to clarify the differences between contractually agreed upon increases in the carrier's liability and the availability of insurance coverage. The AGCT believes we should require the carrier to disclose the limits of its liability in a clear, concise manner and preclude a carrier from characterizing contractually agreed upon increases in liability as ''insurance.'' AGCT also believes the rules should provide that a carrier may have additional liability if it sells excess liability insurance. It is unclear to AGCT whether the proposed rule used the term ''excess liability insurance'' as it is normally used in the insurance industry or as a term of art meaning insurance in excess of the carrier's liability as limited by its released rates. If FMCSA intended to define insurance in excess of the carrier's liability as limited by its released rates, AGCT recommends we should simply refer to it as ''liability insurance.''

AMSA believes that the AGCT suggestion that we clarify language in § 375.201 to explain the difference between carrier liability under released rates orders (RRO) and the availability of excess liability insurance is unnecessary. Section 375.201 is directed to movers and AMSA believes we intended to restate the mover's understanding of the parameters of liability. AMSA believes movers do not require additional explanations along these lines to understand their liability.

AMSA comments that paragraph (a) of this section, which states the mover is legally liable for loss or damage occurring during the transportation of household goods, should be modified to eliminate confusion as to the full extent of a mover's liability. Proposed paragraph (a) reads as follows:

(a) In general, you are legally liable for loss or damage if it happens during performance of any one of the following three services identified on your lawful bill of lading:

(1) Transportation of household goods.

(2) Storage-in-transit of household goods, including incidental pickup or delivery service.

(3) Servicing of an appliance or other article, if you or your agent performs the servicing.

AMSA proposes revising paragraph (a) to read as follows:

(a) In general, you are legally liable for loss or damage if it happens during

performance of any transportation of household goods and all related services identified on your lawful bill of lading.

AMSA comments that paragraph (c) of this section provides that the mover may incur additional liability if it sells excess liability insurance. AMSA states when a mover arranges for the purchase of insurance and a shipment is transported under separate liability insurance, the mover's liability is specifically limited to 60 cents per pound per article. AMSA believes the regulations provide for no additional coverage by the mover unless the mover fails to issue a copy of the insurance policy or other appropriate evidence of insurance as explained in proposed § 375.303(h). Given these circumstances, AMSA recommends we delete this provision.

Response to Comments

We do not agree with AGCT's suggestion to change ''loss and damage'' in the title of the section to ''loss or damage'' because we believe the words are interchangeable and essentially mean the same thing. We agree with AMSA's comments on paragraph (a). By using the phrase ''and all related services'' we can eliminate subparagraphs (a)(1)–(a)(3). This clarifies that the mover has liability for any services offered in the bill of lading.

We are also adopting the AGCT's comments to change ''excess liability insurance'' to ''liability insurance.'' We agree with AGCT concerning the need for additional explanations regarding carrier liability in this section and have included appropriate language in § 375.201(d). We do not agree with AMSA's comments concerning paragraph (c). Paragraph (c) builds upon proposed § 375.303(h) by noting the full liability the carrier may be subject to if it fails to issue a copy of the insurance policy or other appropriate evidence of insurance as explained in proposed § 375.303(h). Thus, we are keeping the provision, but have added clarifying language concerning § 375.303(h) (§ 375.303(g) in this interim final rule).

In addition, FMCSA is replacing the reference in paragraph (b) to the 1993 released rates order with a more generic reference. This order was recently amended, effective May 12, 2002. Because Surface Transportation Board released rates orders may change over time, the regulations should not be date-specific in referencing such orders.

Section 375.203 What Actions of an Individual Shipper May Limit or Reduce My Normal Liability?

AMSA comments that paragraph (a) provides that the inclusion of perishable household goods in a shipment without notice to the mover relieves the mover of liability. It suggests that to comport with generally applicable tariff provisions that allow the mover to limit liability when perishables are disclosed and accepted for transportation, this provision should be expanded to include reference to hazardous and dangerous articles, as follows:

> If an individual shipper includes perishable, dangerous or hazardous articles in the shipment without your knowledge, you need not assume liability for those articles or for the loss or damage caused by their inclusion in the shipment. If the shipper requests that you accept such articles for transportation, you may elect to limit your liability for any loss or damage by appropriately published tariff provisions.

AMSA believes paragraph (b), by including reference to units of weight and measure in metric terms with the Imperial equivalent expressed parenthetically, will prove unduly confusing to both individual shippers and the moving industry. It recommends that until such time as the metric system is more commonly recognized in the United States, the terms should be reversed, with the metric equivalent shown in parenthesis.

Response to Comments

We have adopted AMSA's comments concerning dangerous and hazardous articles. This change also comports with 49 CFR 175.25 concerning passengers transporting dangerous or hazardous materials in airline baggage and 18 U.S.C. 1716 and U.S. Postal publication number 52, July 1999 (available at *http://www.usps.com/cpim/ftp/pubs/pub52.pdf* and *http://www.usps.com/cpim/ftp/pubs/pub52.htm*) concerning hazardous, restricted, and perishable articles being proper for mailing. We have also placed a warning similar to § 175.25(a)(1) in Appendix A to part 375—Your Rights and Responsibilities When You Move (YRRWYM), noting that the mover may limit its liability for the transportation of such materials in household goods.

The National Institute of Standards and Technology (NIST) has advised FMCSA that we should primarily use SI (metric) measurements. The Omnibus Trade and Competitiveness Act of 1988 cites metric units before inch-pound units where both units appear together and places separate sections containing requirements in metric units before corresponding sections containing requirements in inch-pound units. In some cases, however, trade practice is currently restricted to the use of inch-pound units; therefore, some NIST requirements continue to specify only inch-pound units until the National Conference of Weights and Measures achieves a broad consensus on the permitted metric units. In accord with NIST policy, FMCSA will use trade practice until the National Conference on Weights and Measures achieves a broad consensus on the permitted metric units.

Section 375.205 May I Have Agents?

The AGCT comments that we should require disclosure of any agency relationships to a shipper. AMSA does not object to such a requirement since it is normal industry practice to explain agency relationships. In fact, subpart B of YRRWYM contains an explicit explanation that alerts shippers to the existence of these relationships.

Response to Comments

We note that requiring disclosure of any agency relationships to a shipper would subject us to additional information collection requirements of 5 CFR part 120 for that disclosure. We note the largest motor carriers have agents and transport the most household goods shipments. Since we explain in the YRRWYM that motor carriers may have agents and AMSA believes it is normal industry practice to make such disclosures, we believe it is not necessary to require a separate notice for shippers. We believe shippers have plenty of notice that agency relationships may exist and may ask about them. If a mover transports a shipment that used the services of an agent, and the agent acted upon, or omitted, items in its performance of such transportation, the shipper has the right to file a complaint with us against the motor carrier or the agent.

Section 375.209 How Must I Handle Complaints and Inquiries?

NACAA supports the requirement that movers maintain a procedure for handling complaints. The AGCT requested that FMCSA impose an explicit affirmative requirement upon a mover to respond promptly and appropriately to complaints by a shipper.

AMSA disagrees with the AGCT because:

> * * * as the [AGCT] concedes, the proposed language contemplates that movers maintain internal systems that are responsive to shippers' complaints. The requirement that telephone numbers be furnished to shippers is sufficient to ensure ready access to the mover's system and, obviously, what may constitute an ''appropriate'' response is dependent upon the facts of each situation. This is not a matter that warrants a more explicit attempt to regulate.

Response to Comments

We believe it is sufficient to ensure ready access to the carrier's system by requiring a telephone number. As AMSA points out, what may constitute an ''appropriate'' response, and even a prompt response, is dependent upon the facts of each situation. We do not believe explicit regulation is warranted. We believe shippers are knowledgeable enough, and should be responsible enough, to inquire with better business bureaus and us if they are dissatisfied with a mover's complaint handling. Better business bureaus also monitor the number of and types of complaints businesses receive.

Section 375.211 Must I Have an Arbitration Program?

A majority of household goods complaints we receive involve loss and damage claims. The 24 individual shippers who submitted docket comments generally complain about the handling of their loss and damage claims rather than commenting directly about any particular aspect of the proposed rule or solutions to correct such problems. The ICCTA imposes an arbitration requirement for the handling of most loss and damage claims against interstate movers. *See* 49 U.S.C. 14708. We proposed to amend the former ''information for shippers'' section of the regulations, formerly 49 CFR 375.2 (proposed § 375.213), to replace the required summary of the carrier's dispute settlement program with a summary of its arbitration procedures and results.

As we discussed in the NPRM, Congress established the arbitration system in the ICCTA to afford consumers a forum for resolving loss and damage claims arising from transportation of household goods and to replace the informal dispute resolution functions previously handed by the ICC. The ICC conducted the informal dispute resolution functions under its general authority to regulate movers, but did not have a specific statutory requirement to perform that function. The Congress wanted ''private, commercial disputes to be resolved the way all other commercial disputes are resolved—by the parties.'' *See* H.R. Rep. No. 104–311, at 87–88 (1995). *See also* pages 117 and 121. The MCSIA expanded the availability of arbitration by requiring that carriers provide arbitration, upon shipper request, for claims of up to $5,000 (as opposed to the $1,000 limit in the ICCTA). The GAO report also studied the roles of consumers in preventing and resolving disputes.

NACAA supports having movers maintain an arbitration program for loss and damage claims.

The Consumers Union recommends we require each mover give its arbitration information at the time an estimate is made rather than before executing an order for service.

The OCC believes arbitration should be expanded to include a format for alternative dispute resolution. Arbitration alone limits available dispute resolution means, and inasmuch as alternative dispute resolution enjoys widespread recognition, it would seem illogical to omit it.

The AGCT requests FMCSA require the mover to provide a fair and prompt process that is paid for by the mover. By requiring the mover to bear the cost of the arbitration, the mover has an incentive to resolve claims and arbitration proceedings in a timely manner.

The 25AG suggest modifying proposed § 375.211(a)(2) to include a paragraph (iv) to require conspicuous disclosure of the right to the information contained in § 375.211(a)(3). They believe that § 375.211(a)(2) and (b) are inadequate as disclosure requirements because they provide no guidance as to either the timing or manner of disclosure.

The 25AG also believe consumers need to know of their right to forego arbitration and pursue court action under 49 U.S.C. 14704. They claim that many movers refuse to participate in their own program or do so in a dilatory fashion. They recommend that we require arbitration be provided at a reasonable cost and at a reasonable location, without undue delay before a neutral independent third party. The arbitrator should be empowered to grant whatever relief would be available in court under law or in equity.

In AMSA's view, a requirement that all household goods carriers file annual arbitration reports would likely not be useful to consumers, itself, and the moving industry. AMSA disagrees that such reports would assist us in meeting our statutory responsibility to report to Congress regarding arbitration, and in providing individual consumers with relevant claims information.

Details regarding arbitration and the relative success or failure of the single program that represents virtually all movers are readily available from AMSA, it asserts. To assist us in meeting our statutory reporting requirements, AMSA stated that it sent reports to FHWA containing the results of its arbitration program, both in advance of the June 1997 due date of the FHWA report to Congress and after June 1997.

AMSA believes that the information contained in the periodic AMSA reports is sufficient. It believes we can use its reports to monitor the moving industry under 49 U.S.C. 14708(g). From a consumer standpoint, AMSA is not convinced that the requested claims handling information would provide consumers with meaningful claims data. Furthermore, it also is not convinced that individual consumers are interested in claims data when it comes to their selection of a mover. Consumers are more interested, AMSA believes, in whether the mover is properly licensed, has insurance, has a good professional reputation, and complies with the regulations. AMSA reported the industry has a claims frequency ratio of roughly 21 percent, *i.e.*, only one in every five shipments results in a claim. AMSA interprets this to mean that the proposed report would have no relevance to almost 80 percent of the consumer shippers whose shipments do not sustain loss or damage. It asserts that the incidence of arbitration is even less frequent. AMSA's experience is that less than one percent of all claims result in arbitration; thus more than 99 percent of the shipments transported will not become involved in the arbitration process.

From a technical standpoint, AMSA believes the proposed report only requires the reporting of the total number of shipments transported and the number of claims less than and over the statutory maximum for mandatory arbitration. It believes the meaning of our ''total shipments'' (all household goods shipments; only COD shipments, excluding civilian government, military and national accounts) is unclear, as is the ''number of claims'' (claims filed; claims paid, and so on). AMSA presumes that it would be left to consumers to try to calculate a claims frequency ratio from the data provided and, if they get that far, to compare their particular mover's frequency with that of other movers or with industry average data. Complicating this situation is the fact that some carriers encourage the use of arbitration, while others do not. Therefore, individual carrier data may be entirely misleading, *e.g.*, a high number of arbitration cases could be construed to mean the carrier has an unacceptable claims experience when precisely the opposite may be true since the number of arbitrations may bear no relation to the number of claims.

In addition, AMSA asserts that the language of the proposal makes it clear that FMCSA will be required to process and maintain over 2,000 carrier annual

reports in order to respond to consumer requests for information. Also, FMCSA would be required to allocate resources to answer consumer questions regarding the reports and compile aggregate statistics to be in a position to answer consumer questions regarding the importance and meaning of a given carrier's data. Consumers will be unable to make informed decisions regarding report data unless they know how specific carrier data compares to industry average data. All of this assumes that we have the necessary staff to collect, process, and disseminate more than 2,000 such reports each year to even a fraction of the 600,000 individual shippers who may choose to request a copy. Since experience has shown AMSA that considerably less than 1,000 shippers will request arbitration in any year, any benefits that may be derived from this system will be overshadowed by the time, effort, and money expended preparing, filing, copying, and disseminating such reports.

AMSA also comments that paragraph (a)(3) would require that, upon an individual shipper's request for arbitration, the mover must furnish forms and information necessary to initiate an action to resolve a dispute. It believes the requirement that specific forms be furnished will be unduly burdensome.

Section 14703 of the Code, it argues, requires that movers furnish shippers with written information explaining the availability of their dispute settlement programs. One of the benefits of these programs is that the process (at least the AMSA version of the process) is quite informal and easy to use. No forms are required. Instead, shippers need only submit a written request for arbitration by letter or facsimile. AMSA believes requiring the use of specific forms to initiate the procedure will only serve to unduly complicate a program that has been running effectively without such forms for more than two years. Accordingly, it recommends that the words ''forms and'' should be deleted from paragraph (a)(3).

The AGCT recommends that the cost of arbitration be borne entirely by movers to provide an incentive to resolve claims promptly.

AMSA believes that Congress has addressed this point. Shippers may not be assessed more than one-half the cost of arbitration and arbitrators' decisions may include cost assessments. *See* 49 U.S.C. 14708(b)(5). It argues that Congress no doubt viewed the payment by shippers of a portion of the expense of arbitration as a means to discourage the presentation of frivolous claims. Of course, movers may elect to bear a greater portion or all of these costs if they so elect.

The OCC recommends that arbitration be expanded to include ''Alternative Dispute Resolution,'' arguing that arbitration alone is limiting. AMSA believes that Congress has also addressed this point. The applicable statute, 49 U.S.C. 14708, refers to ''arbitration'' as a means of settling disputes between movers and shippers. That aside, ''Alternative Dispute Resolution'' is a generic term that refers to a wide array of practices which are intended to resolve disagreements at lower cost than would be incurred in litigation and includes arbitration.

The 25AG recommend that the proposed arbitration section should be strengthened in several respects by the addition of requirements for prominent disclosure of consumers' rights at the outset of the transportation transaction and expeditious processing of requests for arbitration by impartial third parties.

AMSA is not opposed to an explicit recitation of mover responsibilities related to disclosure and other aspects of statutorily mandated arbitration programs. However, it argues that the predicate for the 25AG's argument is that if the regulations are not explicit, ''* * * many movers will not participate in arbitration in good faith otherwise.'' Such a proposition is obviously inconsistent, it states.

If a mover is intent on violating the requirements of law, AMSA argues, explicit regulatory language will not act as a deterrent. This is a matter of enforcement. To the extent the 25AG have, as they assert, encountered movers that do not participate in an arbitration program, AMSA argues that those movers should be reported to FMCSA for enforcement action.

Moreover, AMSA notes that the proposed regulation contains no less than 14 explicit directives that will govern all aspects of mover arbitration programs. One of those requirements states that: ''You must produce and distribute a concise, easy-to-read, accurate summary of your arbitration program, including the items in this section.'' § 375.211(b). In addition, paragraph (a)(2) requires that ''Before the household goods are tendered for transport, your arbitration program must provide notice to the individual shipper of the availability of neutral arbitration. * * *'' Thus AMSA believes these and other provisions of the proposed regulations clearly address the 25AG's concerns.

Response to Comments

We agree with AMSA. We believe the annual arbitration report (proposed §§ 375.901–375.907) will not be a benefit to shippers, the industry, or FMCSA. We also believe we should not retain the ICC's annual performance report elements for a combined annual report. Consumers will have to make informed decisions regarding movers' products and services without past performance reports that have been, and most likely would continue to be, inaccurate. FMCSA does not have the necessary staff to collect, process, verify, and disseminate such reports each year to all individual shippers, consumer advocacy organizations, and attorneys general who may choose to request a copy.

AMSA was correct that FMCSA would be required to process and maintain over 4,000 carrier annual reports in order to respond to consumer requests for information. (The NPRM used the figure 2,000 for the number of motor carriers, but we are using 4,000 in this Interim Final Rule, based on the FMCSA Motor Carrier Management Information System and Insurance Division's best estimate in March 2002 of the number of active household goods carriers authorized to operate in interstate commerce.) Also, the agency would have to allocate resources to answer consumer questions regarding the reports and compile aggregate statistics if we were to be in a position to answer consumer questions regarding the importance and meaning of a given carrier's data. Consumers would be unable to make informed decisions regarding report data unless they know how specific carrier data compares to industry average data. All of this would assume that FMCSA would have the necessary staff to collect, process, and disseminate more than 4,000 such reports each year to even a fraction of the 600,000 individual shippers who may choose to request a copy. Any benefits that may be derived from a reporting system would be outweighed by the time, effort, and money expended preparing, filing, copying, and disseminating such reports. FMCSA cannot justify the information collection costs in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Therefore, FMCSA is withdrawing the proposal to require the filing of an annual arbitration report.

We congratulate AMSA for not needing forms to initiate its arbitration programs. As AMSA points out, however, it does not represent all interstate movers. FMCSA does not want to preclude a mover who finds it

necessary to have a form from requiring that form and we would require the mover provide it upon the individual shipper's request.

We note, in response to comments by NACAA and OCC, that consumers have numerous remedies available to them before entering the arbitration process or if carriers fail to establish and maintain arbitration processes. As the 25AG note, consumers, NACAA, and the OCC should know of the consumer's right to decline from participating in arbitration, and, instead, pursue court action under 49 U.S.C. 14704. We believe it is not necessary to inform movers of this right in part 375 since AMSA has shown through its comments that its members have a good understanding of the statute. FMCSA has added this information to the YRRWYM appendix, though, to be provided to shippers for their benefit.

NACAA should not be surprised about our position regarding our limited role in dispute resolution. The Congress, as the NPRM noted, provided a clear understandable directive against allocating scarce resources to resolve private disputes and indicated that our primary role was to oversee the regulations. The GAO report also noted this Congressional directive.

We are not adopting the NACAA recommendation that the regulations require that other Federal, State, and local agencies retain jurisdiction over movers' acts and practices. This can be accomplished only by statute, not through these regulations.

Section 375.213 What Information Must I Provide to a Prospective Individual Shipper?

NACAA supports requiring movers to provide all prospective customers with the YRRWYM booklet. NACAA further believes movers should be required to insert their prior two years arbitration reports in YRRWYM to enable consumers to examine the claims history of a prospective mover. It believes the expense to movers will be negligible. It also recommends that all movers post annual arbitration reports on the Internet with references to their web site in YRRWYM and that FMCSA audit these arbitration reports.

The AGCT suggests requiring movers to provide a prospective shipper with a copy of a blank uniform bill of lading used by the mover before loading the shipment, to give the shipper an opportunity to review and ask meaningful questions about the terms listed on the form. It also would require movers to provide copies of their tariffs to properly inform the consumer of possible charges that may be levied by the mover.

The Consumers Union recommends that the information required by this section be provided at the time an estimate is given rather than before an order for service is executed.

AMSA believes the AGCT's recommendation that movers be required to provide a blank bill of lading and their tariffs to prospective shippers is unrealistic and burdensome. AMSA alleges that industry data indicates that roughly three shipment surveys are performed for each shipment booked. AMSA did not provide the data for the docket. AMSA believes requiring the distribution of bills of lading and tariffs containing several hundred pages of technical matter to prospective shippers would burden shippers and movers alike. In any event, Congress has addressed this issue by requiring in 49 U.S.C. 13702(c)(1) that movers provide notice of the availability of their tariffs for shippers who would elect to examine tariff provisions related to their move.

Consumers Union strongly urges FMCSA to redraft YRRWYM into even plainer language. As one example it states that subpart K should be at the front of the pamphlet.

AMSA disagrees with the Consumers Union. The proposed YRRWYM publication is a substantial revision of the former ICC publication. AMSA believes it significantly clarifies many points that are important to consumers in language that represents a major improvement over the former ICC language.

Response to Comments

FMCSA will adopt the specific recommendation provided by the Consumers Union by moving Subpart K to the front of the pamphlet.

In the interim final rule, FMCSA has added a paragraph (a)(3) requiring movers to provide notice of the availability of the applicable sections of their tariffs for shippers' examination or have copies sent to them upon request. FMCSA believes this addition provides shippers with adequate information to assist themselves in asking informed questions.

To require significant additional consumer information be provided by carriers, as recommended by some commenters (arbitration reports, blank bills of lading, complete copies of tariff) at the time an estimate is given, would add significant burdens on carriers beyond anything proposed in the NPRM. Since shippers frequently obtain more than one estimate, the additional burden on carriers could be multiplied several times. Also, because most tariffs are voluminous documents, FMCSA believes that it is beneficial to both shippers and carriers to limit the additional requirements in paragraph (a)(3) to the applicable sections of the tariff.

Section 375.215 How Must I Collect Charges?

The OCC recommends the option of pre-payment be made available at the shipper's election, especially for weight-based shipments. The mover would insure an accurate weight before shipping to protect its weight-based revenues. The shipper, in turn, would have more confidence in the weight and pre-payment of freight charges would eliminate unexpected destination or other charges.

AMSA questions whether OCC's recommendation would serve the interests of shippers. Section 375.401(a)(1) of the proposed regulations provides a mechanism for guaranteed charges. Shippers have the option of electing to tender their goods under a binding estimate and, in fact, many exercise that option. AMSA states that its data indicates that 47.2 percent of all COD consumer shipments were transported under binding estimate tariff provisions in 1996. (AMSA did not provide this data for the docket.) AMSA believes that authorizing payment of transportation charges in advance of the actual delivery of goods could provide unscrupulous movers with the opportunity to deceive shippers. As a case in point, it notes the experience of Ms. Josephine Meany, whose complaint is included in the NACAA comments. Unfortunately, Ms. Meany paid thousands of dollars to an unlicensed mover for what amounted to essentially no service. Her son's goods were not transported to the intended destination and she was forced to hire and pay a second mover to transport the goods. AMSA urges that we reject the OCC recommendation.

Response to Comments

FMCSA agrees with AMSA. The shipper may not know at the time he or she contracts for transportation whether circumstances related to the move may cause additional freight charges beyond those agreed upon at origin. The mover should not be held accountable for poor planning on the shipper's part. FMCSA, however, has added regulatory text to the interim final rule that specifies that all rates and charges for the transportation and services rendered must be in accordance with the mover's applicable tariff in effect, including the method of payment.

Section 375.217 How Must I Collect Charges Upon Delivery?

NACAA requests a modification stating that the mover ''may specify two forms of payment acceptable, only one being cash or a cash equivalent.''

The AGCT suggested FMCSA establish nondiscriminatory rules governing cash-on-delivery (COD) service and collection of COD funds rather than allowing movers to develop their own procedures in the tariff. It suggested modifying paragraph (b) to require movers to relinquish possession of a shipment upon payment by the consumer of an amount substantially less than the binding or non-binding estimate. This provides the consumer with some leverage over the mover in the event of a dispute. The mover would have to pursue a claim against the consumer rather than requiring full payment by the consumer and forcing the consumer to pursue the mover. Such a burden shift provides greater protection for the consumer.

AMSA comments that the NACAA proposal, if adopted, would limit the options available to movers and their customers to effect the payment of transportation charges. The generally applicable options for payment are cash, certified check, traveler's check, or bank check (drawn by a bank and signed by a bank officer). *See* HGB Tariff 400–M, Item 29. In addition, the existing credit regulations in § 377.215, the household goods regulations in § 375.19, and proposed § 375.221, authorize the credit card option for payment and provide specific requirements related to the use of credit. Taken as a whole, AMSA believes these provisions adequately address the concerns expressed by NACAA.

AMSA believes the AGCT proposal for adopting nondiscriminatory rules for the collection of transportation charges in this proceeding is addressed in the preceding paragraph. Additionally, AMSA asserts that the AGCT has apparently neglected to consider the discussion at page 27128 of the NPRM that outlines the FHWA response to the moving industry's request for amendment of the existing credit regulations. AMSA states ''obviously, household goods movers are not at liberty to fashion payment and/or extension of credit tariff provisions that would violate the existing or proposed FHWA regulations.''

The 25AG argue that the form of payment issue is directly related to consumer overcharge complaints. The 25AG therefore propose that § 375.221 require that, if a mover agrees to accept a credit card at the beginning of the shipment transaction, the credit card should be accepted at delivery. They also propose a related amendment to § 375.503(b)(9) dealing with bill of lading contents, which would require disclosure of the form of payment required upon delivery if it is different from that agreed to at the outset of the transaction.

In a similar vein, the AGCT is opposed to permitting movers to treat the reversal of a credit card transaction as an involuntary extension of credit. It argues that consumers should be authorized to treat a mover's failure to pay a claim for delay or loss/damage as an ''involuntary extension of the shipper's credit to the mover,'' thus subjecting the mover to the same financial penalties as the consumer bears under the credit regulations at § 375.807.

AMSA asserts that each of these proposals is fraught with the potential for endless controversies between movers and shippers. More importantly, it believes, they reflect a misunderstanding of Congressional intent. Section 13707 provides that a motor carrier ''* * * shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made.'' Since the extension of credit by movers is permissive, it would be foolhardy to adopt regulations that would attempt to address these issues since they cannot adequately anticipate the many circumstances that occur when drivers and consumers settle accounts at the time of delivery. AMSA argues that accepting a credit card at origin, for example, provides the consumer with sufficient time to seek alternative means of payment should the charge amount be declined by the card issuer. If a driver delivers on weekends or after hours and the mover's credit/collection department is closed, the driver cannot call in the charges and the mover will not be in a position to make certain that the card issuer will accept the charge. Dealing with a credit card at delivery may also cause unnecessary delays. If the charge is declined, the consumer must seek alternative means of payment that could unnecessarily delay delivery. In the meantime, the mover must wait, which could result in additional charges, vehicle detention, or storage-in-transit. These proposals could have the unfortunate result of forcing movers to limit the payment alternatives that are presently offered to shippers.

AMSA strongly opposes the AGCT proposal that movers should be required to relinquish possession of a shipment upon payment of an amount ''substantially less than the binding or non-binding estimate'' in order to provide consumers with ''leverage'' in the event a dispute arises. AMSA believes it obviously ignores the requirements of 49 U.S.C. 13707 and the important requirement contained in 49 U.S.C. 13702(a)(2) that:

> The mover may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

AMSA believes the 25AG have approached this and a number of other issues as if the regulations to be promulgated should be treated in a vacuum with no consideration given to underlying statutory directives or restraints. They also ignore the fact that movers have a lien on the goods they transport and may refuse to deliver until their charges are paid or guaranteed. *Illinois Steel Co.* v. *Baltimore & Ohio Railroad Co.,* 320 U.S. 508 (1944).

Response to Comments

FMCSA appreciates the comments received regarding this section and has incorporated the recommendation that we require the mover to specify the form of payment when the mover prepares the estimate. The mover and its agents must honor the form of payment at delivery, except when a shipper agrees to a change. The mover must include the same information on the order for service and bill of lading. It is important to state in the rule that the carrier must accept the method of payment originally agreed in order to avoid unnecessarily burdening the shipper, who may not be prepared to make an alternative form of payment. For example, in a case where a cashier's check is the agreed payment and the carrier demands cash on a Saturday evening when the bank is closed, a serious problem would be created for the shipper, most likely resulting in the driver leaving without unloading the shipment.

FMCSA has also added another requirement to the interim final rule. If the mover or its agent agrees to accept a charge or credit card payment as the method to pay for receipt of goods at delivery, then the mover must arrange for delivery during the time the mover's credit/collection department is open to seek approval of payment by card issuer, unless the vehicle is equipped to process credit card payments.

Section 375.221 May I Use a Charge or Credit Card Plan for Payments?

The OCC believes the term ''cashier's check'' should not supplant the term ''money order.'' A loss of an open money order that does not denote a payee can result in a stop payment of the same. No stop payment is available for the loss of cash. A shipper may hesitate to carry a large sum of cash and may want to go to a convenience store and convert the cash into consecutive money orders. AMSA agrees that both terms should be used.

The 25AG believe the regulations should mandate that the mover's payment policy be the same at all stages of the transaction. If charge or credit cards are permitted at the order for service, the cards should be allowed at the time of delivery. They suggest that carriers should inform consumers of their payment policies.

The AGCT suggests the regulations should not allow carriers to treat reversal of credit card transactions as an involuntary extension of credit. This is not consumer protection, it believes. If carriers suffer financial loss due to actions of the consumer, carriers should be required to rely on the same avenues of dispute resolution that are available to the shipper. It further recommends that FMCSA should allow a consumer to treat a carrier's failure to pay a claim for untimely shipments or damage or loss as an involuntary extension of the shipper's credit to the carrier, subjecting the carrier to the same financial penalties as the consumer listed in § 375.807.

Response to Comments

FMCSA has added money orders as a form of acceptable payment in the interim final rule. If a mover accepts money orders as an acceptable form of payment, the mover must include the provision in its tariff.

FMCSA has also added language to § 375.221(a) to make it clear that a carrier is bound by the payment provisions in its tariff from the time it gives an estimate until completion of any transaction that results from that estimate, unless otherwise agreed with a shipper under § 375.217(a).

FMCSA has retained the rule language that allows a carrier to treat a reversal of a credit card transaction as an involuntary extension of credit because the use of a credit card is considered an alternative to payment in cash, certified check, money order, or cashiers check, which are payment methods that cannot be reversed.

However, FMCSA has not added a provision allowing a consumer to treat an unpaid claim against a carrier as an involuntary extension of credit. Adding such a provision would be beyond the scope of the NPRM. Resolution of a claim that may be in dispute is traditionally resolved in a State court.

Section 375.301 What Service Options May I Provide?

The AGCT recommends that the regulations should require carriers to have liability insurance covering casualty losses resulting from the actions of the carrier.

AMSA comments that the rationale underlying the AGCT recommendation is not clear. AMSA states that carriers are liable for cargo loss and damage under 49 U.S.C. 14706 and must provide evidence of insurance pursuant to 49 U.S.C. 13906(a)(3). As a general proposition, casualty insurance coverage contemplates personal injury losses, a subject that is not related to this proceeding. In any event, carriers are also required by statute to maintain liability insurance in amounts prescribed by the Secretary covering bodily injury, etc. *See* 49 U.S.C. 13906(a)(1).

Response to Comments

FMCSA agrees with AMSA. The AGCT's recommendation appears to contemplate requiring personal injury loss coverage in these regulations. This is not within the scope of this rulemaking and is already required by statute and regulation.

Section 375.303 If I Sell Liability Insurance Coverage, What Must I Do?

The 25AG recommend requiring clear and conspicuous disclosure to consumers of all limitations on liability coverage and any inventory requirements needed for valuation of their shipments, as well as requiring disclosure, at the time of delivery, of whether any agents were used during the move and whether the consumer's goods were stored during the shipment. They further recommend that upon the consumer's request, carriers should provide numerous pieces of information. Such information would include the agents or subcontractors used during the move, liability coverage for that move, identification of all storage facilities used, and liability coverage attendant to that storage. They also suggest development of regulations that will sharply limit the use of disreputable tactics by some carriers to avoid legitimate liability coverage obligations.

The AGCT suggested the regulations require carriers to procure insurance on behalf of the shipper. If a carrier sells or offers to sell liability insurance to the shipper, the carrier must comply with any applicable licensing requirements of a State insurance regulatory body. If the carrier sells or procures insurance on behalf of the consumer, the consumer must be the named insured on the policy and the carrier must provide the consumer with a copy of the policy and a certificate of insurance indicating the period of coverage.

AMSA comments that the language proposed in § 375.303(a)(1) and (2) is unclear in establishing the conditions under which carriers may sell or procure insurance coverage for cargo loss or damage. As written, paragraph (a) provides that insurance may be procured only under the two conditions set out in paragraphs (a)(1) and (2). However, those paragraphs are not connected with the conjunctive ''and'' or the disjunctive ''or.'' Moreover, AMSA believes the language in paragraph (a)(2) is confusing. It describes a situation where the shipper fails to declare a valuation of $1.25 per pound and pays or agrees to pay the carrier for assuming liability equal to ''the declared value.'' This condition is at odds with itself.

AMSA points out that under the outstanding Surface Transportation Board released rates order (RRO), the failure to declare a lump sum value or valuation of $1.25 per pound will result in the shipment being deemed to have been released to a declared lump sum value of $1.25 per pound times the weight of the shipment. *See* 9 I.C.C. 2d 523.

In any event, AMSA believes paragraph (a)(2) can be eliminated as unnecessary. Historically, carriers were authorized to sell or procure excess insurance only when the shipment was released to a value not exceeding 60 cents per pound. Although current § 375.11(a) contains the additional condition that ''the shipper does not declare a valuation of $1.25 or more,'' it is clear that the latter condition is superfluous. Although stated as two conditions, they are actually the same. If a shipper releases a shipment at 60 cents per pound, he could not declare a valuation at $1.25 per pound or more. Conversely, if he declares a valuation at $1.25 or more, he could not release the shipment at 60 cents per pound. This mutual exclusivity is made clear in the RRO giving rise to this language. *See* RRO No. MC–505, Released Rates of Motor Common Carriers of Household Goods, June 7, 1966, and Released Rates Decision No. MC–999, 9 ICC. 2d 523 (1993). AMSA therefore recommends that paragraph (a)(2) be deleted.

AMSA further argues that paragraphs (b) and (c) are duplicative to some extent. Current § 375.11(a) is limited to insurance for loss and damage just as appears in proposed paragraph (c). It therefore recommends that paragraph (b) be deleted, paragraph (c) be redesignated as (b), and the remaining paragraphs be redesignated accordingly.

With respect to the 25AG recommendation that more explicit language should be employed to preclude carrier avoidance of payment of loss or damage claims, AMSA believes that proposed § 375.303 is not intended to deal with this issue. Carriers, it asserts, are required to process claims for loss or damage in accordance with the regulations contained in 49 CFR part 370. If, as the 25AG argue, they encounter situations in which they believe carriers have violated part 370, a complaint can be made to FMCSA.

AMSA believes that the AGCT recommendation that carriers be required to procure insurance on behalf of shippers and, if appropriate, comply with any applicable State licensing requirements, confuses the carrier's role in procuring insurance. Carriers do not sell insurance, but may procure insurance on behalf of a shipper from an insurance entity that is authorized to issue a policy under applicable State law.

Response to Comments

In response to the 25AG, we believe that the carrier, its employees, and agents are essentially one and the same, in that the carrier is responsible for the acts of both the employees and agents. Therefore, the authorized carrier named in the bill of lading would be primarily responsible for any activity involving the move, including the selling of insurance and providing the shipper with a policy from the insurance carrier. If the authorized carrier used an owner-operator under lease agreement, the carrier would be fully liable for the move.

The Surface Transportation Board's revised RRO states that unless the shipper expressly releases the shipment to a value not exceeding 60 cents per pound per article, the carrier's maximum liability for loss and damage shall be either the lump sum value declared by the shipper or an amount equal to $4.00 times the actual weight of the shipment, whichever is greater. Additionally, the shipper may purchase additional liability insurance coverage from the carrier. The revised RRO provides that the $4.00 rate may be increased annually by the carrier based on the Department of Commerce's Cost of Living Adjustment.

As we noted in our response to § 375.201, we have added regulatory text to § 375.201 concerning the full liability to which the carrier may be subject if it fails to issue a copy of the insurance policy or other appropriate evidence of insurance. Also, we have adopted AMSA's recommendation to delete proposed paragraphs (a)(2) and (b) in § 375.303.

Section 375.401 Must I Estimate Charges?

NACAA supports estimates being given in writing. The AGCT suggests changing ''binding estimate'' everywhere in the proposed regulations to ''guaranteed delivery price.'' It believes that the term ''estimate'' implies approximation rather than a fixed price. It further suggests changing paragraph (b) to reflect the fact that the final charges will be based on the actual weight ''or volume'' because this is consistent with estimates to be given based on weight or volume.

Starving Students has a deep concern about requiring written estimates. It states that a written estimate requires a personal visit to the shipper's residence, which is costly. It estimates that requiring a prior written estimate would add $250 or more to the cost of the move and believes adding such costs would discourage many shippers from hiring a mover for small moves.

Starving Students also believes that there is not enough advance time to perform a visual inspection for a written estimate. Shippers often schedule moves with very short notice, which does not permit a prior visual inspection to be performed. The majority of Starving Students' bookings are booked within seven days of the scheduled move.

Starving Students also notes that numerous moves occur from locations where movers do not have a local office in the vicinity. A prior visual inspection will be impossible in these cases. The consumer would have to select a mover not based on price or service, but on the proximity of a field estimator. Small movers offer low cost, no frills alternatives to the large van lines. It argues that excluding small movers, like Starving Students, from interstate moves based on a lack of a national network of estimators is an unfair restraint of trade. In summary, Starving Students believes that shippers and carriers want the same thing, *i.e.*, for the consumer to pay, and the carrier to receive, a reasonable price for the transportation of household goods across state lines.

AMSA believes this section provides that individual shippers must be given a written estimate before an order for service is executed and commends FMCSA for including these provisions in the proposed regulations. Providing as many written estimates as possible will certainly serve to reduce shipper complaints and misunderstandings over final charges. However, AMSA believes there are certain aspects of this requirement that should be considered further.

AMSA believes that most moves are booked at least two weeks in advance with the majority booked a month or more in advance. However, situations arise when moves are booked on much less than two weeks' notice or sudden last-minute changes make the preparation of a written estimate in advance of the move impossible. Situations brought about by unusual circumstances such as unexpected employment changes, domestic disputes, evictions, foreclosures, or emergency evacuations do not always permit much in the way of advance notice. AMSA believes that requiring a written estimate, which is, in turn, subject to the 110 percent rule, will cause some movers to refuse short notice shipments to avoid being held to the 110 percent payment provision because there is no opportunity to perform a visual inspection. Shippers will then be left with fewer options to accommodate their requirements, *e.g.*, move on their own or use unlicensed movers who ignore FMCSA regulations.

AMSA recommends that an alternative procedure be adopted for short notice shipments. Shippers would be given the opportunity to waive the requirement for a written estimate (or to waive the 110 percent rule) in short notice situations. The shipper will nonetheless receive service from a licensed professional mover subject to all of the other protections provided by the proposed regulations, it believes. It suggests that paragraph (a)(2) should be amended by revising paragraph (a) and adding a new paragraph (e), as follows:

(a) Before you execute an order for service for a shipment of household goods for an individual shipper, you must estimate the total charges in writing, except as provided in paragraph (e) below. The written estimate must be in one of the following two types:

* * * * *

(e) Waiver—Signatures Required. Subject to the shipper's agreement to waive the requirement for a written binding or non-binding estimate, pursuant to the provisions of § 375.407, you may provide a price quotation which shall be your reasonably accurate estimate of the approximate costs the individual shipper can expect to pay. The

shipper's agreement to waive the written estimate requirement must also include collection or credit arrangements acceptable to the shipper for payment of the total charges. The waiver agreement must be in writing and signed by the shipper before the shipment is loaded, and a copy must be retained as an addendum to the bill of lading.

AMSA believes for situations other than short-notice shipments, the provisions of § 375.407 that have been designed to deal with ''hostage shipments'' are a welcome addition to the proposed regulations. AMSA routinely receives complaints from desperate shippers whose shipments are being held by unscrupulous movers to be exchanged for the payment of charges in excess of the 110 percent maximum. If the government enforces these provisions, AMSA asserts, many complaints of this nature will be eliminated.

In response to AGCT's suggestion that the term ''guaranteed delivery price'' be used in this section and throughout in lieu of ''binding estimate,'' AMSA notes the term ''binding estimate'' is rooted in the underlying statute, 49 U.S.C. 13704(a)(1).

Response to Comments

We did not require that a personal visit had to be made to execute the written estimate when we proposed the section regarding written estimates. We believe a written estimate could be executed after any telephone interview with a prospective shipper. Whatever the estimator estimates the total to be and communicates it to the shipper, the estimator would follow it up in writing.

We believe that the requirement to provide a written non-binding estimate, subject to the 110 percent rule, would cause some movers to make more accurate estimates for short notice shipments. This is because the incentive to add charges for additional services should be less when a carrier would not have to be paid for at least 30 days after delivery, and when the additional charges could be disputed by the shipper. This should provide shippers with a more accurate estimate to compare to other movers. Shippers would then be in a better position to compare and pay a more realistic amount than what some movers have allowed their agents to estimate.

In the interim final rule, we have added a requirement that the mover provide each shipper with an explanation in writing of the formula used when an estimate is given in terms of volume and then converted to weight. We have added a requirement that the mover specify the final charges will be based on actual weight and services, subject to the 110 percent rule at delivery.

We have also added a requirement that the mover must determine charges for any accessorial services such as elevators, long carries, *etc.,* before preparing the order for service and the bill of lading. If the mover fails to ask the shipper about such charges and fails to determine such charges before preparing the order for service and the bill of lading, the mover must deliver the goods and bill the shipper after 30 days for the additional charges.

In addition the interim final rule contains a new paragraph (b) specifying that, at the time the estimate is presented, the mover must specify the form of payment that it will accept at delivery.

To clarify the role of household goods brokers in the estimating process, FMCSA has added a new § 375.409, discussed below.

Section 375.403 How Must I Provide a Binding Estimate?

The AGCT suggests requiring all carriers include a binding estimate provision in their tariffs and to provide a binding estimate if requested by the consumer. It suggests the rules should not allow carriers to unilaterally refuse to honor the binding estimate and carriers should be required to provide the service as originally agreed on. It recommends that carriers be permitted to negotiate with the consumer for any additional services requested at the time of pickup, either as a binding or non-binding estimate, and that the rules should affirmatively require carriers to inquire of site conditions at the destination or other matters which may result in the imposition of additional charges at the delivery point. If the carrier fails to ask whether there are any long flights of stairs, AGCT states, the carrier should ''not be permitted to charge for any additional services at the destination which may have reasonably been anticipated and not listed as an additional charge in its estimate. This is reasonable, since the carrier has experience in this area, and knows such services often require additional charges.''

The AGCT believes carriers should be required to relinquish possession and bill the consumer for such additional services rather than demand immediate payment at the time of delivery.

AMSA comments about paragraph (a)(5), which provides three options for the carrier if the shipper tenders additional household goods or requests additional services that were not included in the original binding estimate. While the first three options will cover most situations, AMSA writes, other circumstances may result in a failure between the mover and the shipper to agree to a price for the additional services. Therefore, AMSA believes it is appropriate to include a fourth option to address this situation as follows:

(iv) If an agreement cannot be reached as to the price and/or service requirements for the additional goods or services, you are not required to service the shipment.

Paragraph (a)(7) provides that the carrier may require full payment for additional services requested by the shipper or required to be performed at destination (such as stair carry, long carry, storage, etc.). AMSA notes that during a typical moving scenario, the shipper may also request additional services while a shipment is en-route, such as a diversion with an extra pick-up or delivery to a friend or relative at an intermediate point. AMSA believes that the proposed language should be clarified to accommodate such requests as follows:

(7) If the individual shipper adds or requires additional services en-route or at destination to complete the transportation, and the services fail to appear on your estimate, you may require full payment at the time of delivery for such added services.

AMSA states that AGCT's proposal that carriers be required to include a binding estimate provision in their tariffs conflicts with the permissive authority conferred by 49 U.S.C. 13704(a) (1) and 14104(b)(l), which provide that carriers ''may'' provide binding estimates of charges.

AMSA believes that the AGCT's suggestions reflect a failure to understand the operational conditions carriers often confront in order to properly service shipments. During a typical move, additional services may be required to complete the move or the shipper may request additional services while the shipment is en-route or before delivery. Since the transportation of household goods is a labor intensive process, the failure of the shipper to properly inform the carrier of the precise requirements necessary to properly remove the contents of a residence, secure them in an over-the-road vehicle and effect delivery at the new residence, can result in additional services which, in turn, require the assessment of additional charges.

AMSA asserts that owner-operators perform the majority of the labor services that are required to load, transport, and unload household goods shipments. These individuals cannot, nor should they be expected to, perform their services without compensation or

for compensation that is less than is necessary to attract their services. AMSA believes that it should be apparent that the fact that the costs and related charges incurred to perform a move may not agree with an estimate of charges is not the exclusive result of carrier misfeasance or deception as certain arguments suggest.

For example, AMSA notes, NACAA proposes that, by paying an additional 10 percent, the shipper is not admitting the legitimacy of the expense or waiving any rights to bring a private action under State or local law. NACAA also proposes that the regulations state that it is an unfair, misleading or deceptive act or practice for a mover to fail to deliver the goods after an offer to pay 110 percent is made.

In response to the AGCT's recommendation that consumers be allowed to reduce the amount they must pay for a carrier to relinquish a COD shipment to ''substantially'' less than 100 percent of the estimate, and that they be allowed to offset any damages from the balance of any remaining charges owed to the carrier, AMSA states that certain AMSA testimony in 1998 before the U.S. House of Representatives Subcommittee on Surface Transportation of the Committee on Transportation and Infrastructure warrants repeating:

> The overwhelming majority of all movers are reputable, regulated businesses. They perform an essential public service by complying with the consumer and other regulations that govern our business and were put in place by the former ICC. * * *
>
> In its evaluation of this situation, and in its consideration of possible legislative solutions, we urge Congress not to lose sight of the fact that the moving industry performs 1.3 million interstate moves each year, the vast majority of which are accomplished without incidence and to the customer's satisfaction. It is the exceptional, out of the norm ''horror story'' that attracts media attention and portrays the industry in a bad light. No attention is paid to the hundreds of thousands of incident-free moves that take place each year. [footnote omitted] This is somewhat understandable since the media concentrates on the exception rather than the rule in its attempt to alert the public to what it perceives to be potential problems. My industry understands that motivation. In fact, we also firmly believe the public should be encouraged to make certain they are selecting a licensed, reputable mover when they require moving services. My point is, given the existing, somewhat negative climate the moving industry is dealing with, Congress should not react in a manner that will unduly burden the industry by imposing regulatory obstacles that translate into less efficient, more costly service to the public. (Testimony of Joseph M, Harrison, President, AMSA, delivered August 5, 1998.)

Attached to Mr. Harrison's testimony were copies of a small sampling of congratulatory letters AMSA members received from customers expressing their satisfaction with the carrier's service. AMSA noted those letters reflect the high level of service all reputable movers strive to achieve. AMSA also noted no publicity was paid to the customer's laudatory comments.

AMSA comments that in the context of estimates of charges versus actual lawful charges, changes in service requirements usually occur either because the shipper requested the changes or because the mover determined they were necessary to properly service a shipment. AMSA argues that one needs merely to review carrier tariffs to understand the many services carriers must perform that may result in changes in estimates of charges. These include vehicle detention, distance and stair carries, impracticable operations, pickup or delivery on Saturdays, Sundays or Holidays, stop-offs, appliance service, shuttle service, and storage-in-transit. Available industry statistics obtained from the AMSA Continuing Traffic Study for COD shipments transported in 1995 indicate the following:

11.7 percent of COD shipments required either an extra pick-up, an extra delivery, or both;

14.2 percent required long carry service or elevator service;

14.0 percent required stair carries; and

2.8 percent required shuttle service to complete pickup or delivery at inaccessible locations or waiting time to accommodate shippers' schedules when accomplishing delivery.

In the aggregate, 56.8 percent of the COD shipments required these or other additional services either at the shippers' specific request or because such service was required to accomplish delivery.

AMSA also believes it is appropriate to consider the former ICC's analysis of the difficulties associated with estimating. In concluding that 10 percent above estimated charges is the appropriate margin for collection by carriers at delivery, the Commission stated:

> In doing so, we recognize that carriers should be permitted some leeway in estimating charges. Calculating approximately the weights of various items of household goods, arriving at an opinion of the total weight of a shipment, and working out the probable costs of accessorial services at origin and destination, all coupled with the element of human error, should not be the bases for establishing the amount beyond which the carrier should be required to extend credit to the shipper. We therefore conclude that a 10 percent margin should be allowed to the carrier in arriving at its reasoned judgment of total charges, and that such a variation will not be an unreasonable burden to the shipper. *Practices of Motor Common Carriers of Household Goods,* 111 M.C.C. 427, 468 (1970). See also *Practices of Motor Common Carriers of Household Goods,* 132 M.C.C. 599, 609 (1981).

Response to Comments

FMCSA agrees with the AGCT that, at the time of pickup, movers should inquire of site conditions at the destination or other circumstances which may result in the imposition of additional charges at the delivery point. If the mover fails to ask whether there are any long flights of stairs, for example, the mover would relinquish possession and bill the shipper for such additional services rather than demand immediate payment at the time of delivery. We have added appropriate language to the interim final rule to incorporate these comments.

In addition, FMCSA requires in § 375.403(a)(8) in the interim final rule that if a shipper asks for additional services after the goods are in-transit, the mover must inform the shipper additional money must be paid. If a mover believes additional services are necessary to properly service a shipment after goods are in-transit, the mover must inform the shipper what the additional services are before performing those services. The mover must allow the shipper at least one hour to determine whether he/she wants the additional services performed. If the shipper agrees to pay for the additional services, the mover must execute a written attachment to the bill of lading and have the shipper sign the written attachment. This could be accomplished through faxes between the parties.

If the additional services are not acceptable by the shipper and the shipment is in transit, the carrier should deliver for the amount of the original estimate and bill for any remainder after 30 days.

FMCSA believes it is the carrier's responsibility to ask and determine at origin if the conditions at the destination require additional services (*i.e.*, shuttle, long carry, elevator, stairs, and other accessorial services) to effect delivery, and to advise the shipper of the cost of such additional services, as well as method of payment for the services at the time of delivery. If the shipper refuses to pay for additional services at origin and before loading, the carrier has the option to accept or deny the shipment. *See* § 375.403(a)(5) in the interim final rule. If the shipper refuses to pay for additional services at the

destination when the carrier arrives for delivery, then the carrier can attempt to negotiate different payment terms for the cost of additional services; however, the carrier must deliver the shipment.

We disagree with AMSA that when the individual shipper adds or requires additional services en-route or at destination to complete the transportation, and the services failed to appear on the mover's binding estimate, the mover may require full payment at the time of delivery for such added services. We believe the better approach is to allow the binding estimate to be paid on delivery and the additional charges be billed at least 30 days after delivery. By requiring the mover to determine the appropriate accessorial charges before loading the shipment and permitting the carrier to refuse servicing the shipment before loading, the problem of inaccurate estimates because of surprise charges and services at destination will be minimized. If new charges or services do occur, we will require the individual shipper to pay them, but only after a period when the individual shipper has had the opportunity to establish his or her financial relationships in the new community. Requiring an individual shipper to raise hundreds, if not thousands, of dollars at the destination in a very short time can cause a severe hardship.

Section 375.405 How Must I Provide a Non-Binding Estimate?

NACAA supports movers retaining shipping records, including written cost estimates, for a period of one year. The Consumers Union believes the rules should require that carriers give consumers a maximum price with a non-binding estimate. The Union suggests allowing a carrier to self-determine how it provides the maximum price, whether through a simplified tariff schedule handed to the consumer, or by calculating a maximum price above the estimate. It asserts that information about a maximum price enhances the consumer's ability to compare carriers.

AMSA believes consistency requires expanding proposed paragraph (b) to address the circumstances presented when changes occur in the services required to transport a shipment that moves on a non-binding estimate just as is provided by § 375.403(a)(5), (6), and (7) for binding estimate shipments. AMSA recommends adding the following similarly worded paragraphs to paragraph (b):

(7) If it appears, before loading, that an individual shipper has tendered additional household goods or requires additional services not identified in the non-binding estimate, you are not required to honor that estimate. However, before loading the shipment, you must do one of the following three things:

(i) Reaffirm your initial non-binding estimate;

(ii) Negotiate a revised written non-binding estimate listing the additional household goods or services;

(iii) If an agreement cannot be reached as to price and/or service requirements for the additional goods or services, you are not required to service the shipment.

(8) Once you load a shipment, failure to execute a new non-binding estimate signifies you have reaffirmed the original non-binding estimate. You may not collect at delivery more than 110 percent of the amount of the original non-binding estimate, plus the full payment for additional services that were performed en-route or at destination that do not appear on your non-binding estimate.

AMSA believes the same additions should be made to the Your Rights and Responsibilities When You Move publication, under the explanation of Non-Binding Estimates.

AMSA also believes the words ''best estimate'' contained in paragraph (b) should be changed to ''reasonably accurate estimate'' because estimates are just that and accuracy is the goal, not best or worst or some other misnomer.

AMSA believes that the proposed requirement that movers retain records of all non-binding estimates of charges for at least one year from the date the estimate was prepared will be unnecessarily burdensome. As part of the normal course of arranging for a move, shippers are encouraged to obtain multiple estimates before their move. As a result, most movers perform many more estimates than moves. AMSA believes that the intent of paragraph (c) is to ensure that estimates are preserved only for the moves that are actually performed. Thus, AMSA suggests deleting paragraph (c) and adding the 1-year retention requirement paragraph (b)(4), as follows:

(4) You must retain a copy of the non-binding estimate for each move you perform for at least one year from the date you made the estimate as an addendum to the bill of lading.

AMSA also recommends that § 375.403(c) and § 375.407(d) should be amended to incorporate these recommended changes.

AMSA comments that the Consumers Union proposal to require carriers to give consumers a maximum price with a non-binding estimate has been addressed by Congress in 49 U.S.C. 14104(b), which does not mandate binding estimates. According to AMSA, a requirement that carriers furnish maximum prices would be tantamount to a mandated binding estimate and inconsistent with the statute.

Response to Comments

FMCSA believes that whether a mover provides an estimate via telephone or a personal visit, the estimate must be in writing. The carrier should provide an estimate that is reasonably accurate and include all services to be provided. The estimate should also be based on the carrier's applicable tariff. This would not be a new burden, as the carriers are already required to do this. The estimate must clearly note the shipper is only required to pay 110 percent of the non-binding estimate at time of delivery. We have added the following provisions to the interim final rule to clarify how to handle changes to non-binding estimates: Any changes in a non-binding estimate must be mutually agreed to in a written attachment to the bill of lading. If a shipper asks for additional services after the goods are in-transit, the mover must inform the shipper additional money must be paid. If a mover determines additional services are necessary to properly service a shipment after the goods are in-transit, the mover must inform the shipper what the additional services are. The mover must allow the shipper at least one hour to determine whether he/she wants the additional services performed. If the shipper agrees to pay for the additional services, the mover must execute a written attachment to the bill of lading and have the shipper sign the written attachment.

FMCSA agrees with AMSA that a requirement that carriers furnish maximum prices would be tantamount to a mandatory binding estimate. FMCSA also agrees with AMSA that paragraphs (a)(7) and (8) of § 375.405 should parallel § 375.403(a)(5)–(7) and has changed the interim final rule language accordingly.

FMCSA also agrees with AMSA's comment on paragraph (b) and has changed ''best estimate'' to ''reasonably accurate estimate.''

FMCSA also agrees that requiring the retention of all estimates for one year would be burdensome, and has changed §§ 375.403(c), 375.405(d), and 375.407(d) so that a mover need only retain for one year copies of estimates for moves actually performed.

Section 375.407 Under What Circumstances Must I Relinquish Possession of a Collect-on-Delivery Shipment Transported Under a Non-Binding Estimate?

NACAA supports the requirement that all goods be released upon payment of no more than 110 percent of the

estimated charge. It also suggests that language should be added clarifying that the consumer, in accepting delivery, is not waiving any rights to proceed against the mover in a private action to recover transportation charges, or waiving State or local enforcement. It argues that the rules should provide that it is unfair, misleading and a deceptive act or practice to fail to deliver household goods when a mover is offered 110 percent of the written estimate.

The AGCT recommends the rules substantially reduce the amount of money that the consumer must pay to the carrier in order for the carrier to relinquish possession of the shipment. The AGCT strongly supports the deferred payment provision of paragraph (c) and believes the consumer should be permitted to offset any damages from the balance of any remaining charges owed to the carrier.

AMSA recommends that to avoid potential misunderstandings, the wording of paragraph (a) should be changed to comport with the language contained in current § 375.3(d), as follows:

> (a) If an individual shipper pays you at least 110 percent of the estimated charges on a collect-on-delivery shipment on which a non-binding estimate of the approximate costs was furnished, plus the costs for additional services that were performed en-route or at destination which were necessary to complete the transportation, you must relinquish possession of the shipment at the time of delivery. You may specify the form of payment acceptable to you.

Paragraph (c) includes an explanation of how carriers must handle the collection of balances due in excess of the 110 percent amount paid on shipments that moved under non-binding estimates. Although it believes that the example provided in the NPRM is clear, AMSA would like language added to avoid any misunderstandings concerning the assessment of authorized service charges on delinquent payments as would be authorized by proposed § 375.807. AMSA recommends adding the following sentence at the conclusion of paragraph (c) of § 375.407:

> If the $400 is not paid within the 30-day period following issuance of your freight or expense bill, you must assess a service charge of one percent of the freight bill, subject to a $20 minimum charge for each subsequent 30-day period or fraction thereof.

AMSA also believes it is necessary to consider the language contained in proposed § 375.801(b) *What types of charges apply to subpart H?*, and the discussion in Subpart H of the Your Rights and Responsibilities publication as they deal with the extension of credit to COD shippers.

AMSA believes the existing credit regulations make it clear that they do not apply to COD non-binding estimate shipments that move under the 110 percent rule. It refers to 49 CFR 377.215(a), and its reference to 49 CFR 375.3(d). This language was lifted in its entirety from the former ICC credit regulations, 49 CFR 1320.8(a), which contained the same inapplicability reference, *i.e.*, 49 CFR 1056.3(d). Under both versions of these regulations, COD shippers must pay not less than 110 percent of the estimated charges on a non-binding estimate shipment at the time of delivery. If a balance remains beyond the 110 percent amount paid, the carrier may request payment of that amount not sooner than 30 days after the date of delivery. There are no other credit arrangements available for the COD customer. The extension of credit regulations contained in 49 CFR 377.215 and 49 CFR 1320.8 apply to shippers, other than COD shippers, to whom carriers extend credit. For example, a national account shipper may arrange for the transportation of its employees' goods under a carrier's tariff rather than under a contract. Because of the repetitive nature of that shipper's business, the carrier may elect to extend credit to the shipper for the payment of transportation charges, in which case the provisions of § 377.215 would apply.

AMSA believes that in the drafting of proposed § 375.801 and the narrative contained in Subpart H of Your Rights and Responsibilities, we incorrectly assumed that the existing credit regulations apply to COD shippers whose goods move under the 110 percent rule. AMSA believes the language and instructions in proposed § 375.801 are bound to create confusion among individual shippers who may assume that their mover will defer its request for payment and extend credit 30 days or more beyond the date of delivery. AMSA recommends rewriting § 375.801 and subpart H to avoid misunderstandings between individual shippers and movers. It believes the regulations and shipper guidance must make it perfectly clear carriers will expect payment of not more than 110 percent of the estimated charges on a COD non-binding estimate shipment at the time of delivery. It also believes the mover rule and shipper guidance must make it perfectly clear the shipper will be billed for any balance due not sooner than 30 days after delivery.

Response to Comments

We do not agree with the AGCT proposal to reduce the amount of payment required at delivery to substantially less than 110 percent of the estimated charges. We believe the 110 percent requirement strikes a fair balance between the carrier's right to receive prompt payment for its services and the shipper's right to pay an amount reasonably close to the estimated charges at the time of delivery. Allowing shippers to offset damages from any remaining charges owed the carrier would violate 49 U.S.C. 13702, which requires household goods carriers to charge and receive the rate specified in their tariffs. In response to NACAA, the right to take claims to court is established by law and does not need to be specifically mentioned in these regulations.

FMCSA agrees with the AMSA comments. We have modified the section to state that the mover may expect payment of no more than 110 percent of the estimated charges on a COD non-binding estimate shipment at the time of delivery and that the shipper will be billed for any balance due not sooner than 30 days after delivery. We have also modified the last sentence in paragraph (a) to state the mover must accept the form of payment agreed upon at time of estimate, including credit card, and relinquish the shipment.

Section 375.409 May Household Goods Brokers Provide Estimates?

We have added new § 375.409 to eliminate confusion regarding the authority of household goods brokers to issue estimates of transportation charges. Twenty-five years ago, the Interstate Commerce Commission concluded that brokers were prohibited from providing estimates because the duty to comply with the household goods regulations rests with the carrier, and shippers aggrieved by an act or omission of a broker would be unprotected by the regulations. In *Entry Control of Brokers,* 126 M.C.C. 476, 520 (1977), the Commission stated:

> For example, if a broker provides a c.o.d. shipper with an estimate it has made, on which the shipper relies, the shipper would be deprived of the protection of 49 CFR 1056.8(b) of the household goods regulations, which provides that where the transportation charges exceed a carrier-made estimate by more than 10 percent, the shipper must pay only 110 percent of the charges upon delivery and is given a period of 15 days following delivery to make payment in full. Since this protection applies only to carrier-made estimates, a c.o.d. shipper who relies upon an incorrect estimate of a broker will have to pay the carrier's entire freight charges

upon delivery, regardless of the extent the actual charges might exceed the broker's estimate.

In *Exec-Van Systems, Inc., Broker Application,* 128 M.C.C. 669, 678 (1978), the ICC noted that a broker's proposal to make estimates ''would appear to be inconsistent with our established regulations, since 49 CFR 1056.8(a) places the obligation for making estimates solely upon the carrier. Applicant would, therefore, be advised not to interfere with the carrier in the performance of his obligations in making estimates, as this responsibility is intended by our regulations to be performed solely by the carrier or his agent.''

Along these same lines, the Commission, in *Ward Moving & Storage Co., Inc., Household Goods Broker Application,* 132 M.C.C. 589, 596 (1981), stated that ''49 CFR 1045.7(b) * * * implicitly forbids the broker offering services or making contractual obligations which only a carrier may offer. It must be clear to the public that the broker is only an arranger of transportation, acting only in an advisory nature and offering services ancillary to the physical transportation.'' The rule cited in this quotation, now codified in 49 CFR 371.7(b), prohibits brokers from misrepresenting themselves, directly or indirectly, as carriers.

Although brokers may not enter into agency agreements with household goods carriers because they are required to exercise discretion in allocating traffic among carriers, we believe it would be permissible for a carrier to enter into a more limited type of agreement authorizing the broker to provide estimates on behalf of the carrier. Under such an agreement, the carrier would have to adopt the broker's estimate as a carrier-issued estimate and incorporate it into the order for service and bill of lading for purposes of compliance with part 375, particularly the 110 percent rule. We believe that under these circumstances, the individual shipper would not be deprived of the protections provided in part 375 because the carrier would still be held accountable for complying with this part. However, a household goods broker may not issue an estimate without entering into such an agreement with a carrier because otherwise the requirements of part 375 would not apply to the broker-issued estimate.

Section 375.501 Must I Write Up an Order for Service?

NACAA supports requiring all prices, terms and services to be presented in written documents signed by the mover and delivered to the shipper before the household goods are packed and loaded; and that these documents must be retained for a period of one year. NACAA also urges us to prohibit movers from requiring shippers to sign blank or incomplete documents, such as estimates, orders for service, or bills of lading.

The AGCT suggests the rules should allow a shipper to proceed against the mover if the mover fails to deliver the shipment in accordance with the time requirements in the contract. It believes that the shipper should not have to pay an additional fee to the mover to ensure pickup and delivery of the goods on the specific dates or within a specific period. The AGCT argues that we should grant the shipper a three-day grace period allowing the shipper to rescind the order for service without any penalty, provided the ordered services are scheduled more than three days after the order is written and that the mover should provide shippers with the items listed in § 375.503(b)(2), (4), (9), (10), and (11).

The AGCT argues that paragraph (a)(5) should allow the shipper to deduct any penalties or per diem amount due to the shipper from any amounts that the shipper owes to the carrier. Alternatively, the mover should be required to make payment to the shipper at the time of delivery in the manner specified by the shipper to level the playing field and allow both parties to collect amounts due them at the same time. Paragraph (a)(6) should require the carrier to affirmatively note the shipper's denial of any special or accessorial services that might be reasonably expected.

In response to the AGCT comments, AMSA argues that shippers do not ordinarily incur additional costs for delivery date commitments unless equipment availability is limited and a specific request requires special operations. With respect to the shipper remedies suggested by the AGCT, AMSA states that: (1) Shippers routinely cancel orders for service for a variety of personal reasons and incur no penalty for doing so; (2) as a general rule, the information listed in § 375.503(b)(2), (4), (9), (10), and (11) is routinely furnished when an order for service is executed; (3) any amount that may be due a shipper as a result of loss, damage or inconvenience must be presented and processed pursuant to the regulations at 49 CFR part 370, or the carrier's lawful tariffs; and (4) if an accessorial service is requested or required, presumably performance of that service is necessary to safely transport a shipment. AMSA questions the advisability of a rule that would permit shippers to refuse services that ''might be reasonably expected.''

Response to Comments

Although carriers may routinely permit shippers to cancel orders for service without penalty and furnish references to several bill of lading provisions when an order for service is executed, the comments from the AGCT indicate that not all carriers adopt such practices. We believe that mandating a 3-day grace period and reference to the bill of lading provisions provides additional consumer protection (*See* new paragraphs (e) and (a)(6) through (a)(10) in the interim final rule).

We adopt the AGCT's comment about paragraph (a)(6) (which is codified at (a)(11) in the final rule) and agree with AMSA that a required accessorial service may be necessary to safely transport a shipment if the mover could reasonably expect it. We require, in new paragraph (b) of the interim final rule, that if an accessorial service is necessary to safely transport a shipment, the mover must refuse to accept the shipment. As a safety agency, we will not allow the mover to provide unsafe transportation even when requested by an individual shipper.

In response to comments by NACAA, in new paragraph (d) in the interim final rule we are prohibiting movers from requiring shippers to sign blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move.

Must I Write Up an Inventory?

NACAA believes the rules should mandate shipment inventories that itemize every box and item consigned to protect shippers and movers for all weight-rated and hour-rated moves, unless the shipper signs a clear and conspicuous waiver of the inventory. NACAA recommends that an inventory form also be required.

AMSA concurs in the NACAA recommendation stating that detailed inventories of the goods tendered for transportation serve to protect the interests of shippers and carriers. AMSA recommends inclusion of the following provision:

Proposed § 375.502 Must I Write Up an Inventory?

(a) You must prepare a written, itemized inventory for each shipment of household goods you transport for an individual shipper. The inventory must identify every carton and every uncartoned item that is included in the shipment. When you prepare the inventory, an identification number that corresponds to the inventory must be placed

on each article that is included in the shipment.

(b) You must prepare the inventory before the shipment is loaded in the vehicle for transportation in a manner that provides the individual shipper with the opportunity to observe and verify the accuracy of the inventory if he or she so requests.

(c) You must furnish a complete copy of the inventory to the individual shipper before beginning to load the shipment. A copy of the inventory, signed by both you and the shipper, must be provided to the shipper, together with a copy of the bill of lading, before you begin to load the shipment.

(d) Upon delivery, you must provide the shipper with the opportunity to observe and verify that the same articles are being delivered and the condition of those articles. You must also provide the shipper the opportunity to note, in writing, any missing articles and the condition of any damaged or destroyed articles. In addition, you must also provide the shipper with a copy of all such notations.

(e) You must retain inventory forms for at least one year from the date you created the form.

AMSA noted its recommended addition would also entail a change in that portion of the Your Rights and Responsibilities publication which deals with this issue (Subpart E—Pick Up of My Shipment of Household Goods).

AMSA therefore recommends adopting the following language in lieu of that proposed:

Should my mover write up an inventory of the shipment?

Yes. Your mover should prepare an inventory of your shipment before loading. The inventory should be a detailed listing of the cartons and uncartoned articles included in your shipment noting any damage or unusual wear to any articles. The purpose of the inventory is to make a list of the articles included in your shipment and a record of the condition of each article.

After completing the inventory both you and the driver should sign each page. Before you sign it, make sure that the inventory lists every item in the shipment and that the entries regarding the condition of each article are accurate. You have the right to note any disagreement in the form. When your mover delivers your shipment, your ability to prove that any articles were lost or damaged may depend on the accuracy of the inventory. Your mover should give you a copy of the inventory. Be sure to keep your copy in a safe place; it is an important part of your shipment records. Your mover will keep the original. If your mover's driver completed the inventory, the mover will attach the complete inventory to the bill of lading as an addendum.

Response to Comments

FMCSA agrees with NACAA and AMSA. We have added the proposed requirements in § 375.503 of the interim final rule and included that a mover must write an inventory of all items involved in a move, assigning each item an identification number. The mover must prepare an inventory before it allows its agents or drivers to load the shipment. The mover must provide a complete copy to the shipper before loading the shipment. Upon delivery, the mover must provide the shipper with an opportunity to verify the same articles are being delivered and the condition of those articles. The mover must provide the shipper the opportunity to note any missing articles and the condition of any damaged or destroyed articles. Finally, the mover must provide the shipper with a copy of all such notations.

Section 375.503 Must I Write Up a Bill of Lading?

NACAA supports the requirement that all prices, terms, and services be presented in written documents signed by the mover and delivered to the shipper before the household goods are packed and loaded and that the allowable form of payment be specified in writing. NACAA supports requiring movers to retain shipping records, including bills of lading, for a period of one year.

The 25AG recommend that the rules should require clear and conspicuous disclosure on all documents, including estimates and bills of lading, of what form of payment will be required upon delivery of household goods, if different from the form of payment received at the outset of the transaction. If a carrier accepts a credit card as only a guarantee, the 25AG assert, the carrier should disclose that the credit card is not the form of payment that will be accepted upon delivery and also must disclose the form acceptable at delivery.

Response to Comments

FMCSA has modified this section (renumbered as § 375.505 in the interim final rule) based on the comments. New paragraph (b)(4) requires movers to specify on the bill of lading the form of payment acceptable at delivery, which must be the same form of payment entered on the estimate and order for service. New paragraph (b)(14) specifies that the attachments to the bill of lading are an integral part of the bill of lading contract. Also, proposed paragraph (b)(4) has been deleted as unnecessary.

Section 375.505 Must I Determine the Weight of a Shipment?

The 25AG strongly agree with the proposed opposition to the use of non-certified on-board trailer scales.

Air-Weigh states that its scales convert truck and trailer air-spring air pressure to accurate weight display. Its scale determines how much weight per pound of air pressure the suspension is supporting by comparing empty and loaded vehicle weights with air pressure required to support the weight. It states that once calibrated, the scale displays the on-the-ground weight of each axle group to within 200 to 300 pounds of an accurate platform scale. Comparative statistical research is being conducted, which Air Weigh intends to forward to the FMCSA when it becomes available.

The Cat Scale Company believes that on-board weighing is not in the best interest of the shipper when addressing the issue of shipper protection. It stated that ''the allowance of on-board weighing would eliminate the customer being given a certified, 'legal for trade' weight of their goods as performed by a third party. The owner of the on-board scale would actually be the party transporting the goods and therefore have an interest in the weight of those goods.''

Cat Scale states further that full length certified scales are governed by regulations established by the National Institute of Standards and Technology (NIST) under the U.S. Department of Commerce. Cat states these regulations are published in the Handbook 44 publication. Most States have adopted Handbook 44 as the State's governing regulations or have regulations in force that are based, in large part, on Handbook 44. Cat asserts that each State very aggressively checks certified scales to insure their compliance with Handbook 44 and in turn seals the scale to show that the scale may be used to give a ''legal for trade'' weight.

Cat also states that significant ongoing maintenance of a certified scale is necessary in order to keep it 100 percent accurate and able to meet Handbook 44 requirements. For example, Cat uses a 200,000 pound capacity scale, having 10,000 graduations of 20 pounds each found in Table 6 Handbook 44 Section 2.20, Scales, pages 2–23. In order for Cat to maintain proper calibration of that scale, when Cat applies 25,000 pounds of test weights to the scale, the maximum deviation tolerance allowed by NIST would be three graduations or 60 pounds. When Cat initially placed into service the scale, the maximum allowable deviation was one half that or 30 pounds. It is Cat's understanding that the deviation of an on-board scale (using Air-Weigh's model 5600 as an example) is 200–300 pounds per axle group. That equates to as much as 900 pounds of potential error per typical load. If the average household goods load weighs 6,023 pounds, Cat believes 900 pounds represents a significant percentage of

that total and could translate into significant unnecessary costs to the shipper.

Cat re-calibrates its scale every 90 days or four times per year. Cat states that typically a State will check calibration and reseal the scale once per year. However, Cat's scale is subject to a random check by the State at any time.

Important to the certified weighing process, Cat believes, is the necessity of the scale to be constructed on a level plane with a 10-foot level approach at each end of the scale. If the scale is not absolutely level, the potential for error exists and is multiplied the more out of level the condition is. Cat asserts it is very difficult to achieve a level surface on many streets or driveways.

Cat states the remote sensor processor on an on-board scale converts the pressure readings at the axle group's air spring to a number and updates the scale every 4.8 seconds. By contrast, on its scale unit, the scale indicator reads data from each load cell 16 times per second, or 76 times more often.

In addition, Cat states Air Weigh's on-board scale systems are not approved by the National Type Evaluation Program of the NIST and are totally unregulated by any standards organization. Cat states it is concerned with shipper protection and customer satisfaction and guarantees its weights to be accurate. If a driver weighs legal on its scale and then receives an overweight citation, Cat states it will either reimburse the driver or trucking company for the amount of the fine, or it will appear in court with the driver as an expert witness. Cat also keeps copies of all of its scale tickets for seven years as required by law. This gives the shipper the opportunity to request a copy of the original ticket if he/she suspects fraud. In the case of its weights being used for billing purposes, Cat's guarantee still applies to make sure that drivers get paid for what they've hauled—no more, no less.

Cat does not think it is in the best interest of the shipper for FMCSA to approve on-board scales for the moving and storage industry because of the potential for error and the lack of a governing body to check the accuracy of the scale system. These factors could equate to shippers incurring additional unnecessary expenses in connection with their household moves.

Weighing Consultants, Inc., (WCI) believes that on-board weighing systems for trucks and trailers are available that meet the tolerance requirements for commercial application, which are 0.1 percent of the applied (net) load. WCI attached to its comments the National Type Evaluation Program of the NIST Certificate of Conformance 99–091 issued to NORAC Systems International for an on-board weighing system. WCI stated the request by Air-Weigh for FMCSA to accept Air-Weigh's technology was based on data accurate at best to 1.0 percent of applied load. WCI recommends rejecting it based on product already available that meets commercial requirements.

A WCI representative made a household move and the net weight of the household goods was 9,540 pounds. WCI stated that this represented the contents of a four-bedroom house and was above the average net weight of a household move. On a certified platform scale the tolerance allowed on this 9,540 pounds would be plus or minus 20 pounds. (WCI refers to Table 6 Handbook 44 Class IIIL scale). The 200–300 pound weight differential stated by Air-Weigh is 10 to 15 times greater. WCI stated, ''If in fact the differential of the Air-Weigh system is 200–300 pounds per axle group, the differential from a certified scale would be 20 to 30 times greater than the presently allowable tolerance. Handbook 44 also states the allowable tolerance for Class IIII scales, allowed for use by law enforcement only, at a maximum of 5 divisions which would be 100 pounds on an axle scale. The Air-Weigh product accuracy is stated as 2 to 3 times the generous Class IIII tolerance.''

WCI believes FMCSA should continue the policy of requiring all weights to be determined on scales certified by a State's Weights and Measures Department. This policy, it believes, will continue to ensure equity in the marketplace and leave the statutory authority for weights and measures with the states. WCI asserts that the National Conference on Weights and Measures and NIST Office of Weights and Measures have always encouraged the development of new technology and evaluate many new weighing device types each year under the National Type Evaluation Program. WCI believes Air-Weigh should be encouraged to submit its product to the National Type Evaluation Program for evaluation as its competitor NORAC System International did.

The Sisson Scale and Equipment Company, Inc., supports the current regulation requiring the use of certified scales for independent shippers by the moving and storage industry.

The Deskin Scale Company, Inc. states that the regulatory guide for its industry has been Handbook 44 since 1949. The NIST has a statutory responsibility for ''cooperation with States in securing uniformity of weights and measures laws and methods of inspection,'' Deskins states.

The only on-board weighing systems that Deskin was aware of that are actually accepted for commercial use are fork lift scales and lifting devices for trash haulers, which use load cells connected to the forks for measuring and do not in any way derive weight information from the pressure of hydraulics or air. Deskin stated its experience has been that ''those who do rely on hydraulics or air pressure do not repeat to any degree of accuracy which is demanded by H–44 and therefore in the interest of the shipper should not be considered for use.'' It is Deskin's opinion that the shipper's best interest will only be served by use of those devices that meet the requirements of Handbook 44.

The Action Scale & Weighing Systems, Inc., states Toledo, Ohio is a ''hub'' for truck traffic coming from the North, South, East, and West, including Michigan ''train trucks'' and grain vehicles from Canada. It is Action's opinion that ''on-board weighing would not be in the best interest of the public, as the fox would virtually be guarding the hen house. The only way to insure accurate weights is on a static scale operated by a third party.''

The California, Colorado, Idaho, Michigan, New Hampshire, Oregon, and Pennsylvania Departments of Agriculture strongly support the use of certified scales for all aspects of commerce done by weight. They support the retention of the regulation requiring the moving and storage industry to use certified scales when conducting commerce where cost is determined by weight. The Pennsylvania Department of Agriculture believes the use of on-board non-certified scales will be an invitation for unscrupulous operators to defraud shippers, based on its experience discovering and prosecuting moving and storage companies for falsifying weighmaster certificates by ''bumping.'' ''Bumping'' is any method where additional charges to the customer are claimed by the moving and storage company by adding additional weight to the load or by adding weight to the scale and then weighing the load.

The State of Idaho Department of Agriculture, Bureau of Weights & Measures, does not dictate what type of scales the moving and storage industry uses, as long as they are commercial type scales, and are therefore capable of being certified. It believes there are a myriad of devices made today that fall short of the requirements for commercial use, but are manufactured for estimation, internal accounting, sorting, or other non-commercial applications. The Idaho Department of

Agriculture states there is at least one on-board weighing system for semi-trailer use (Weigh-Tronix, model STS–50, 50,000 times 20 pounds) that has a certificate of compliance on the market today.

The Idaho Department of Agriculture is concerned that non-commercial type on-board weighing systems are being used. It is also concerned that manufacturers are using this rulemaking to try to circumvent the National Type Evaluation Program of the NIST requirements being met by other scale manufacturers. The Idaho Department of Agriculture encourages Air-Weigh and Hi-Tech Scale to work to get their products approved through the National Type Evaluation Program system.

The Idaho Department of Agriculture notes that the National Conference on Weights and Measures along with NIST advisers have determined the requirements for commercial scales. The tolerances and performance requirements have been set to prevent either the buyer or seller from being damaged in transactions. These standards are recognized not only in every jurisdiction in this country but throughout the world. The Idaho Department of Agriculture urges FMCSA to ensure any rule change continues to require shipping and storage charges be determined on a commercial scale—whatever form that scale may be, a vehicle scale or on-board scale system.

The Michigan Department of Agriculture would not object to the non-commercial use of non-certified scales, provided they are clearly marked ''Not Legal For Trade'' and could thus be used for estimates only. Otherwise, the Michigan Department of Agriculture strongly supports maintaining the ''certified scale'' requirement for commercial sales.

The Handbook 44 serves the California Department of Agriculture as a uniform model governing performance, use, and testing of commercial weighing and measuring devices. The California Department of Agriculture urges FMCSA to retain a policy of requiring weights upon which charges are based to be determined on scales that have been tested and sealed by State weights and measures officials applying the requirements of Handbook 44. Companies who wish to offer weighing and measuring devices for use in determining charges for goods or services, should ensure that they comply with the uniform standards contained in Handbook 44, and should continue to be required by FMCSA to submit such devices to testing and verification by weights and measures officials.

The Oregon Department of Agriculture requires that: (1) Any weighing or measuring device must be licensed, tested and approved by the Oregon Department of Agriculture Measurement Standards Division when the device is used commercially for the measurement of vehicles; and (2) any commercial weighing or measuring instrument or device must be issued a Certificate of Conformance traceable to NIST.

The New Hampshire Department of Agriculture believes that on-board scales are not in the best interest of shippers and competitors. The potential error of 200–300 pounds per axle group is unacceptable, as well as its ''incorrect'' status under Handbook 44.

The Colorado Department of Agriculture does not have a problem with on-board weighing. It believes any rules that are adopted must take into account the individual State requirements for commercial measuring devices. All states currently have requirements for commercial measuring devices that are rooted in years of experience. These requirements manifest themselves as Handbook 44.

The Colorado Department of Agriculture states that if FMCSA elects to allow the use of on-board weighing systems, it must (1) ensure that the system is as accurate as the certified scales that are currently used for shipping; and (2) ensure the on-board weighing system meets the same standards, with regard to specifications, as other commercial devices, *i.e.,* that it meets the criteria of Handbook 44. The Colorado Department of Agriculture believes that meeting Handbook 44 requirements will ensure that both the shipper and carrier are treated equally, and scale manufacturers can compete equitably.

AMSA urges us to acknowledge the advantages of advances in technology that have become available throughout the moving industry for the weighing of shipments. It asserts that the use of on-board scales promotes shipper satisfaction by producing immediate, on-site shipment weights without the need to follow a tractor-trailer to an available scale. It proposed adding new § 375.523, which it believes will protect shippers' rights by requiring that shippers observe the weighing procedure, and allow them to reject the results of the on-board weighing procedure and elect to have the shipment weighed on a traditional scale. The recommended provision would read as follows:

If a trailer is so equipped, at the shipper's option, shipment weight may be determined with an on-board trailer scale if the shipper observes the weighing of the trailer both before and after the loading of the shipment. If the shipper accepts the final weight determination, you must obtain a signed statement to that effect and retain it as part of the shipment file. If the shipper rejects the on-board scale weight determination, the shipment must be weighed on a certified motor vehicle scale in accordance with the requirements of § 375.509.

Response to Comments

FMCSA opposes the use of non-certified on-board trailer scales. The comments show they are not in the best interest of shippers. On-board weighing has the potential for manipulation of actual weight. While we acknowledge there may be advantages to using new technology for the weighing of shipments, AMSA and its device manufacturer have not produced evidence that its system is compliant with Handbook 44.

FMCSA believes the issue of on-board trailer scales should be discussed in a separate and specific rulemaking. We believe the moving industry must work with the NIST and the States before asking us to allow their use. The NIST is the government agency responsible for promoting uniformity in United States weights and measures laws, regulations, and standards. The NIST regulations achieve equity between buyers and sellers in the marketplace and enhance shipper confidence in the marketplace. FMCSA does not have this expertise and will defer to the NIST for its opinions in this matter. The NIST does not want FMCSA approving a device that may set non-uniform weight regulations and may achieve inequality between buyers and sellers in the marketplace and degrade shipper confidence in the marketplace.

The moving industry may also want the NIST to research the issue as allowed by 15 CFR 200.101 *Measurement research.* The NIST provides basic research and development activities aimed at meeting broad general needs. The NIST may also undertake investigations or developments to meet specialized physical measurement problems of an industrial group using funds supplied by the requesting organization.

AMSA has not indicated how it will safeguard shippers' rights other than requiring that shippers observe the on-board weighing procedure and permitting them to reject the results of this procedure. The comments by the weighing industry and State regulatory agencies suggest that AMSA's methods and device may provide false weights.

AMSA does not specify how often the device would be calibrated, who would ensure calibration accuracy, and what happens if the calibration was done in another State and the shipper wishes to contest the weight in another State.

FMCSA has added a requirement in the interim final rule that the mover must provide a written explanation of volume to weight conversions, when the mover provides an estimate by volume and converts the volume to weight. Also, this section has been renumbered as § 375.507.

Section 375.507 What Is a Certified Scale?

The regulatory text of proposed § 375.507, which defined ''certified scale,'' has been moved to § 375.103, where it is more appropriate.

Section 375.509 How Must I Determine the Weight of a Shipment?

The 25AG believe the proposed rule fails to provide the shipper disclosures necessary to assure that carriers do not double bill on so-called split loads. They allege shippers are presented with recently issued official weight tickets from a nearby certified public scale at the time of delivery; however, the shipper is unaware that a partial load bound for another destination remains onboard, and that it formed a portion of the total load reflected on the ticket. They believe the rules should require that each shipper's shipment must be weighed separately.

AMSA states that a requirement that each shipper's shipment be weighed separately would result in operating gridlock. To comply with such a rule, carriers would be required to unload one shipment that is on a van to accommodate a second shipment solely for weighing purposes. The impracticalities of coordinating such operations should be obvious.

Response to Comments

FMCSA is not adopting the 25AG's proposal. FMCSA believes it is economically costly and time consuming to weigh each shipment separately as suggested by the 25AG. The rules as proposed are adequate. The weight must be determined by weighing the shipment at origin or back weighing the shipment. The shipper is further protected by the regulations that allow a shipper to witness the weighing and the right to request a re-weigh. Final transportation charges are based on actual weight in accordance with applicable tariff provisions.

Section 375.511 May I Use an Alternative Method for Shipments Weighing 454 Kilograms or Less?

AMSA states this section adopts the provisions of the current regulations, which provide that shipments weighing 1,000 pounds or less may be weighed on a certified platform or warehouse scale in lieu of a scale designed for weighing motor vehicles. AMSA understands the agency's concerns that an increase in the minimum shipment weight threshold might allow movers to charge a minimum rate at the higher weight threshold when the shipment actually weighs less and that defining a small shipment as one weighing 3,000 pounds or less could be perceived as giving our blessing to an increase in the minimum rate threshold in household goods carriers' tariffs. However, AMSA does not agree that these concerns will actually occur if the 1,000 pound small shipment weight is increased. AMSA argues that tariff charges, historically, have not been linked to the minimum weight determination threshold. For more than 40 years, AMSA states, the tariff minimum weight remained at 500 pounds (even though the minimum scale weight was 1,000 pounds) as personal effects shipments continued to gradually increase in weight. As a result, in June 1984, the tariff minimum was increased to 1,000 pounds, not because the increase corresponded to the threshold, but because of increases in the fixed administrative costs associated with the servicing of small shipments.

As a matter of practice, the moving industry already considers shipments weighing less than 3,000 pounds to be classified as small shipments and has adjusted its principal tariff series accordingly. A small shipment surcharge applicable to shipments weighing less that 3,000 pounds was initiated in May 1989 to offset the administrative costs associated with handling these shipments. This surcharge remained in effect until May 1996 when it was incorporated into the line-haul tariff rates. Therefore, an increase in the minimum scale weight would not impact existing tariff provisions since they have already been adjusted to reflect the costs associated with the handling of small shipments.

With this history in mind, and because the minimum scale weight and the minimum tariff rate have been unrelated to one another, AMSA does not agree that an increase in the minimum scale weight to 3,000 pounds will have a causal effect on tariff rates. Instead, AMSA believes that increasing the weight limit to 3,000 pounds would promote greater efficiency in the weighing of shipments on certified warehouse and platform scales which will, in turn, help reduce tractor-trailer traffic and congestion in areas where larger motor vehicle scales are operated.

AMSA notes that the proposed and current regulations require that if shipment charges are weight-based, the carrier must obtain a gross and tare weight for each shipment. Separate weight tickets identifying each weighing of a shipment are required to be provided to the shipper. The certificates list the scale name, location, weighing date, identification of tare, gross or net weights, vehicle identifications, and the name of the shipper. Clearly, this is sufficient to ensure that carriers obtain accurate shipment weights.

Response to Comments

We agree with the AMSA comments on this section and have modified the interim final rule to raise the weight threshold from 454 kilograms (1,000 pounds) to 3,000 pounds.

Section 375.513 Must I Give the Individual Shipper an Opportunity to Observe the Weighing?

NACAA supports requiring movers to afford shippers an opportunity to observe weighing of their shipments.

Response to Comments

The proposed observation requirement is adopted without change.

Section 375.515 May an Individual Shipper Waive His/Her Right To Observe Each Weighing?

AMSA argues this provision should be modified. AMSA recommends the provision should indicate that the shipper's decision not to observe weighings constitutes a waiver of that right. It argues that proposed § 375.513 clearly requires that carriers ''* * * must give the person who will observe the weighings a reasonable opportunity to be present to observe the weighings.'' Assuming a shipper elects not to observe the weighings, to be consistent, § 375.515 should be amended to indicate that right was waived. 49 U.S.C. 14104(c) requires that shipper waiver of the right to observe re-weighings must be accomplished in writing. Therefore, to accommodate both situations, AMSA recommends revising the section to read as follows:

> If an individual shipper elects not to observe a weighing, the shipper is presumed to have waived that right. If an individual shipper elects not to observe a re-weighing, the shipper shall waive that right in writing. This does not affect any other rights of the individual shipper under this part or otherwise.

Response to Comments

FMCSA agrees with AMSA and has added language to the interim final rule that a shipper's waiver of the right to observe a re-weighing must be in writing. We allow the shipper to send the writing via fax, e-mail, or any other electronic means.

Section 375.521 What Must I Do if an Individual Shipper Wants To Know the Actual Weight or Charges for a Shipment Before I Tender Delivery?

NACAA supports requiring movers to comply with the shipper's requests for notice of the shipment weight and charges before delivery.

Response to Comments

The proposed notification requirement is adopted without change.

Section 375.601 Must I Transport the Shipment in a Timely Manner?

NACAA supports requiring movers to transport goods in a timely manner.

Response to Comments

The proposed reasonable dispatch requirement is adopted without change.

Section 375.605 How Must I Notify an Individual Shipper of Any Service Delays?

NACAA supports requiring movers to retain notices relating to service delays for a period of one year and supports requiring movers to notify shippers of service delays.

AMSA believes there is a basic problem with the language employed in this section. The section states that a carrier must notify a shipper of service delays. AMSA believes the inconsistency lies in the fact that if a carrier is unable to pick up a shipment on the agreed upon date(s), it must notify the shipper of the delay and amend the order for service. It makes little sense to AMSA to amend an order for service for delay at origin. The practical result of this section, as written, is that carriers will never be responsible for delays at origin because the order for service will reflect that the shipment was actually loaded on the agreed upon pick-up date. Appropriate changes should be made.

In addition, AMSA notes that paragraph (b)(6) requires the mover, in the instance of delay notification, to furnish the shipper with a ''true copy'' of the notice by first class mail or in person. AMSA believes this provision, while carried over from the existing regulations, will be no more feasible to perform under the proposed regulations than it is under the existing regulations. During the course of a move, while both the shipment and the shipper are in transit, there is no practical benefit in mailing a copy of the delay notification to the shipper. Since the shipper, who has already received notice of a delay by telephone, telegram, or in person is not at his old or his future address, no purpose is served by mailing a duplicate notice. AMSA submits that the solution lies in simply adding the words ''if the shipper requests a copy of the notice.'' Such a revision would ensure that ''interested shippers'' who desire a copy of the notice for their records or to support a claim for delay or inconvenience will be furnished a copy, while duplicate copies would not be automatically forwarded to other shippers who have already received their shipments and have no need for the notice.

Response to Comments

FMCSA agrees with AMSA's comments on this section and has made appropriate changes in the interim final rule language.

Section 375.607 What Must I Do if I Am Able To Tender a Shipment for Final Delivery More Than 24 Hours Before a Specified Date or Period of Time?

The AGCT comments that carriers should be required to deliver the shipment in accordance with the delivery dates or periods specified in the contract. Paragraph (c) should preclude a carrier from limiting its liability for storage-in-transit to the delivery period. It is inequitable to allow a carrier to avoid any liability for delays in shipment while providing no similar mechanism to excuse a shipper's delay, even if the delay is caused by circumstances beyond the shipper's control. It recommends we should permit movers only limit their liability to the last day of the delivery period specified in the bill of lading.

AMSA comments on this AGCT proposal that paragraph (c) preclude movers from limiting their ''liability'' for storage-in-transit. In addition, it is suggested that this subsection be modified to only permit the mover to limit its ''liability'' to the last day of the period specified in the bill of lading. The proposed regulation speaks in terms of ''responsibility'' and not ''liability.'' The rule is apparently intended to authorize movers, at their option, to not assess storage charges, or, alternatively, to assess charges beyond the agreed date. In support of the AGCT's position, it argues that it is ''inequitable'' to allow carriers to avoid liability for delays with no similar mechanism to excuse shipper delays. AMSA believes that movers routinely honor delay and/or inconvenience claims in accordance with their tariff provisions that are not intended to avoid carrier liability.

Response to Comments

FMCSA agrees with the comments of this section.

Section 375.609 What Must I Do for Shippers Who Store Household Goods in Transit?

NACAA supports requiring movers to retain notices issued under this section for a period of one year.

The AGCT comments that the nine-month limitation on a shipper's right to file a claim against the carrier for damage or loss of goods in paragraph (b)(2) runs counter to a shipper's right to bring an action within the State of Connecticut's statutory period. It believes the rules should acknowledge the shipper's right to rely on a State-established statutory period for bringing an action against the carrier. Any other action is not shipper protection in its opinion. It also recommends that we modify paragraphs (a) and (b) to impose liability on the carrier until ten days after the carrier actually gave notice to the shipper that the period of storage-in-transit will expire and the shipment will be governed by rules and charges of the warehouseman. It believes the ten-day period is consistent with the provisions in paragraph (c).

AMSA asserts that paragraph (d) will require that notifications to shippers regarding the expiration of storage-in-transit (SIT) be accomplished by certified mail, return receipt requested. This provision should be expanded to include notification by facsimile transmission and overnight courier. Such a change will permit movers to take advantage of faster methods of transmitting the required notifications. This is particularly important for SIT periods of less than 10 days when only 1-day notice is required as contemplated by § 375.609(e).

In connection with paragraph (b)(2), AMSA believes that the AGCT's suggestion conflicts with the nine-month statutory period provided for the filing of claims for loss or damage in 49 U.S.C. 14706(e)(1).

In response to the AGCT proposal to retain carrier liability until 10 days after the carrier actually gives notice, AMSA does not believe that a notice related to the expiration of storage-in-transit should be allowed to unduly extend the SIT period. AMSA states shippers are advised at the time their goods are placed in storage that the SIT storage period is 90 days and if a longer period

applies by virtue of a particular carrier's tariff, the shipper is so advised.

Response to Comments

In the interim final rule, FMCSA has added to paragraph (d) that notification can be made by facsimile, overnight courier, e-mail, or certified mail return receipt. All of these methods can confirm delivery notification to the shipper. We cannot adopt the AGCT's comment about the shipper's right to bring an action within a State's statutory limitation period. The Federal statute takes precedence for interstate moves. Also, FMCSA cannot add a new requirement that would impose on carriers a potential additional 9 days of liability when it has failed to give the 10 day notification under paragraph (c). The rule, as adopted, imposes liability on a carrier for an indefinite period if it does not give notice and ensures the shipper of at least 24 hours notice that a carrier liability for goods in storage will end.

Section 375.701 May I Provide for a Release of Liability on My Delivery Receipt?

NACAA supports the requirement that movers must not include in their paperwork a release from liability for damages, but believes permitting carriers to include the ''statement the property was received in apparent good condition except as noted in the shipping documents'' is not justified and can lead to serious shipper harm. It suggests that proposed § 375.701(b) be removed. It also proposes requiring check boxes with statements such as ''I have not had an opportunity to open all boxes to verify the condition of their contents or determine if anything is missing.'' It believes the rules should mandate inclusion of a statement that the ''mover remains liable for all losses suffered by shipper'' with an explanation of the procedure and time limits for making a claim.

The AGCT recommends amending this section to make explicit that the ''apparent good condition'' language is not binding and the rules should not allow a carrier to include a statement that the property was received in good condition unless otherwise noted. It asserts that the shipper does not have the time to inspect all goods as the carrier unloads them. This is especially true for any items that are boxed and unavailable for inspection at the time of delivery. It believes the regulation creates a barrier to the shipper's ability to successfully assert damage claims against the carrier.

AMSA argues that paragraph (a) makes it clear that any carrier statement attempting to release it from liability is not permitted. The statement NACAA objects to is a general acknowledgment indicating that the services ordered have been accomplished and the shipment has been delivered in ''apparent'' good condition. The shipper is only expected to note conspicuous loss or damage at the time of delivery. The presumption of ''apparent'' good condition is routinely rebutted by shippers after they have had an opportunity to unpack and perform a more thorough inspection.

Response to Comments

FMCSA agrees with AMSA's comments on this section and believes no changes are necessary.

Section 375.703 What Is the Maximum Collect-on-Delivery Amount I May Demand at the Time of Delivery?

The AGCT recommends requiring carriers to relinquish possession of the shipment in an amount substantially less than 100 percent of the estimate.

AMSA comments that the maximum COD amount that may be collected on a non-binding estimate shipment is 110 percent of the estimated amount. It states that this provision should be revised to mirror its earlier suggested change in § 375.403(a)(7), to provide that the carrier may also require full payment for additional services requested or required by the shipper that do not appear on the estimate and were performed by the mover en-route or at destination. The proposed subsection would read as follows:

(b) On a non-binding estimate, the maximum amount is 110 percent of the non-binding estimate of charges, except that full payment may be collected at the time of delivery for any added additional services that were performed en-route or at destination which were necessary to complete the transportation and do not appear on your non-binding estimate. You may specify the form of payment acceptable to you.

Response to Comments

We have not made the changes to this section suggested by AMSA since we are providing in § 375.403(a)(7) that the carrier may not require full payment for additional services required by the shipper that do not appear on the estimate and were performed by the mover en-route or at destination. We believe that all shipments based on non-binding estimates should be released to the shipper for no more than 110 percent of the original estimate and the remainder billed after 30 days.

Section 375.705 If a Shipment Is Transported on More Than One Vehicle, What Charges May I Collect at Delivery?

The AGCT requested the rules should not permit demand for payment until the entire shipment is delivered. Shipments are not split for the shipper's benefit, but only for the convenience of the carrier. Shippers should only be required to tender payment upon the carrier delivering the entire shipment.

AMSA comments that the proposed section is patterned after the existing regulation and, on split delivery shipments, it would authorize carriers to defer collection of transportation charges until final delivery or collection of a pro-rata portion of those charges based upon the quantity of goods included in the first delivery.

AMSA argues the AGCT also ignored the requirements of 49 U.S.C. 13707, that provides that carriers must not relinquish possession of goods until transportation charges are paid. Thus, collection of a pro-rata portion of transportation charges equal to the quantity of goods delivered is required by statute.

From an operational standpoint, AMSA alleges, industry data indicates that less than 2 percent of the shipments transported in 1994 moved in two or more vans. This percentage is nearly equal to the number of shipments (2 percent) that weighed more than 18,000 to 20,000 pounds, the normal capacity of a moving van, and required the service of two or more vans. AMSA stated this data came from the latest year for which such data was available from the AMSA Continuing Traffic Study, though AMSA did not submit the study as part of its comments. Therefore, AMSA contends that, contrary to the AGCT's position, most shipments that involve split deliveries are not the result of carrier convenience. They are dictated by operational requirements.

Response to Comments

FMCSA agrees with the AMSA comments on this section and has made no changes to the proposed rule.

Section 375.707 If a Shipment Is Partially Lost or Destroyed, What Charges May I Collect at Delivery?

The AGCT comments that it is unimaginable that a carrier can lose or destroy part of a shipment and yet demand full payment before being obligated to relinquish possession of the remainder of the shipment. It believes this provision is abhorrent and strongly anti-shipper. The proposed regulation is silent as to when the carrier must refund

the amount of the lost or destroyed shipment to the shipper. The AGCT argues the carrier should be forced to relinquish possession of a shipment and only bill the shipper for amounts due and owing 30 days after delivering the shipment to the shipper.

AMSA comments that as proposed, in the event of partial loss or destruction of a shipment, the mover must determine, at its own expense, the portion of the shipment that was delivered intact. It recommends that the wording of this provision be revised for clarity to avoid confusion concerning the basis for refunding charges that were applicable to lost or destroyed portions of shipments, as follows:

(b)(4) You must determine, at your own expense, the proportion of the shipment, based on actual or constructive weight, not lost or destroyed in transit.

AMSA argues that the AGCT's comments evoke the same degree of incredulity that the AGCT professes regarding the proposed rule. AMSA argues that carriers routinely process claims for loss or damage, the sum of which includes a portion of the transportation charge related to lost goods. It is difficult to understand the rationale that would deny payment on a 10,000 pound shipment if, for example, cartons weighing 500 pounds were not tendered at the time of delivery. In such a situation, the carrier is liable for the value of the lost goods and a pro-rata portion of the transportation charges. As AMSA had commented previously, the ICCTA requires that carriers ''* * * shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made.''

Response to Comments

FMCSA agrees with the AMSA comments on this section and has modified paragraph (b)(4) in the interim final rule accordingly.

Section 375.709 If a Shipment Is Totally Lost or Destroyed, What Charges May I Collect at Delivery?

The AGCT comments that carriers should be required to pay shippers the declared value of a lost or destroyed shipment on or before the last day of the contractually agreed on delivery date, less the specific valuation charge.

AMSA comments that under this section as proposed, movers will not be entitled to collect or require shippers to pay freight charges (including charges for accessorial or terminal services) when a shipment is totally lost or destroyed in transit. The provisions of paragraph (a)(2) appear to be in conflict by providing that ''you may apply paragraph (a) of this section only to the transportation of household goods and not to charges for other services the individual shipper ordered.'' AMSA is unclear as to the difference between the prohibited ''accessorial services'' charges referred to in paragraph (a) and the permitted ''other services'' charges referred to in paragraph (a)(2). AMSA recommends that paragraph (a)(2) be deleted to avoid confusion concerning the meaning of this section.

AMSA states that the settlement of claims for loss or damage does not fall into the simple scenario presented by the AGCT. All such claims must be substantiated. If a claimant declared a shipment value of $100,000, that does not automatically entitle the claimant to that amount in the event of a total loss. If the goods are actually valued at $75,000 and the claimant can substantiate that amount, the carrier will honor a claim for the same amount. 49 U.S.C. 14706 imposes liability ''* * * for the actual loss or injury to the property * * *'' The regulations require that claims for loss or damage be submitted, in writing in accordance with the requirements of 49 CFR part 370, and that they, inter alia, include a ''certification of values [and] depreciation reflected thereon.'' 49 CFR 370.7(b). Obviously, the processing and settlement of claims for loss or damage by carriers must follow the explicit requirements of the regulations.

Response to Comments

FMCSA agrees with AMSA's comments for this section and has changed the interim final rule accordingly.

Section 375.801 What Types of Charges Apply to Subpart H?

The AGCT again asserts the rules should require carriers to relinquish possession of shipments in an amount substantially less than 100 percent of the estimate.

Response to Comments

FMCSA does not agree with the AGCT comments. We believe that all binding estimates should be released to the shipper for no more than 100 percent of the original estimate. Sections 375.801–375.807 do not apply to non-binding estimates.

Section 375.805 If I Am Forced To Relinquish a Collect-on-Delivery Shipment Before the Payment of ALL Charges, How Do I Collect the Balance?

The AGCT comments that carriers should not be allowed to present freight or expense bills before the expiration of a 30-day period after delivery.

AMSA comments that in order to collect the balance of charges due on collect-on-delivery shipments, proposed § 375.805 would require carriers to present the freight bill within 7 days from the date the shipment was delivered at destination. Such a requirement is unreasonably short and unrealistic. Typically, a freight bill cannot be prepared until all shipment paperwork is received from the delivering driver. It is not uncommon for this process to consume most of the proposed 7-day period. A 7-day requirement is also inconsistent with the 15-day requirement contained in proposed § 375.807, and there is no justification for the two different time periods. It therefore recommends that § 375.805 be revised to read:

On ''collect-on-delivery'' shipments, you must present your freight bill for all transportation charges as provided in § 375.807(a).

Response to Comments

FMCSA agrees with AMSA's comment and has changed the rule text to be 15 days as required by § 375.807.

Section 375.807 What Actions May I Take To Collect the Charges Upon My Freight Bill?

The AGCT comments that shippers should not be automatically subjected to a one percent service charge by the operation of a regulation and believes the FMCSA should consider imposing a one percent ceiling on any service charge imposed by the carrier.

AMSA comments that as proposed, individual shippers will be assessed a service charge equal to one percent of the amount of the freight bill, subject to a $20 minimum charge, for extension of the normal credit period. AMSA believes this wording should be clarified to indicate that the one-percent fee applies in 30-day increments, rather than once for the entire extended credit period. For example, if the bill remains unpaid for 60 additional days following the initial 30-day period (for a total of 90 days), the one percent service charge would be applied three times, once for each 30-day extension or fraction thereof.

AMSA believes the AGCT suggestion that the regulation should limit to one percent any service charge imposed by carriers is an unreasonable request. AMSA asserts the cost of credit and capital and the cost to carriers of carrying delinquent accounts does not equate to a flat one percent of an outstanding amount.

Response to Comments

FMCSA agrees with AMSA's comments and has modified paragraph (c)(2) in the interim final rule to state the service charge will be assessed for each 30-day extension of the credit period during which the charges go unpaid.

Section 375.901 What Is An Annual Arbitration Report?

We discussed the comments concerning the arbitration report under § 375.211 in our discussion of the arbitration program as a whole. As we have decided to not require such a report, we have removed proposed §§ 375.901–375.907.

Section 375.1001 What Penalties Do We Impose for Violations of This Part? (Section 375.901 in Interim Final Rule)

NACAA supports movers being subject to statutory penalties for failure to comply with these regulations. In addition to these penalties, NACAA proposes that carriers be made subject to actions brought pursuant to State unfair or deceptive trade practices laws by adding the following language to this section:

> The regulations are supplementary law; that is, the remedies provided herein shall be cumulative and supplementary to all other remedies otherwise provided by Federal, State and local law.

The OCC requests this section include the following language. ''Not withstanding the above civil penalties, nothing in this Section shall deprive any holder of a receipt of bill of lading any remedy or right of action under existing law. Where litigation is pursued under other existing rights, the prevailing party shall be allowed attorney fees, trial preparation costs, and court costs.'' The OCC believes its proposed language should also be paraphrased in YRRWYM on the front page. It believes that shippers should be able to choose the choice of forum in the State of shipping or destination and that a list of State agencies that take complaints concerning household goods moves should be included.

AMSA comments that the NPRM attempted to explain and/or define the penalties, civil and criminal, arising from violations of the proposed regulations. AMSA believes this to be inadvisable. AMSA notes that 49 U.S.C. Chapter 149 consists of 14 specific laws that require 36 pages of written text (sections and related statutory and case notes) defining the scope of these penalty provisions. An attempt to restate these provisions in a short-hand version is likely to lead to misinterpretations and debate over Congressional intent. AMSA believes the statutory penalty provisions speak for themselves and, if invoked, they will prevail and not the proposed regulations. Therefore, AMSA recommends that all but the first two sentences of proposed § 375.1001 be eliminated.

Response to Comments

FMCSA agrees with AMSA's comments on this section and has removed all but the first two sentences of § 375.1001 (renumbered as 375.901 in the interim final rule). Regarding NACAA's comments, the Carmack amendment, now codified at 49 U.S.C. 14706, imposes a uniform regime of carrier liability for interstate shipments of property designed to eliminate the uncertainty resulting from potentially conflicting State laws. Federal and State courts have consistently held that Carmack preempts (or supercedes) a broad range of State consumer protection laws potentially applicable to interstate household goods carriers, regardless of whether these laws are consistent with Carmack. The language proposed by NACAA is inconsistent with prevailing case law and beyond the authority of FMCSA to impose in this rulemaking proceeding.

We agree with OCC's recommendation that this section include the following language: ''Notwithstanding the above civil penalty, nothing in this section shall deprive any holder of a receipt of a bill of lading, any remedy or right of action under existing law.''

Appendix A Your Rights and Responsibilities When You Move

FMCSA has modified appendix A to be consistent with the interim final rules as modified by the above comments.

Order of the Final Regulations

The following table specifies the new section of each rule, the old section (if any) where the rule originated, and the title of the new section.

PART 375.—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE

New section	Old section	Title of new section
SUBPART A—GENERAL REQUIREMENTS		
375.101	375.1(a)	Who must follow these regulations?
375.103	375.1(b)	What are the definitions of terms used in this part?
375.105	None	What are the information collection requirements of this part?
SUBPART B—BEFORE OFFERING SERVICES TO CUSTOMERS		
Liability Considerations		
375.201	375.12	What is my normal liability for loss or damage when I accept goods from an individual shipper?
375.203	375.12	What actions of an individual shipper may limit or reduce my normal liability?
General Responsibilities		
375.205	375.14	May I have agents?
375.207	375.17	What items must be in my advertisements?
375.209	375.13	How must I handle complaints and inquiries?
375.211	None	Must I have an arbitration program?
375.213	375.2	What information must I provide to a prospective individual shipper?
Collecting Transportation Charges		
375.215	373, subpart A	How must I collect charges?

PART 375.—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE—Continued

New section	Old section	Title of new section
375.217	377, subpart A	May I collect charges upon delivery?
375.219	377.215(a) and (b)	May I extend credit to shippers?
375.221	375.19	May I use a charge card plan for payments?
SUBPART C—SERVICE OPTIONS PROVIDED		
375.301	None	What service options may I provide?
375.303	375.11	If I sell liability insurance coverage, what must I do?
SUBPART D—ESTIMATING CHARGES		
375.401	375.3	Must I estimate charges?
375.403	375.3	How must I provide a binding estimate?
375.405	375.3	How must I provide a non-binding estimate?
375.407	375.3	Under what circumstances must I relinquish possession of a collect-on-delivery shipment transported under a non-binding estimate?
375.409	None	May household goods brokers provide estimates?
SUBPART E—PICK-UP OF SHIPMENTS OF HOUSEHOLD GOODS BEFORE LOADING		
375.501	375.5	Must I write up an order for service?
375.503	None	Must I write up an inventory?
375.505	375.6	Must I write up a bill of lading?
Weighing the Shipment		
375.507	375.7	Must I determine the weight of a shipment?
375.509	375.7	How must I determine the weight of a shipment?
375.511	375.7	May I use an alternative method for shipments weighing 3,000 pounds or less?
375.513	375.7	Must I give the individual shipper an opportunity to observe the weighing?
375.515	375.7	May an individual shipper waive his/her right to observe each weighing?
375.517	375.7	May an individual shipper demand re-weighing?
375.519	375.7	Must I obtain weight tickets?
375.521	375.7	What must I do if an individual shipper wants to know the actual weight or charges for a shipment before I tender delivery?
SUBPART F—TRANSPORTATION OF SHIPMENTS		
375.601	375.8	Must I transport the shipment in a timely manner?
375.603	375.8	When must I tender a shipment for delivery?
375.605	375.8	How must I notify an individual shipper of any service delays?
375.607	375.8	What must I do if I am able to tender a shipment for final delivery more than 24 hours before a specified date or period of time?
375.609	375.12(c)	What must I do for shippers who store household goods in transit?
SUBPART G—DELIVERY OF SHIPMENTS		
375.701	375.10	May I provide for a release of liability on my delivery receipt?
375.703	375.3(d)	What is the maximum collect-on-delivery amount I may demand at the time of delivery?
375.705	375.16	If a shipment is transported on more than one vehicle, what charges may I collect at delivery?
375.707	375.15	If a shipment is partially lost or destroyed, what charges may I collect at delivery?
375.709	375.15	If a shipment is totally lost or destroyed, what charges may I collect at delivery?
SUBPART H—COLLECTION OF ACTUAL CHARGES		
375.801	None	What types of charges apply to subpart H?
375.803	377.205	How must I present my freight or expense bill?
375.805	375.3(d)	If I was forced to relinquish a collect-on-delivery shipment before the payment of ALL charges, how do I collect the balance?
375.807	377.215 (c)	What actions may I take to collect the charges upon my freight bill?
SUBPART I—PENALTIES		
375.901	None	What penalties do we impose for violations of this part?
APPENDIX A		
Part 375, Appendix A	Part 375 Form: Office of Compliance and Enforcement (OCE)–100.	Your Rights and Responsibilities When You Move.

Compliance and Effective Dates

The agency is specifying when motor carriers and drivers must comply with this interim final rule. The effective date cited in the **DATES** heading at the top of this document is the date that this interim final rule's amendments affect the current Code of Federal Regulations published by the Office of the Federal Register. Motor carriers and drivers transporting household goods may not begin to comply with this interim final rule on that date.

The compliance date is the date that motor carriers and drivers must begin to comply with this interim final rule. Motor carriers, drivers, and the FMCSA must do many necessary things before the rules can be enforced. The FMCSA must update motor carrier information, compliance, and enforcement computer systems and manuals. The FMCSA has eight computer software packages where it must find the correct code, write new code, test the new software, and distribute it to its division offices.

The agency must develop training, distribute training materials, and ensure training materials are read, taught, and understood by the FMCSA's inspectors, investigators, and auditors. The agency also plans to provide training and presentations to the public about the new rules.

Motor carriers must develop training or use FMCSA's training materials, distribute training materials, and ensure training materials are read, taught, and understood by the drivers engaged in interstate commerce who transport household goods. The FMCSA cannot do its part, and cannot expect motor carriers to do their part, within 90 days after today.

The agency believes a compliance date near the end of the ''off-season'' will be the least burdensome to all carriers and enforcement officials. Most affected carriers subject to this interim final rule have fewer household goods shipments between October and March and most affected carriers would suffer less disruption to their operations if the rule took effect near the beginning of a new moving season (April through September). Therefore, the agency is providing a compliance date when all carriers, drivers, and enforcement officials will switch from the current rule to the new rule: Monday, March 1, 2004.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979) because there is substantial public interest. It is anticipated that the economic impact of this rulemaking will be minimal.

The rules affect a broad segment of the public. In addition, the agency received comments to the NPRM from the California, Colorado, Idaho, Michigan, New Hampshire, Oregon, and Pennsylvania Departments of Agriculture, the elected Attorney Generals from 26 States, and numerous consumer groups.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The changes being made to the existing rule by FMCSA do not impose a significant economic impact on a substantial number of small entities. The original rule issued by the ICC imposed paperwork requirements that would take 785 hours for each entity. Today's IFR increases that burden by 458 hours; the new total of the burden hours is 1,243 hours. The total is being added to FMCSA's information collection budget, since the original amount was never ''transferred'' from the ICC.

The interim final rule bases this estimate of 1,243 hours upon the estimated costs identified to create records, duplicate records, store the original and duplicated copies of records, and practice inventory control for the records.

The information required for preparing these documents is the type of information already developed by such entities in the normal course of conducting a household goods transportation business. The time necessary to compile the incremental data for the documents required in these regulations should be minimal and would vary proportionately with the number of shipments transported by the carrier.

FMCSA did not propose any different requirements or timetables for small entities. As noted above, we do not believe these requirements will be onerous, with many carriers already having to comply with these requirements. Furthermore, FMCSA has eliminated existing performance reporting requirements for both large and small carriers.

As explained above, FMCSA cannot exempt small carriers from these proposals without seriously diminishing the agency's ability to ensure the protection of consumers. Exempting them could have the same impact as not issuing (or enforcing) these proposals. Therefore, FMCSA certifies that this interim final rule will not have a significant impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). State Attorneys General submitted comments to the May 2, 1998 NPRM, which were considered in developing this interim final regulation. The FMCSA has addressed the concerns of the Attorneys General in the interim final rule. The FMCSA certifies that this interim final rule has federalism implications because it directly impacts the distribution of power and responsibilities among the various levels of government.

Federalism Summary Impact Statement

The FMCSA Position Supporting the Need To Issue This Regulation

The State Attorneys General generally believe they hold authority to enforce laws and regulations governing the interstate transportation of household goods and want FMCSA to acknowledge their role. However, the interstate transportation of household goods involves issues that are national in scope that have been regulated exclusively by the Federal government for many years. Regulations implementing the Household Goods Transportation Act of 1980 were promulgated by the Interstate Commerce Commission (ICC) in 1981 and were subsequently transferred to DOT by the ICC Termination Act of 1995 where Congress, in 49 U.S.C. 14104, conferred authority on the Secretary of Transportation to 'issue regulations protecting individual shippers.' The Secretary subsequently delegated this authority to FMCSA under 49 CFR 1.73(a)(6). Thus, the Carmack Amendment, now codified at 49 U.S.C. 14706, imposes a uniform regime of carrier liability for interstate shipments of property designed to eliminate the uncertainty resulting from potentially conflicting State laws. Federal and State courts have consistently held that

Carmack preempts a broad range of State consumer protection laws potentially applicable to interstate household goods carriers. As was the case with the former ICC regulation amended by today's interim final rule, under current case law this rule preempts all State regulations that purport to regulate the interstate transportation of household goods subject to Federal jurisdiction.

AMSA commented that the NPRM's conclusion that this rule is not intended to preempt any State law or regulation was incorrect and is likely to promote uncertainty and potential conflicts with States. AMSA wrote ''In promulgating these regulations FHWA has expressly preempted application of any State law that would impact the services required to perform interstate transportation of household goods. States, for example, may not regulate the manner in which household goods carriers are required by FHWA to execute orders for service nor may they enforce any State regulation that would affect any other aspect of the interstate moving service performed by household goods carriers regulated by FHWA. *See, e.g., Fidelity Federal S. Sr L. Assn.* v. *de la Cuesta,* 458 U.S. 141, 73 L.Ed.Zd 664 (1982) (Even where Congress has not completely displaced State regulation in a specific area, State law is nullified to the extent that it actually conflicts with Federal law. Federal regulations have no less pre-emptive effect than Federal statutes.) FHWA authority to issue the proposed regulations is without question. As the NPRM notes, in enacting section 14104 of the Termination Act, the enabling statute in this proceeding-Congress conferred authority on the Secretary to 'issue regulations protecting individual shippers.' That is precisely what the Secretary proposes and his action in doing so preempts all State regulations that would purport to regulate the same activities. For these reasons, the cited sentence should be removed or clarified in the final decision in this proceeding. In a similar vein, it is appropriate at this point to address certain comments of NACAA. NACAA urges that the proposed regulations should announce that they are supplementary law only and that violations will also subject movers to remedies provided by other Federal, State and local laws, such as State deceptive trade practices laws. (Comments, p. 7). This suggestion reflects a fundamental misconception of the Supremacy Clause, U.S. Constitution, Art. VI, clause 2, and Federal preemption. There is not the slightest suggestion in the law or its precedent that Congress ever intended this explicit and comprehensive regulatory scheme to be supplemental to or superseded by any State law or regulation. Congress could not have been clearer in expressing its intent to occupy the field of interstate household goods transportation regulation. AMSA asserts the NACAA's contention is flatly wrong.'' The FMCSA agrees that AMSA has correctly stated current case law on the preemption issue.

Prior Consultations With State and Local Officials

As the AMSA pointed out, the NPRM's conclusion that this rule is not intended to preempt any State law or regulation was incorrect. Thus, the requirement in section 6(c) to consult ''with State and local officials early in the process of developing the proposed regulation'' in accordance with OMB guidance to send letters to State and local officials or their regional or national representative organizations, such as the National Association of Governors, did not occur. The agency did receive comments to the docket from State and local officials.

Summary of the Nature of State and Local Officials' Concerns

State officials recommended that the rules incorporate additional consumer protection provisions, including: (1) More comprehensive disclosure requirements, particularly with respect to insurance and carrier liability; (2) stronger arbitration requirements; (3) uniform rules governing cash-on-delivery service, including requiring movers to relinquish possession of a shipment upon payment of an amount substantially less than the amount of the estimate; (4) requiring movers to offer guaranteed delivery prices if requested by the shipper; (5) restricting billing for additional services not contained in the estimate; (6) establishing a three-day grace period allowing a shipper to rescind an order for service without penalty; (7) permitting the shipper to deduct penalties for late deliveries from the transportation charges; (8) relaxing limitations on a shipper's right to file loss and damage claims, including claims for loss and damage occurring during storage-in-transit; and (9) prohibiting demands for payment until the entire shipment is delivered.

Statement of the Extent To Which the FMCSA Has Addressed the Concerns of State and Local Officials

In response to these comments, FMCSA modified the proposed rules by: (1) Revising the consumer information pamphlet that movers must give shippers to include guidance regarding their right to decline arbitration; (2) clarifying carrier liability disclosure requirements; (3) requiring movers to disclose the identity of subcontractors used to handle the move; (4) requiring movers to relinquish delivery and defer demanding payment for charges not in the estimate which the mover could have reasonably determined at the time of pick-up; and (5) mandating a three-day grace period for shippers to cancel orders for service without penalty.

Conclusion

The FMCSA submitted State and local official comments to the docket and this federalism summary impact statement to the Director of the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has determined that the changes in this interim final rule will not have an impact of $100 million or more in any one year.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. The majority of the information collection (IC) requirements in this IFR are not new. Yet, the FMCSA has determined, for reasons set forth below, that the information collection requirements in this IFR would technically constitute a new collection of information undertaking, thus needing a new OMB approval and control number.

The FMCSA seeks approval of the collection of information requirements in this IFR to generate, maintain, retain, disclose, and provide information to, or for, the agency under 49 CFR part 375. The information collected will assist individual household goods shippers in their commercial dealings with interstate household goods carriers, thereby providing a desirable consumer

protection service. The collection of information would be used by prospective household goods shippers to make informed decisions about contracts and services to be ordered, executed, and settled within the interstate household goods carrier industry. These information collection items were required by the former ICC regulations. When these items transferred from the ICC to the FMCSA, however, no OMB control number was assigned to cover this information collection transfer. It is therefore necessary to calculate the old information collection burden hours for these items approved under the ICC rules versus the new burden generated by this IFR. The only information collection items changing from the former ICC's rules regarding household goods transportation are the addition of an arbitration program summary, written non-binding estimates and inventory, and the elimination of the annual performance reporting requirement.

Assumptions used for calculations in this PRA section include the following: (1) There are currently approximately 4,000 active household goods carriers—up from the 2,000 estimated in the 1998 NPRM; (2) an estimated 75 new household goods carriers will start-up business each year; (3) over the next 3 years, two large van lines will start-up business; and (4) the arbitration report that was proposed at NPRM stage will not be required.

The following table summarizes the information collection burden hours of this IFR by setting forth the appropriate section of part 375 that is affected. The total annual burden hour estimate in this IFR is *4,370,037* (the estimate at NPRM stage was 4,811,127 burden hours, a difference of 441,090 burden hours). The chart also shows which information collection activities were required under the former-ICC regulations and those which are new, set forth for the first time in this IFR. A detailed analysis of the burden hours can be found in the OMB Supporting Statement that corresponds with this IFR. The Supporting Statement and its attachments are in the docket associated with this rule (Docket No. FMCSA–97–2979).

Type of burden	Proposed section	Hourly burden	New burden?
Agency Agreements	375.205	19	No
Minimum Advertising Information Soliciting Prospective Individual Shippers	375.207	684	No
Complaint and Inquiry Handling	375.209	500,000	No
Arbitration Program Summary	375.211	8,000	Yes
Your Rights and Responsibilities When You Move Booklet	375.213	8,334	No
Selling Insurance Policies	375.303	100,000	No
Estimates—Binding	375.401	1,836,000	No
Estimates—Non-binding	375.401	1,224,000	Yes
Orders for Service	375.501	300,000	No
Inventory	375.503	0 [1]	Yes
Bills of Lading	375.505	300,000	No
Volume to Weight Conversions	375.507	4,000	No
Weight Tickets	375.519	42,000	No
Notifications of Reasonable Dispatch Service Delays	375.605	16,000	No
Delivery More Than 24 Hrs. Ahead of Time	375.607	1,000	No
Notification of Storage-in-Transit Liability Assignments	375.609	30,000	No
''Old'' Burden Hours	.....	.....	3,138,037
''New'' Burden Hours	.....	.....	1,232,000
Total Burden Hours for IC	.....	4,370,037	

[1] Making inventories is a usual and customary moving industry practice that the FMCSA is adopting at the suggestion of the NACAA and the AMSA. The PRA regulations at 5 CFR 1320.3(b)(2) allow the FMCSA to calculate no burden when the agency demonstrates that the activity needed to comply is usual and customary. The supporting statement in the docket demonstrates that moving industry drivers usually and customarily write inventories before loading shipments, although drivers have not been required by law to do so before today's **Federal Register**.

We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet the goal of 49 CFR part 375 to protect consumers, including: (1) Whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

You may submit comments on the *information collection burden* addressed by this interim final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by July 11, 2003. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The agency has analyzed this rulemaking for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action does not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This final rule would 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.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12988 (Civil Justice Reform)

This action 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.

List of Subjects

49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements

49 CFR Part 377

Credit, Freight forwarders, Highways and roads, Motor carriers.

■ For the reasons set out in the preamble, FMCSA amends 49 CFR parts 375 and 377 as set forth below:

■ 1. Part 375 is revised to read as follows:

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

Subpart A—General Requirements

Sec.

375.101 Who must follow these regulations?
375.103 What are the definitions of terms used in this part?
375.105 What are the information collection requirements of this part?

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Subpart G—Delivery of Shipments

375.701 May I provide for a release of liability on my delivery receipt?
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375.705 If a shipment is transported on more than one vehicle, what charges may I collect at delivery?
375.707 If a shipment is partially lost or destroyed, what charges may I collect at delivery?
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Subpart H—Collection of Charges

375.801 What types of charges apply to subpart H?
375.803 How must I present my freight or expense bill?
375.805 If I am forced to relinquish a collect-on-delivery shipment before the payment of ALL charges, how do I collect the balance?
375.807 What actions may I take to collect the charges upon my freight bill?

Subpart I—Penalties

375.901 What penalties do we impose for violations of this part?
Appendix A to Part 375—Your Rights and Responsibilities When You Move

Authority: 5 U.S.C. 553; 49 U.S.C. 13301, 13704, 13707, 14104, 14706; and 49 CFR 1.73.

Subpart A—General Requirements

§ 375.101 Who must follow these regulations?

You, a for-hire motor carrier engaged in the interstate transportation of household goods, must follow these regulations when offering your services to individual shippers. You are subject to this part only when you transport household goods for individual shippers by motor vehicle in interstate commerce.

§ 375.103 What are the definitions of terms used in this part?

Terms used in this part are defined as follows. You may find other terms used in these regulations defined in 49 U.S.C. 13102. The definitions contained in this statute control. If terms are used in this part and the terms are neither defined here nor in 49 U.S.C. 13102, the terms will have the ordinary practical meaning of such terms.

Advertisement means any communication to the public in connection with an offer or sale of any interstate household goods transportation service. This includes written or electronic database listings of your name, address, and telephone number in an on-line database. This excludes listings of your name, address, and telephone number in a telephone directory or similar publication. However, Yellow Pages advertising is included in the definition.

Cashier's check means a check that has all four of the following characteristics:

(1) Drawn on a bank as defined in 12 CFR 229.2.

(2) Signed by an officer or employee of the bank on behalf of the bank as drawer.

(3) A direct obligation of the bank.

(4) Provided to a customer of the bank or acquired from the bank for remittance purposes.

Certified scale means any scale inspected and certified by an authorized scale inspection and licensing authority, and designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, or designed as a platform or warehouse type scale.

Commercial shipper means any person who is named as the consignor or consignee in a bill of lading contract who is not the owner of the goods being transported but who assumes the responsibility for payment of the transportation and other tariff charges for the account of the beneficial owner of the goods. The beneficial owner of the goods is normally an employee of the consignor and/or consignee. A freight forwarder tendering a shipment to a carrier in furtherance of freight forwarder operations is also a commercial shipper. The Federal government is a government bill of lading shipper, not a commercial shipper.

Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.

Government bill of lading shipper means any person whose property is transported under the terms and conditions of a government bill of lading issued by any department or agency of the Federal government to the carrier responsible for the transportation of the shipment.

Household goods, as used in connection with transportation, means the personal effects or property used, or to be used, in a dwelling, when part of the equipment or supplies of the dwelling. Transportation of the household goods must be arranged and paid for by the individual shipper or by another individual on behalf of the shipper. Household goods includes property moving from a factory or store if purchased with the intent to use in a dwelling and transported at the request of the householder, who also pays the transportation charges.

Individual shipper means any person who is the consignor or consignee of a household goods shipment identified as such in the bill of lading contract. The individual shipper owns the goods being transported and pays the transportation charges.

May means an option. You may do something, but it is not a requirement.

Must means a legal obligation. You must do something.

Order for service means a document authorizing you to transport an individual shipper's household goods.

Reasonable dispatch means the performance of transportation on the dates, or during the period, agreed upon by you and the individual shipper and shown on the Order For Service/Bill of Lading. For example, if you deliberately withhold any shipment from delivery after an individual shipper offers to pay the binding estimate or 110 percent of a non-binding estimate, you have not transported the goods with reasonable dispatch. The term ''reasonable dispatch'' excludes transportation provided under your tariff provisions requiring guaranteed service dates. You will have the defenses of force majeure, *i.e.*, superior or irresistible force, as construed by the courts.

Should means a recommendation. We recommend you do something, but it is not a requirement.

Surface Transportation Board means an agency within the Department of Transportation. The Surface Transportation Board regulates household goods carrier tariffs among other responsibilities.

Tariff means an issuance (in whole or in part) containing rates, rules, regulations, classifications or other provisions related to a motor carrier's transportation services. The Surface Transportation Board requires a tariff contain specific items under § 1312.3(a) of this title. These specific items include an accurate description of the services offered to the public and the specific applicable rates (or the basis for calculating the specific applicable rates) and service terms. A tariff must be arranged in a way that allows for the determination of the exact rate(s) and service terms applicable to any given shipment.

We, us, and *our* means the Federal Motor Carrier Safety Administration (FMCSA).

You and *your* means a motor carrier engaged in the interstate transportation of household goods and its household goods agents.

§ 375.105 What are the information collection requirements of this part?

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2126_____.

(b) The information collection requirements are found in the following sections:

Section 375.205, Section 375.207, Section 375.209, Section 375.211, Section 375.213, Section 375.215, Section 375.217, Section 375.303, Section 375.401, Section 375.403, Section 375.405, Section 375.409, Section 375.501, Section 375.503, Section 375.505, Section 375.507, Section 375.515, Section 375.519, Section 375.521, Section 375.605, Section 375.607, Section 375.609, Section 375.803, Section 375.805, and Section 375.807.

Subpart B—Before Offering Services to My Customers

Liability Considerations

§ 375.201 What is my normal liability for loss and damage when I accept goods from an individual shipper?

(a) In general, you are legally liable for loss or damage if it happens during performance of any transportation of household goods and all related services identified on your lawful bill of lading.

(b) You are liable for loss of, or damage to, any household goods to the extent provided in the current Surface Transportation Board's released rates order. Contact the Surface Transportation Board for a current copy of the Released Rates of Motor Carrier Shipments of Household Goods. The rate may be increased annually by the carrier based on the Department of Commerce's Cost of Living Adjustment.

(c) As required by § 375.303(g), you may have additional liability if you sell liability insurance and you fail to issue a copy of the insurance policy or other appropriate evidence of insurance.

(d) You must, in a clear and concise manner, disclose to the individual shipper the limits of your liability.

§ 375.203 What actions of an individual shipper may limit or reduce my normal liability?

(a) If an individual shipper includes perishable, dangerous, or hazardous articles in the shipment without your knowledge, you need not assume liability for those articles or for the loss or damage caused by their inclusion in the shipment. If the shipper requests that you accept such articles for

transportation, you may elect to limit your liability for any loss or damage by appropriately published tariff provisions.

(b) If an individual shipper agrees to ship household goods released at a value greater than 60 cents per pound ($1.32 per kilogram) per article, your liability for loss and damage may be limited to $100 per pound ($220 per kilogram) per article if the individual shipper fails to notify you in writing of articles valued at more than $100 per pound ($220 per kilogram).

(c) If an individual shipper notifies you in writing that an article valued at greater than $100 per pound ($220 per kilogram) will be included in the shipment, the shipper will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.

General Responsibilities

§ 375.205 May I have agents?

(a) You may have agents provided you comply with paragraphs (b) and (c) of this section. A household goods agent is defined as either one of the following two types of agents:

(1) A *prime agent* provides a transportation service for you or on your behalf, including the selling of, or arranging for, a transportation service. You permit or require the agent to provide services under the terms of an agreement or arrangement with you. A prime agent does not provide services on an emergency or temporary basis. A prime agent does not include a household goods broker or freight forwarder.

(2) An *emergency or temporary agent* provides origin or destination services on your behalf, excluding the selling of, or arranging for, a transportation service. You permit or require the agent to provide such services under the terms of an agreement or arrangement with you. The agent performs such services only on an emergency or temporary basis.

(b) If you have agents, you must have written agreements between you and your prime agents. You and your retained prime agent must sign the agreements.

(c) Copies of all your prime agent agreements must be in your files for a period of at least 24 months following the date of termination of each agreement.

§ 375.207 What items must be in my advertisements?

(a) You and your agents must publish and use only truthful, straightforward, and honest advertisements.

(b) You must include, and you must require each of your agents to include, in all advertisements for all services (including any accessorial services incidental to or part of interstate household goods transportation), the following two elements:

(1) Your name or trade name, as it appears on our document assigning you a U.S. DOT number, or the name or trade name of the motor carrier under whose operating authority the advertised service will originate.

(2) Your U.S. DOT number, assigned by us authorizing you to operate as a for-hire motor carrier transporting household goods.

(c) Your FMCSA-assigned U.S. DOT number must be displayed only in the following form in every advertisement: U.S. DOT No. (*assigned number*).

§ 375.209 How must I handle complaints and inquiries?

(a) You must establish and maintain a procedure for responding to complaints and inquiries from your individual shippers.

(b) Your procedure must include all four of the following items:

(1) A communications system allowing individual shippers to communicate with your principal place of business by telephone.

(2) A telephone number.

(3) A clear and concise statement about who must pay for complaint and inquiry telephone calls.

(4) A written or electronic record system for recording all inquiries and complaints received from an individual shipper by any means of communication.

(c) You must produce a clear and concise written description of your procedure for distribution to individual shippers.

§ 375.211 Must I have an arbitration program?

(a) You must have an arbitration program for individual shippers. You must establish and maintain an arbitration program with the following eleven minimum elements:

(1) You must design your arbitration program to prevent you from having any special advantage in any case where the claimant resides or does business at a place distant from your principal or other place of business.

(2) Before the household goods are tendered for transport, your arbitration program must provide notice to the individual shipper of the availability of neutral arbitration, including all three of the following items:

(i) A summary of the arbitration procedure.

(ii) Any applicable costs.

(iii) A disclosure of the legal effects of election to use arbitration.

(3) Upon the individual shipper's request, you must provide information and forms you consider necessary for initiating an action to resolve a dispute under arbitration.

(4) You must require each person you authorize to arbitrate to be independent of the parties to the dispute and capable of resolving such disputes, and you must ensure the arbitrator is authorized and able to obtain from you or the individual shipper any material or relevant information to carry out a fair and expeditious decisionmaking process.

(5) You must not charge the individual shipper more than one-half of the total cost for instituting the arbitration proceeding against you. In the arbitrator's decision, the arbitrator may determine which party must pay the cost or a portion of the cost of the arbitration proceeding, including the cost of instituting the proceeding.

(6) You must refrain from requiring the individual shipper to agree to use arbitration before a dispute arises.

(7) Arbitration must be binding for claims of $5,000 or less, if the individual shipper requests arbitration.

(8) Arbitration must be binding for claims of more than $5,000, if the individual shipper requests arbitration and the carrier agrees to it.

(9) If all parties agree, the arbitrator may provide for an oral presentation of a dispute by a party or representative of a party.

(10) The arbitrator must render a decision within 60 days of receipt of written notification of the dispute, and a decision by an arbitrator may include any remedies appropriate under the circumstances.

(11) The arbitrator may extend the 60-day period for a reasonable period if you or the individual shipper fail to provide, in a timely manner, any information the arbitrator reasonably requires to resolve the dispute.

(b) You must produce and distribute a concise, easy-to-read, accurate summary of the your arbitration program, including the items in this section.

§ 375.213 What information must I provide to a prospective individual shipper?

(a) Before you execute an order for service for a shipment of household goods, you must furnish to your prospective individual shipper, all five of the following documents:

(1) The contents of appendix A of this part, ''Your Rights and Responsibilities When You Move.''

(2) A concise, easy-to-read, accurate estimate of your charges.

(3) A notice of the availability of the applicable sections of your tariff for the estimate of charges, including an explanation that individual shippers may examine these tariff sections or have copies sent to them upon request.

(4) A concise, easy-to-read, accurate summary of the your arbitration program.

(5) A concise, easy to read, accurate summary of your customer complaint and inquiry handling procedures. Included in this description must be both of the following two items:

(i) The main telephone number the individual shipper may use to communicate with you.

(ii) A clear and concise statement concerning who must pay for telephone calls.

(b) To comply with paragraph (a)(1) of this section, you must produce and distribute a document with the text and general order of appendix A to this part as it appears. The following three items also apply:

(1) If we, the Federal Motor Carrier Safety Administration, choose to modify the text or general order of appendix A, we will provide the public appropriate notice in the **Federal Register** and an opportunity for comment as required by part 389 of this chapter before making you change anything.

(2) If you publish the document, you may choose the dimensions of the publication as long as the type font size is at least 10 point or greater and the size of the booklet is at least as large as 36 square inches (232 square centimeters).

(3) If you publish the document, you may choose the color and design of the front and back covers of the publication. The following words must appear prominently on the front cover in at least 12 point or greater bold or full-faced type: **''Your Rights And Responsibilities When You Move. Furnished By Your Mover, As Required By Federal Law.''** You may substitute your name or trade name in place of ''Your Mover'' if you wish (for example, *Furnished by XYZ Van Lines, As Required By Federal Law*).

(c) Paragraphs (b)(2) and (b)(3) of this section do not apply to exact copies of appendix A published in the **Federal Register** or the *Code of Federal Regulations.*

Collecting Transportation Charges

§ 375.215 How must I collect charges?

You must issue an honest, truthful freight or expense bill in accordance with subpart A of part 373 of this chapter. All rates and charges for the transportation and related services must be in accordance with your appropriately published tariff provisions in effect, including the method of payment.

§ 375.217 How must I collect charges upon delivery?

(a) You must specify the form of payment when you prepare the estimate. You and your agents must honor the form of payment at delivery, except when a shipper agrees to a change in writing.

(b) You must specify the same form of payment provided in paragraph (a) of this section when you prepare the order for service and the bill of lading.

(c) Charge or credit card payments:

(1) If you agree to accept payment by charge or credit card, you must arrange with the individual shipper for the delivery of the household goods during the time your credit/collection department is open so you may seek approval of payment by the card issuer.

(2) Paragraph (c)(1) of this section does not apply to you when you have equipped your motor vehicle(s) to process card transactions.

(d) You may maintain a tariff setting forth nondiscriminatory rules governing collect-on-delivery service and the collection of collect-on-delivery funds.

(e) If an individual shipper pays you at least 110 percent of the approximate costs of a non-binding estimate on a collect-on-delivery shipment, you must relinquish possession of the shipment at the time of delivery.

§ 375.219 May I extend credit to shippers?

You may extend credit to shippers, but, if you do, it must be in accordance with § 375.807.

§ 375.221 May I use a charge or credit card plan for payments?

(a) You may provide in your tariff for the acceptance of charge or credit cards for the payment of freight charges. Accepting charge or credit card payments is different than extending credit to shippers in §§ 375.219 and 375.807. Once you provide an estimate you are bound by the provisions in your tariff regarding payment as of the estimate date, until completion of any transaction that results from that estimate, unless otherwise agreed with a shipper under § 375.217(a).

(b) You may accept charge or credit cards whenever shipments are transported under agreements and tariffs requiring payment by cash, certified check, money order, or a cashier's check.

(c) If you allow an individual shipper to pay for a freight or expense bill by charge or credit card, you are deeming such payment to be the same as payment by cash, certified check, money order, or a cashier's check.

(d) The charge or credit card plans you participate in must be identified in your tariff rules as items permitting the acceptance of the charge or credit cards.

(e) If an individual shipper causes a charge or credit card issuer to reverse a charge transaction, you may consider the individual shipper's action tantamount to forcing you to provide an involuntary extension of your credit. In such instances, the rules in § 375.807 apply.

Subpart C—Service Options Provided

§ 375.301 What service options may I provide?

(a) You may design your household goods service to provide individual shippers with a wide range of specialized service and pricing features. Many carriers provide at least the following five service options:

(1) Space reservation.

(2) Expedited service.

(3) Exclusive use of a vehicle.

(4) Guaranteed service on or between agreed dates.

(5) Liability insurance.

(b) If you sell liability insurance, you must follow the requirements in § 375.303.

§ 375.303 If I sell liability insurance coverage, what must I do?

(a) You, your employee, or an agent, may sell, offer to sell, or procure liability insurance coverage for loss or damage to shipments of any individual shippers only when the individual shipper releases the shipment for transportation at a value not exceeding 60 cents per pound ($1.32 per kilogram) per article.

(b) You may offer, sell, or procure any type of insurance policy on behalf of the individual shipper covering loss or damage in excess of the specified carrier liability.

(c) You must issue to the individual shipper a policy or other appropriate evidence of the insurance the individual shipper purchased.

(d) You must provide a copy of the policy or other appropriate evidence to the individual shipper at the time you sell or procure the insurance.

(e) You must issue policies written in plain English.

(f) You must clearly specify the nature and extent of coverage under the policy.

(g) Your failure to issue a policy, or other appropriate evidence of insurance purchased, to an individual shipper will subject you to full liability for any

claims to recover loss or damage attributed to you.

(h) You must provide in your tariff for the provision of selling, offering to sell, or procuring liability insurance coverage. The tariff must also provide for the base transportation charge, including your assumption for full liability for the value of the shipment. This would be in the event you fail to issue a policy or other appropriate evidence of insurance to the individual shipper at the time of purchase.

Subpart D—Estimating Charges

§ 375.401 Must I estimate charges?

(a) Before you execute an order for service for a shipment of household goods for an individual shipper, you must estimate the total charges in writing. The written estimate must be one of the following two types:

(1) A *binding estimate,* an agreement made in advance with your individual shipper. It guarantees the total cost of the move based upon the quantities and services shown on your estimate.

(2) A *non-binding estimate,* what you believe the total cost will be for the move, based upon the estimated weight or volume of the shipment and the accessorial services requested. A non-binding estimate is not binding on you. You will base the final charges upon the actual weight of the individual shipper's shipment and the tariff provisions in effect.

(b) You must specify the form of payment you and your agent will honor at delivery. Payment forms may include, but are not limited to, cash, a certified check, a money order, a cashier s check, a specific charge card such as American Express™, a specific credit card such as Visa™, or your credit as allowed by § 375.807.

(c) For non-binding estimates, you must provide your reasonably accurate estimate of the approximate costs the individual shipper should expect to pay for the transportation and services of such shipments. If you provide an inaccurately low estimate, you may be limiting the amount you will collect at the time of delivery as provided in § 375.407.

(d) If you provide a shipper with an estimate based on volume that will later be converted to a weight-based rate, you must provide the shipper an explanation in writing of the formula used to calculate the conversion to weight. You must specify the final charges will be based on actual weight and services subject to the 110 percent rule at delivery.

(e) You must determine charges for any accessorial services such as elevators, long carries, etc., before preparing the order for service and the bill of lading for binding or non-binding estimates. If you fail to ask the shipper about such charges and fail to determine such charges before preparing the order for service and the bill of lading, you must deliver the goods and bill the shipper after 30 days for the additional charges.

(f) You and the individual shipper must sign the estimate of charges. You must provide a dated copy of the estimate of charges to the individual shipper at the time you sign the estimate.

(g) Before loading a household goods shipment, and upon mutual agreement of both you and the individual shipper, you may amend an estimate of charges. You may not amend the estimate after loading the shipment.

§ 375.403 How must I provide a binding estimate?

(a) You may provide a guaranteed binding estimate of the total shipment charges to the individual shipper, so long as it is provided for in your tariff. The individual shipper must pay the amount for the services included in your estimate. You must comply with the following nine requirements:

(1) You must provide a binding estimate in writing to the individual shipper or other person responsible for payment of the freight charges.

(2) You must retain a copy of each binding estimate as an attachment to be made an integral part of the bill of lading contract.

(3) You must clearly indicate upon each binding estimate's face the estimate is binding upon you and the individual shipper. Each binding estimate must also clearly indicate on its face the charges shown are the charges being assessed for only those services specifically identified in the estimate.

(4) You must clearly describe binding estimate shipments and all services you are providing.

(5) If it appears an individual shipper has tendered additional household goods or requires additional services not identified in the binding estimate, you are not required to honor the estimate. If an agreement cannot be reached as to the price or service requirements for the additional goods or services, you are not required to service the shipment. However, if you do service the shipment, before loading the shipment, you must do one of the following three things:

(i) Reaffirm your binding estimate.

(ii) Negotiate a revised written binding estimate listing the additional household goods or services.

(iii) Agree with the individual shipper, in writing, that both of you will consider the original binding estimate as a non-binding estimate subject to § 375.405.

(6) Once you load a shipment, failure to execute a new binding estimate or a non-binding estimate signifies you have reaffirmed the original binding estimate. You may not collect more than the amount of the original binding estimate.

(7) If you believe additional services are necessary to properly service a shipment after the household goods are in-transit, you must inform the individual shipper what the additional services are before performing those services. You must allow the shipper at least one hour to determine whether he/she wants the additional services performed. If the individual shipper agrees to pay for the additional services, you must execute a written attachment to be made an integral part of the bill of lading contract and have the individual shipper sign the written attachment. This may be done through fax transmissions. You must bill the individual shipper for the additional services after 30 days after delivery. If the shipper does not agree to pay the additional services performed by the carrier after the shipment is picked up, the carrier should perform the additional services as required to complete the delivery and bill the individual shipper for the additional services after 30 days after delivery.

(8) If the individual shipper requests additional services after the household goods are in-transit, you must inform the individual shipper additional charges will be billed. You must require full payment at destination of the original binding estimate only. You must bill for the payment of the balance of any remaining charges after 30 days after delivery. For example, if your binding estimate to an individual shipper estimated total charges at delivery as $1,000, but your actual charges at destination are $1,500, you must deliver the shipment upon payment of $1,000. You then must issue freight or expense bills after 30 days after delivery for the remaining $500.

(9) Failure to relinquish possession of a shipment upon an individual shipper's offer to pay the binding estimate amount constitutes a failure to transport a shipment with ''reasonable dispatch'' and subjects you to cargo delay claims pursuant to part 370 of this chapter.

(b) If you do not provide a binding estimate to an individual shipper, you

must provide a non-binding estimate to the individual shipper in accordance with § 375.405.

(c) You must retain a copy of the binding estimate for each move you perform for at least one year from the date you made the estimate and keep it as an attachment to be made an integral part of the bill of lading contract.

§ 375.405 How must I provide a non-binding estimate?

(a) If you do not provide a binding estimate to an individual shipper in accordance with § 375.403, you must provide a non-binding written estimate to the individual shipper.

(b) If you provide a non-binding estimate to an individual shipper, you must provide your reasonably accurate estimate of the approximate costs the individual shipper should expect to pay for the transportation and services of the shipment. You must comply with the following ten requirements:

(1) You must provide reasonably accurate non-binding estimates based upon the estimated weight or volume of the shipment and services required. If you provide a shipper with an estimate based on volume that will later be converted to a weight-based rate, you must provide the shipper an explanation in writing of the formula used to calculate the conversion to weight.

(2) You must explain to the individual shipper final charges calculated for shipments moved on non-binding estimates will be those appearing in your tariffs applicable to the transportation. You must explain to the individual shipper these final charges may exceed the approximate costs appearing in your estimate.

(3) You must furnish non-binding estimates without charge and in writing to the individual shipper or other person responsible for payment of the freight charges.

(4) You must retain a copy of each non-binding estimate as an attachment to be made an integral part of the bill of lading contract.

(5) You must clearly indicate on the face of a non-binding estimate, the estimate is not binding upon you and the charges shown are the approximate charges to be assessed for the services identified in the estimate. The estimate must clearly state that the shipper may not be required to pay more than 110 percent of the non-binding estimate at the time of delivery.

(6) You must clearly describe on the face of a non-binding estimate the entire shipment and all services you are providing.

(7) If it appears an individual shipper has tendered additional household goods or requires additional services not identified in the non-binding estimate, you are not required to honor the estimate. If an agreement cannot be reached as to the price or service requirements for the additional goods or services, you are not required to service the shipment. However, if you do service the shipment, before loading the shipment, you must do one of the following two things:

(i) Reaffirm your non-binding estimate.

(ii) Negotiate a revised written non-binding estimate listing the additional household goods or services.

(8) Once you load a shipment, failure to execute a new non-binding estimate signifies you have reaffirmed the original non-binding estimate. You may not collect more than 110 percent of the amount of the original non-binding estimate at destination.

(9) If you believe additional services are necessary to properly service a shipment after the household goods are in-transit, you must inform the individual shipper what the additional services are before performing those services. You must allow the shipper at least one hour to determine whether he/she wants the additional services performed. If the individual shipper agrees to pay for the additional services, you must execute a written attachment to be made an integral part of the bill of lading contract and have the individual shipper sign the written attachment. This may be done through fax transmissions. You must bill the individual shipper for the additional services after 30 days after delivery. If the shipper does not agree to pay the additional services performed by the carrier after the shipment is picked up, the carrier should perform the additional services as required to complete the delivery and bill the individual shipper for the additional services after 30 days after delivery.

(10) If the individual shipper requests additional services after the household goods are in-transit, you must inform the individual shipper additional charges will be billed. You may require full payment at destination of no more than 110 percent of the original non-binding estimate. You must bill for the payment of the balance of any remaining charges after 30 days after delivery. For example, if your non-binding estimate to an individual shipper estimated total charges at delivery as $1,000, but your actual charges at destination are $1,500, you must deliver the shipment upon payment of $1,100 (110 percent of the estimated charges) and forego demanding immediate payment of the balance. You then must issue a freight or expense bill for the remaining $400 after the 30-day period expires.

(c) If you furnish a non-binding estimate, you must enter the estimated charges upon the order for service and upon the bill of lading.

(d) You must retain a copy of the non-binding estimate for each move you perform for at least one year from the date you made the estimate and keep it as an attachment to be made an integral part of the bill of lading contract.

§ 375.407 Under what circumstances must I relinquish possession of a collect-on-delivery shipment transported under a non-binding estimate?

(a) If an individual shipper pays you at least 110 percent of the approximate costs of a non-binding estimate on a collect-on-delivery shipment, you must relinquish possession of the shipment at the time of delivery. You must accept the form of payment agreed to at the time of estimate, unless the shipper agrees in writing to a change in the form of payment.

(b) Failure to relinquish possession of a shipment upon an individual shipper's offer to pay 110 percent of the estimated charges constitutes a failure to transport the shipment with ''reasonable dispatch'' and subjects you to cargo delay claims pursuant to part 370 of this chapter.

(c) You must defer billing for the payment of the balance of any remaining charges for a period of 30 days following the date of delivery. After this 30-day period, you may demand payment of the balance of any remaining charges, as explained in § 375.405.

§ 375.409 May household goods brokers provide estimates?

A household goods broker must not provide an individual shipper with an estimate of charges for the transportation of household goods unless there is a written agreement between the broker and you, the carrier, adopting the broker's estimate as your own estimate. If you make such an agreement with a broker, you must ensure compliance with all requirements of this part pertaining to estimates, including the requirement that you must relinquish possession of the shipment if the shipper pays you 110 percent of a non-binding estimate at the time of delivery.

Subpart E—Pick Up of Shipments of Household Goods

Before Loading

§ 375.501 Must I write up an order for service?

(a) Before you receive a shipment of household goods you will move for an individual shipper, you must prepare an order for service. The order for service must contain the information described in the following 15 items:

(1) Your name and address and the FMCSA U.S. DOT number assigned to the mover who is responsible for performing the service.

(2) The individual shipper's name, address and, if available, its telephone number(s).

(3) The name, address, and telephone number of the delivering mover's office or agent located at or nearest to the destination of the shipment.

(4) A telephone number where the individual shipper/consignee may contact you or your designated agent.

(5) One of the following three entries must be on the order for service:

(i) The agreed pickup date and agreed delivery date of the move.

(ii) The agreed period(s) of the entire move.

(iii) If you are transporting the shipment on a guaranteed service basis, the guaranteed dates or periods for pickup, transportation, and delivery. You must enter any penalty or per diem requirements upon the agreement under this item.

(6) The names and addresses of any other motor carriers, when known, who will participate in interline transportation of the shipment.

(7) The form of payment you and your agents will honor at delivery. The payment information must be the same that was entered on the estimate.

(8) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(9) The maximum amount you will demand at the time of delivery to obtain possession of the shipment, when you transport on a collect-on-delivery basis.

(10) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The released rates may be increased annually by the carrier based on the Department of Commerce's Cost of Living Adjustment.

(11) A complete description of any special or accessorial services ordered and minimum weight or volume charges applicable to the shipment, subject to the following two conditions:

(i) If you provide service for individual shippers on rates based upon the transportation of a minimum weight or volume, you must indicate on the order for service the minimum weight- or volume-based rates, and the minimum charges applicable to the shipment.

(ii) If you do not indicate the minimum rates and charges, your tariff must provide you will compute the final charges relating to such a shipment based upon the actual weight or volume of the shipment.

(12) Any identification or registration number you assign to the shipment.

(13) *For non-binding estimates,* your reasonably accurate estimate of the amount of the charges, the method of payment of total charges, and the maximum amount (no more than 110 percent of the non-binding estimate) you will demand at the time of delivery to relinquish possession of the shipment.

(14) *For binding estimates,* the amount of charges you will demand based upon the binding estimate and the terms of payment under this estimate.

(15) Whether the individual shipper requests notification of the charges before delivery. The individual shipper must provide you with the telephone number(s) or address(es) where you will transmit the notification.

(b) You, your agent, or your driver must inform the individual shipper if you reasonably expect a special or accessorial service is necessary to safely transport a shipment. You must refuse to accept the shipment when you reasonably expect a special or accessorial service is necessary to safely transport a shipment and the individual shipper refuses to purchase the special or accessorial service. You must make a written note if the shipper refuses any special or accessorial services that you reasonably expect to be necessary.

(c) You and the individual shipper must sign the order for service. You must provide a dated copy of the order for service to the individual shipper at the time you sign the order.

(d)(1) You may provide the individual shipper with blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move.

(2) You are forbidden from requiring the individual shipper to sign any blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move.

(e) You must provide the individual shipper the opportunity to rescind the order for service without any penalty for a three-day period after the shipper signs the order for service, if the shipper scheduled the shipment to be loaded more than three days after signing the order.

(f) Before loading the shipment, and upon mutual agreement of both you and the individual shipper, you may amend an order for service.

(g) You must retain a copy of the order for service for each move you perform for at least one year from the date you made the order for service and keep it as an attachment to be made an integral part of the bill of lading contract.

§ 375.503 Must I write up an inventory?

(a) You must prepare a written, itemized inventory for each shipment of household goods you transport for an individual shipper. The inventory must identify every carton and every uncartoned item that is included in the shipment. When you prepare the inventory, an identification number that corresponds to the inventory must be placed on each article that is included in the shipment.

(b) You must prepare the inventory before the shipment is loaded in the vehicle for transportation in a manner that provides the individual shipper with the opportunity to observe and verify the accuracy of the inventory if he or she so requests.

(c) You must furnish a complete copy of the inventory to the individual shipper before beginning to load the shipment. A copy of the inventory, signed by both you and the individual shipper, must be provided to the shipper, together with a copy of the bill of lading, before you begin to load the shipment.

(d) Upon delivery, you must provide the individual shipper with the opportunity to observe and verify that the same articles are being delivered and the condition of those articles. You must also provide the individual shipper the opportunity to note in writing any missing articles and the condition of any damaged or destroyed articles. In addition, you must also provide the shipper with a copy of all such notations.

(e) You must retain inventories for each move you perform for at least one year from the date you made the inventory and keep it as an attachment to be made an integral part of the bill of lading contract.

§ 375.505 Must I write up a bill of lading?

(a) You must issue a bill of lading. The bill of lading must contain the terms and conditions of the contract. You must furnish a complete copy of the bill of lading to the individual shipper before beginning to load the shipment.

(b) On a bill of lading, you must include the following 14 items:

(1) Your name and address, or the name and address of the motor carrier issuing the bill of lading.

(2) The names and addresses of any other motor carriers, when known, who will participate in transportation of the shipment.

(3) The name, address, and telephone number of your office (or the office of your agent) where the individual shipper can contact you in relation to the transportation of the shipment.

(4) The form of payment you and your agents will honor at delivery. The payment information must be the same that was entered on the estimate and order for service.

(5) When you transport on a collect-on-delivery basis, the name, address, and if furnished, the telephone number of a person to notify about the charges.

(6) *For non-guaranteed service,* the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods for pickup and delivery entered upon the bill of lading must conform to the agreed dates or periods of time for pickup and delivery entered upon the order for service or a proper amendment to the order for service.

(7) *For guaranteed service,* subject to tariff provisions, the dates for pickup and delivery, and any penalty or per diem entitlements due the individual shipper under the agreement.

(8) The actual date of pickup.

(9) The company or carrier identification number of the vehicle(s) upon which you load the individual shipper's shipment.

(10) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(11) The maximum amount you will demand at the time of delivery to obtain possession of the shipment, when you transport under a collect-on-delivery basis.

(12) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The released rates may be increased annually by the carrier based on the Department of Commerce's Cost of Living Adjustment.

(13) Evidence of any insurance coverage sold to or procured for the individual shipper from an independent insurer, including the amount of the premium for such insurance.

(14) Each attachment to the bill of lading. Each attachment is an integral part of the bill of lading contract. The following three items must be added as an attachment to the bill of lading.

(i) The binding or non-binding estimate.

(ii) The order for service.

(iii) The inventory.

(c) A copy of the bill of lading must accompany a shipment at all times while in your (or your agent's) possession. When you load the shipment upon a vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment.

(d) You must retain bills of lading for each move you perform for at least one year from the date you created the bill of lading.

Weighing the Shipment

§ 375.507 Must I determine the weight of a shipment?

(a) When you transport household goods on a non-binding estimate dependent upon the shipment weight, you must determine the weight of each shipment transported before the assessment of any charges.

(b) You must weigh the shipment upon a certified scale.

(c) You must provide a written explanation of volume to weight conversions, when you provide an estimate by volume and convert the volume to weight.

§ 375.509 How must I determine the weight of a shipment?

(a) You must weigh the shipment by using one of the following two methods:

(1) *First method—origin weigh.* You determine the difference between the tare weight of the vehicle before loading at the origin of the shipment and the gross weight of the same vehicle after loading the shipment.

(2) *Second method—back weigh.* You determine the difference between the gross weight of the vehicle with the shipment loaded and the tare weight of the same vehicle after you unload the shipment.

(b) The following three conditions must exist for both the tare and gross weighings:

(1) The vehicle must have installed or loaded all pads, dollies, hand trucks, ramps, and other equipment required in the transportation of the shipment.

(2) The driver and other persons must be off the vehicle at the time of either weighing.

(3) The fuel tanks on the vehicle must be full at the time of each weighing, or, in the alternative, when you use the *first method—origin weigh,* in paragraph (a)(1) of this section, where the tare weighing is the first weighing performed, you must refrain from adding fuel between the two weighings.

(c) You may detach the trailer of a tractor-trailer vehicle combination from the tractor and have the trailer weighed separately at each weighing provided the length of the scale platform is adequate to accommodate and support the entire trailer at one time.

(d) You must use the net weight of shipments transported in containers. You must calculate the difference between the tare weight of the container (including all pads, blocking and bracing used in the transportation of the shipment) and the gross weight of the container with the shipment loaded in the container.

§ 375.511 May I use an alternative method for shipments weighing 3,000 pounds or less?

For shipments weighing 3,000 pounds or less (1,362 kilograms or less), you may weigh the shipment upon a platform or warehouse certified scale before loading for transportation or after unloading.

§ 375.513 Must I give the individual shipper an opportunity to observe the weighing?

You must give the individual shipper or any other person responsible for the payment of the freight charges the right to observe all weighings of the shipment. You must advise the individual shipper, or any other person entitled to observe the weighings, where and when each weighing will occur. You must give the person who will observe the weighings a reasonable opportunity to be present to observe the weighings.

§ 375.515 May an individual shipper waive his/her right to observe each weighing?

(a) If an individual shipper elects not to observe a weighing, the shipper is presumed to have waived that right.

(b) If an individual shipper elects not to observe a re-weighing, the shipper must waive that right in writing. The individual shipper may send the writing via fax, e-mail, or any other electronic means.

(c) Waiver of the right to observe a weighing or re-weighing does not affect any other rights of the individual shipper under this part or otherwise.

§ 375.517 May an individual shipper demand re-weighing?

After you inform the individual shipper of the billing weight and total charges and before actually beginning to unload a shipment weighed at origin (*first method* under § 375.509(a)(1)), the individual shipper may demand a re-weigh. You must base your freight bill charges upon the re-weigh weight.

§ 375.519 Must I obtain weight tickets?

(a) You must obtain weight tickets whenever we require you to weigh the shipment in accordance with this subpart. You must obtain a separate weight ticket for each weighing. The weigh master must sign each weight ticket. Each weight ticket must contain the following six items:

(1) The complete name and location of the scale.

(2) The date of each weighing.

(3) The identification of the weight entries as being the tare, gross, or net weights.

(4) The company or carrier identification of the vehicle.

(5) The last name of the individual shipper as it appears on the bill of lading.

(6) The carrier's shipment registration or bill of lading number.

(b) When both weighings are performed on the same scale, one weight ticket may be used to record both weighings.

(c) As part of the file on the shipment, you must retain the original weight ticket or tickets relating to the determination of the weight of a shipment.

(d) All freight bills you present to an individual shipper must include true copies of all weight tickets obtained in the determination of the shipment weight in order to collect any shipment charges dependent upon the weight transported.

§ 375.521 What must I do if an individual shipper wants to know the actual weight or charges for a shipment before I tender delivery?

(a) You must comply with a request of an individual shipper of a shipment being transported on a collect-on-delivery basis who specifically requests notification of the actual weight or volume and charges on a shipment. This requirement is conditioned upon the individual shipper supplying you with an address or telephone number where the individual shipper will receive the communication. You must make your notification by telephone, telegram, or in person.

(b) The individual shipper must receive your notification at least one full 24-hour day before any tender of the shipment for delivery, excluding Saturdays, Sundays and Federal holidays.

(c) You may disregard the 24-hour notification requirement on shipments in any one of the following three circumstances:

(1) The shipment will be back weighed (*i.e.*, weighed at destination).

(2) Pickup and delivery encompass two consecutive weekdays, if the individual shipper agrees.

(3) The shipment is moving under a non-binding estimate and the maximum payment required at time of delivery is 110 percent of the estimated charges, but only if the individual shipper agrees to waive the 24-hour notification requirement.

Subpart F—Transportation of Shipments

§ 375.601 Must I transport the shipment in a timely manner?

Yes. Transportation in a timely manner is also known as ''reasonable dispatch service.'' You must provide reasonable dispatch service to all individual shippers, except for transportation on the basis of guaranteed pickup and delivery dates.

§ 375.603 When must I tender a shipment for delivery?

You must tender a shipment for delivery for an individual shipper on the agreed delivery date or within the period specified on the bill of lading. Upon the request or concurrence of the individual shipper, you may waive this requirement.

§ 375.605 How must I notify an individual shipper of any service delays?

(a) When you are unable to perform either the pickup or delivery of a shipment on the dates or during the periods specified in the order for service and as soon as the delay becomes apparent to you, you must notify the individual shipper of the delay, at your expense, in one of the following three ways:

(1) By telephone.

(2) By telegram.

(3) In person.

(b) You must advise the individual shipper of the dates or periods you expect to be able to pick up and/or deliver the shipment. You must consider the needs of the individual shipper in your advisement. You also must do the following four things:

(1) You must prepare a written record of the date, time, and manner of notification.

(2) You must prepare a written record of your amended date or period for pick-up or delivery.

(3) You must retain these records as a part of your file on the shipment. The retention period is one year from the date of notification.

(4) You must furnish a copy of the notice to the individual shipper by first class mail or in person if the individual shipper requests a copy of the notice.

§ 375.607 What must I do if I am able to tender a shipment for final delivery more than 24 hours before a specified date?

(a) You may ask the individual shipper to accept an early delivery date. If the individual shipper does not concur with your request or the individual shipper does not request an early delivery date, you may, at your discretion, place a shipment in storage under your own account and at your own expense in a warehouse located near the destination of the shipment. If you place the shipment in storage, you must comply with paragraph (b) of this section. You may comply with paragraph (c) of this section, at your discretion.

(b) You must immediately notify the individual shipper of the name and address of the warehouse where you place the shipment. You must make and keep a record of your notification as a part of your shipment records. You have responsibility for the shipment under the terms and conditions of the bill of lading. You are responsible for the charges for redelivery, handling, and storage until you make final delivery.

(c) You may limit your responsibility under paragraph (b) of this section up to the agreed delivery date or the first day of the period of time of delivery as specified in the bill of lading.

§ 375.609 What must I do for shippers who store household goods in transit?

(a) If you are holding goods for storage-in-transit (SIT) and the period of time is about to expire, you must comply with this section.

(b) You must notify the individual shipper, in writing of the following four items:

(1) The date of conversion to permanent storage.

(2) The existence of a nine-month period after the date of conversion to permanent storage when the individual shipper may file claims against you for loss or damage occurring to the goods in transit or during the storage-in-transit period.

(3) The fact your liability is ending.

(4) The fact the individual shipper's property will be subject to the rules, regulations, and charges of the warehouseman.

(c) You must make this notification at least 10 days before the expiration date of either one of the following two periods:

(1) The specified period of time when the goods are to be held in storage.

(2) The maximum period of time provided in your tariff for storage-in-transit.

(d) You must notify the individual shipper by facsimile transmission,

overnight courier, e-mail, or certified mail, return receipt requested.

(e) If you are holding household goods in storage-in-transit for a period of time less than 10 days, you must give notification to the individual shipper of the information specified in paragraph (b) of this section one day before the expiration date of the specified time when the goods are to be held in such storage.

(f) You must maintain a record of notifications as part of the records of the shipment.

(g) Your failure or refusal to notify the individual shipper will automatically effect a continuance of your carrier liability according to the applicable tariff provisions with respect to storage-in-transit, until the end of the day following the date when you actually gave notice.

Subpart G—Delivery of Shipments

§ 375.701 May I provide for a release of liability on my delivery receipt?

(a) Your delivery receipt or shipping document must not contain any language purporting to release or discharge you or your agents from liability.

(b) The delivery receipt may include a statement the property was received in apparent good condition except as noted on the shipping documents.

§ 375.703 What is the maximum collect-on-delivery amount I may demand at the time of delivery?

(a) On a binding estimate, the maximum amount is the exact estimate of the charges.

(b) On a non-binding estimate, the maximum amount is 110 percent of the non-binding estimate of the charges.

§ 375.705 If a shipment is transported on more than one vehicle, what charges may I collect at delivery?

(a) At your discretion, you may do one of the following three things:

(1) You may defer the collection of all charges until you deliver the entire shipment.

(2) If you have determined the charges for the entire shipment, you may collect charges for the portion of the shipment tendered for delivery. You must determine the percentage of the charges for the entire shipment represented by the portion of the shipment tendered for delivery.

(3) If you cannot reasonably calculate the charges for the entire shipment, you must determine the charges for the portion of the shipment being delivered. You must collect this amount. The total charges you assess for the transportation of the separate portions of the shipment must not be more than the charges due for the entire shipment.

(b) In the event of the loss or destruction of any part of a shipment transported on more than one vehicle, you must collect the charges as provided in § 375.707.

§ 375.707 If a shipment is partially lost or destroyed, what charges may I collect at delivery?

(a) If a shipment is partially lost or destroyed, you may first collect your freight charges for the entire shipment, if you choose. If you do this, you must refund the portion of your published freight charges corresponding to the portion of the lost or destroyed shipment (including any charges for accessorial or terminal services), at the time you dispose of claims for loss, damage, or injury to the articles in the shipment under part 370 of this chapter.

(b) To calculate the amount of charges applicable to the shipment as delivered, you must multiply the percentage corresponding to the delivered shipment by the total charges applicable to the shipment tendered by the individual shipper. The following four conditions also apply:

(1) If the charges computed exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges must apply. This will apply only to the transportation of household goods and not to charges for other services the individual shipper ordered.

(2) You must collect any specific valuation charge due.

(3) You may disregard paragraph (a) of this section if loss or destruction was due to an act or omission of the individual shipper.

(4) You must determine, at your own expense, the proportion of the shipment, based on actual or constructive weight, not lost or destroyed in transit.

(c) The individual shipper's rights are in addition to, and not in lieu of, any other rights the individual shipper may have with respect to a shipment of household goods you or your agent(s) partially lost or destroyed in transit. This applies whether or not the individual shipper exercises its rights provided in paragraph (a) of this section.

§ 375.709 If a shipment is totally lost or destroyed, what charges may I collect at delivery?

(a) You are forbidden from collecting, or requiring an individual shipper to pay, any freight charges (including any charges for accessorial or terminal services) when a household goods shipment is *totally lost or destroyed* in transit. The following two conditions also apply:

(1) You must collect any specific valuation charge due.

(2) You may disregard paragraph (a) of this section if loss or destruction was due to an act or omission of the individual shipper.

(b) The individual shipper's rights are in addition to, and not in lieu of, any other rights the individual shipper may have with respect to a shipment of household goods you or your agent(s) totally lost or destroyed in transit. This applies whether or not the individual shipper exercises its rights provided in paragraph (a) of this section.

Subpart H—Collection of Charges

§ 375.801 What types of charges apply to subpart H?

(a) This subpart applies to all shipments subject to binding estimates.

(b) This subpart does not apply to collect-on-delivery shipments subject to the 110 percent rule for non-binding estimates. You may expect payment of not more than 110 percent of the estimated charges on a collect-on-delivery non-binding estimate at the time of delivery. You must bill the individual shipper for any balance due not sooner than 30 days after delivery.

§ 375.803 How must I present my freight or expense bill?

You must present your freight or expense bill in accordance with § 377.205 of this chapter.

§ 375.805 If I am forced to relinquish a collect-on-delivery shipment before the payment of ALL charges, how do I collect the balance?

On ''collect-on-delivery'' shipments, you must present your freight bill for all transportation charges within 15 days as required by § 375.807.

§ 375.807 What actions may I take to collect the charges upon my freight bill?

(a) You must present a freight bill within 15 days (excluding Saturdays, Sundays, and Federal holidays) of the date of delivery of a shipment at its destination.

(b) The credit period must be seven days (including Saturdays, Sundays, and Federal holidays).

(c) You must provide in your tariffs the following four things:

(1) You must automatically extend the credit period to a total of 30 calendar days for any shipper who has not paid your freight bill within the 7-day period.

(2) You will assess a service charge to each individual shipper equal to one percent of the amount of the freight bill,

subject to a $20 minimum charge, for the extension of the credit period. You will assess the service charge for each 30-day extension the charges go unpaid.

(3) You must deny credit to any shipper who fails to pay a duly-presented freight bill within the 30-day period. You may grant credit to the individual shipper when the individual shipper satisfies he/she will promptly pay all future freight bills duly presented.

(4) You must ensure all payments of freight bills are strictly in accordance with the rules and regulations of this part for the settlement of your rates and charges.

Subpart I—Penalties

§ 375.901 What penalties do we impose for violations of this part?

The penalty provisions of 49 U.S.C. Chapter 149, Civil and Criminal Penalties apply to this part. These penalties do not overlap. Notwithstanding these civil penalties, nothing in this section shall deprive any holder of a receipt or a bill of lading any remedy or right of action under existing law.

Appendix A to Part 375—Your Rights and Responsibilities When You Move

You must furnish this document to prospective individual shippers as required by § 375.213. The text as it appears in this appendix may be reprinted in a form and manner chosen by you, provided it complies with § 375.213(b)(2) and (b)(3). You do not have to italicize titles of sections.

YOUR RIGHTS AND RESPONSIBILITIES WHEN YOU MOVE

OMB No. 2126–_____.

Furnished By Your Mover, As Required By Federal Law

Authority: 49 U.S.C. 13301, 13704, 13707, and 14104; 49 CFR 1.73.

What is Included in This Pamphlet?

In this pamphlet, you will find a discussion of each of these topics:

Why Was I Given This Pamphlet?

What Are The Most Important Points I Should Remember From This Pamphlet?

What If I Have More Questions?

Subpart A—General Requirements

Who must follow the regulations?

What definitions are used in this pamphlet?

Subpart B—Before Requesting Services From Any Mover

What is my mover's normal liability for loss or damage when my mover accepts goods from me?

What actions by me limit or reduce my mover's normal liability?

What are dangerous or hazardous materials that may limit or reduce my mover's normal liability?

May my mover have agents?

What items must be in my mover's advertisements?

How must my mover handle complaints and inquiries?

Do I have the right to inspect my mover's tariffs (schedules of charges) applicable to my move?

Must my mover have an arbitration program?

Must my mover inform me about my rights and responsibilities under Federal law?

What other information must my mover provide to me?

How must my mover collect charges?

May my mover collect charges upon delivery?

May my mover extend credit to me?

May my mover accept charge or credit cards for my payments?

Subpart C—Service Options Provided

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What is the maximum collect-on-delivery amount my mover may demand I pay at the time of delivery?

If my shipment is transported on more than one vehicle, what charges may my mover collect at delivery?

If my shipment is partially or totally lost or destroyed, what charges may my mover collect at delivery?

How must my mover calculate the charges applicable to the shipment as delivered?

Subpart H—Collection of Charges

Does this subpart apply to most shipments?

How must my mover present its freight or expense bill to me?

If I forced my mover to relinquish a collect-on-delivery shipment before the payment of ALL charges, how must my mover collect the balance?

What actions may my mover take to collect from me the charges in its freight bill?

Do I have a right to file a claim to recover money for property my mover lost or damaged?

Subpart I—Resolving Disputes with My Mover

What may I do to resolve disputes with my mover?

Why Was I Given This Pamphlet?

The Federal Motor Carrier Safety Administration's (FMCSA) regulations protect consumers on interstate moves and define the rights and responsibilities of consumers and household goods carriers.

The household goods carrier (mover) gave you this booklet to provide information about your rights and responsibilities as an individual shipper of household goods. Your primary responsibility is to select a reputable household goods carrier, ensure that you understand the terms and conditions of the contract, and understand and pursue the remedies that are available to you when problems arise. You should talk to your mover if you have further questions. The mover will also furnish you with another booklet describing its procedure for handling your questions and complaints. The other booklet will include a telephone number you can call to obtain additional information about your move.

What Are the Most Important Points I Should Remember From This Pamphlet?

1. Movers must give written estimates.
2. Movers may give binding estimates.
3. Non-binding estimates are not always accurate; actual charges may exceed the estimate.
4. You should not sign blank or incomplete documents or allow anyone representing you to do so.
5. You may request from the mover the availability of guaranteed pick up and delivery dates.
6. Be sure you understand the mover's responsibility for loss or damage, and request an explanation of the difference between valuation and actual insurance.
7. You have the right to be present each time your shipment is weighed.
8. You may request a re-weigh of your shipment.
9. If you agree to move under a non-binding estimate, you should confirm with your mover—in writing—the method of payment at delivery as cash, certified check, cashier's check, money order, or credit card.
10. Movers must offer a dispute settlement program as an alternative means of settling loss or damage claims. ASK YOUR MOVER FOR DETAILS.

11. You should ask the person you speak to whether he/she works for the actual mover or a household goods broker. A household goods broker only arranges for the transportation. A household goods broker must not represent itself as a mover. A household goods broker does not own trucks of its own. The broker is required to find an authorized mover to provide the transportation. You should know a household goods broker generally has no authority to provide you an estimate on behalf of a specific mover. If a household goods broker provides you an estimate, it may not be binding on the actual mover and you may have to pay the actual charges the mover incurs. A household goods broker is not responsible for loss or damage.

12. You may request complaint information about movers from the Federal Motor Carrier Safety Administration under the Freedom of Information Act. You may be assessed a fee to obtain this information. *See* 49 CFR part 7 for the schedule of fees.

13. You should seek estimates from at least three different movers. You should not disclose any information to the different movers about their competitors, as it may affect the accuracy of their estimates.

What If I Have More Questions?

If this pamphlet does not answer all of your questions about your move, do not hesitate to ask your mover's representative who handled the arrangements for your move, the driver who transports your shipment, or the mover's main office for additional information.

Subpart A—General Requirements

The primary responsibility for your protection lies with you in selecting a reputable household goods carrier, ensuring you understand the terms and conditions of your contract with your mover, and understanding and pursuing the remedies that are available to you when problems arise.

Who Must Follow the Regulations?

The regulations inform motor carriers engaged in the interstate transportation of household goods (movers) what standards the movers must follow when offering services to you. You, an individual shipper, are not directly subject to the regulations. However, your mover may be required by the regulations to force you to pay on time. The regulations only apply to your mover when the mover transports your household goods by motor vehicle in interstate commerce, *i.e.*, when you are moving from one State to another. The regulations do not apply when your interstate move takes place within a single commercial zone. A commercial zone is roughly equivalent to the local metropolitan area of a city or town. For example, a move between Brooklyn, NY, and Hackensack, NJ, would be considered to be within the New York City commercial zone and would not be subject to these regulations. Commercial zones are defined in 49 CFR part 372.

What Definitions Are Used in This Pamphlet?

Accessorial (additional) services—These are services such as packing, appliance servicing, unpacking, or piano stair carries you request to be performed (or are necessary because of landlord requirements or other special circumstances). Charges for these services are in addition to the transportation charges.

Advanced charges—These are charges for services not performed by the mover, but by someone else. A professional, craftsman, or other third party may perform these services at your request. The mover pays for these services and adds the charges to your bill of lading charges.

Advertisement—This is any communication to the public in connection with an offer or sale of any interstate household goods transportation service. This will include written or electronic database listings of your mover's name, address, and telephone number in an on-line database. This excludes listings of your mover's name, address, and telephone number in a telephone directory or similar publication. However, Yellow Pages advertising is included within the definition.

Agent—A local moving company authorized to act on behalf of a larger, national company.

Appliance service—The preparation of major electrical appliances to make them safe for shipment. Charges for these services are in addition to the transportation charges.

Bill of lading—The receipt for your goods and the contract for its transportation.

Carrier—The mover transporting your household goods.

Cash on delivery (COD)—This means payment is required at the time of delivery at the destination residence (or warehouse).

Certified scale—Any scale designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform or warehouse type scale properly inspected and certified.

Estimate, binding—This is an agreement made in advance with your mover. It guarantees the total cost of the move based upon the quantities and services shown on the estimate.

Estimate, non-binding—This is what your mover believes the cost will be based upon the estimated weight of the shipment and the accessorial services requested. A non-binding estimate is not binding on the mover. The final charges will be based upon the actual weight of your shipment, the services provided, and the tariff provisions in effect.

Expedited service—This is an agreement with the mover to perform transportation by a set date in exchange for charges based upon a higher minimum weight.

Flight charge—An extra charge for carrying items up or down flights of stairs.

Guaranteed pickup and delivery service—An additional level of service featuring guaranteed dates of service. Your mover will provide reimbursement to you for delays. This premium service is often subject to minimum weight requirements.

High value article—These are items included in a shipment valued at more than $100 per pound ($220 per kilogram).

Household goods as used in connection with transportation, means the personal effects or property used, or to be used, in a dwelling, when part of the equipment or supplies of the dwelling. Transportation of the household goods must be arranged and paid for by you or by another individual on your behalf. This may include items moving from a factory or store when you purchase them to use in your dwelling. You must request that these items be transported and you (or another individual on your behalf) must pay the transportation charges to the mover.

Inventory—The detailed descriptive list of your household goods showing the number and condition of each item.

Linehaul charges—The charges for the vehicle transportation portion of your move. These charges apply in addition to the accessorial service charges.

Long carry—An added charge for carrying articles excessive distances between the mover's vehicle and your residence.

May—An option. You or your mover may do something, but it is not a requirement.

Mover—A motor carrier engaged in the transportation of household goods and its household goods agents.

Must—A legal obligation. You or your mover must do something.

Order for service—The document authorizing the mover to transport your household goods.

Order (bill of lading) number—The number used to identify and track your shipment.

Peak season rates—Higher linehaul charges applicable during the summer months.

Pickup and delivery charges—Separate transportation charges applicable for transporting your shipment between the storage-in-transit warehouse and your residence.

Reasonable dispatch—The performance of transportation on the dates, or during the period of time, agreed upon by you and your mover and shown on the Order For Service/Bill of Lading. For example, if your mover deliberately withholds any shipment from delivery after you offer to pay the binding estimate or 110 percent of a non-binding estimate, your mover has not transported the goods with reasonable dispatch. The term ''reasonable dispatch'' excludes transportation provided under your mover's tariff provisions requiring guaranteed service dates. Your mover will have the defenses of force majeure, *i.e.*, that the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.

Should—A recommendation. We recommend you or your mover do something, but it is not a requirement.

Shuttle service—The use of a smaller vehicle to provide service to residences not accessible to the mover's normal linehaul vehicles.

Storage-in-transit (SIT)—The temporary warehouse storage of your shipment pending further transportation. For example, you may need SIT if your new home is not quite ready

to occupy. You must specifically request SIT service. This may not exceed a total of 180 days of storage. You will be responsible for the added charges for SIT service, as well as the warehouse handling and final delivery charges.

Surface Transportation Board—An agency within the Department of Transportation that regulates household good carrier tariffs among other responsibilities. The Surface Transportation Board's address is 1925 K Street NW., Washington, DC 20423–0001 Tele. 202–565–1674.

Tariff—An issuance (in whole or in part) containing rates, rules, regulations, classifications or other provisions. The Surface Transportation Board requires a tariff contain three specific items. First, an accurate description of the services the mover offers to the public. Second, the specific applicable rates (or the basis for calculating the specific applicable rates) and service terms for services offered to the public. Finally, the mover's tariff must be arranged in a way that allows you to determine the exact rate(s) and service terms applicable to your shipment.

Valuation—The degree of ''worth'' of the shipment. The valuation charge compensates the mover for assuming a greater degree of liability than is provided for in its base transportation charges.

Warehouse handling—An additional charge applicable each time SIT service is provided. This charge compensates the mover for the physical placement and removal of items within the warehouse.

We, Us, and Our—The Federal Motor Carrier Safety Administration (FMCSA).

You and Your—You are an individual shipper of household goods. You are a consignor or consignee of a household goods shipment and your mover identifies you as such in the bill of lading contract. You own the goods being transported and you pay the transportation charges to the mover.

Where may other terms used in this pamphlet be defined? You may find other terms used in this pamphlet defined in 49 U.S.C. 13102. The statute controls the definitions in this pamphlet. If terms are used in this pamphlet and the terms are neither defined here nor in 49 U.S.C. 13102, the terms will have the ordinary practical meaning of such terms.

Subpart B—Before requesting services from any mover

What Is My Mover's Normal Liability for Loss or Damage When My Mover Accepts Goods From Me?

In general, your mover is legally liable for loss or damage if it happens during performance of any transportation of household goods and all related services identified on your mover's lawful bill of lading.

Your mover is liable for loss of, or damage to, any household goods to the extent provided in the current Surface Transportation Board's Released Rates Order. You may obtain a copy of the current Released Rates Order by contacting the Surface Transportation Board at the address in the definition of the Surface Transportation Board. The rate may be increased annually by your mover based on the Department of Commerce's Cost of Living Adjustment. Your mover may have additional liability if your mover sells liability insurance to you.

All moving companies are required to assume liability for the value of the goods transported. However, there are different levels of liability, and you should be aware of the amount of protection provided and the charges for each option.

Basically, most movers offer two different levels of liability (options 1 and two, below) under the terms of their tariffs and the Surface Transportation Board's Released Rates Orders. These orders govern the moving industry.

Option 1: Released Value

This is the most economical protection option available. This no-additional cost option provides minimal protection. Under this option, the mover assumes liability for no more than 60 cents per pound ($1.32 cents per kilogram), per article. Loss or damage claims are settled based upon the pound (kilogram) weight of the article multiplied by 60 cents per pound ($1.32 cents per kilogram). For example, if your mover lost or destroyed a 10-pound (4.54-kilogram) stereo component valued at $1000, your mover would be liable for no more than $6.00. Obviously, you should think carefully before agreeing to such an arrangement. There is no extra charge for this minimal protection, but you must sign a specific statement on the bill of lading agreeing to it.

Option 2: Full Value Protection (FVP)

Under this option, the mover is liable for the replacement value of lost or damaged goods (as long as it doesn't exceed the total declared value of the shipment). If you elect to purchase full value protection, when your mover loses, damages or destroys your articles, your mover must repair, replace with like items, or settle in cash at the current market replacement value, regardless of the age of the lost or damaged item. The minimum declared value of a shipment under this option is $5,000 or $4.00 times the actual total weight (in pounds) of the shipment, whichever is greater. For example, the minimum declared value for a 4,000-pound (1,814.4-kilogram) shipment would be $16,000. Your mover may offer you FVP with a $250 or $500 deductible, or with no deductible at all. The amount of the deductible will affect the cost of your FVP coverage. The $4.00 per pound minimum valuation rate may be increased annually by your mover based on changes in the household furnishings element of the Consumer Price Index established by the U.S. Department of Labor's Bureau of Labor Statistics.

Unless you specifically agree to other arrangements, the mover must assume liability for the entire shipment based upon this option. The approximate cost for FVP is $8.50 for each $1000 of declared value; however, it may vary by mover. In the example above, the valuation charge for a shipment valued at $16,000 would be $136.00. This fee may be adjusted annually by your mover based on changes in the household furnishings element of the Consumer Price Index.

Under these two options, movers are permitted to limit their liability for loss or damage to articles of extraordinary value, unless you specifically list these articles on the shipping documents. An article of extraordinary value is any item whose value exceeds $100 per pound ($220 per kilogram). Ask your mover for a complete explanation of this limitation before your move. It is your responsibility to study this provision carefully and to make the necessary declaration.

These optional levels of liability are not insurance agreements governed by State insurance laws, but instead are authorized under Released Rates Orders of the Surface Transportation Board of the U.S. Department of Transportation.

In addition to these options, some movers may also offer to sell, or procure for you, separate liability insurance from a third-party insurance company when you release your shipment for transportation at the minimum released value of 60 cents per pound ($1.32 per kilogram) per article (Option 1). This is not valuation coverage governed by Federal law, but optional insurance regulated under State law. If you purchase this separate coverage and your mover is responsible for loss or damage, the mover is liable only for an amount not exceeding 60 cents per pound ($1.32 per kilogram) per article, and the balance of the loss is recoverable from the insurance company up to the amount of insurance purchased. The mover's representative can advise you of the availability of such liability insurance and the cost.

If you purchase liability insurance from or through your mover, the mover is required to issue a policy or other written record of the purchase and to provide you with a copy of the policy or other document at the time of purchase. If the mover fails to comply with this requirement, the mover becomes fully liable for any claim for loss or damage attributed to its negligence.

What Actions by Me Limit or Reduce My Mover's Normal Liability?

Your actions may limit or reduce your mover's normal liability, under the following three circumstances:

(1) You include perishable, dangerous, or hazardous materials in your household goods without your mover's knowledge.

(2) You ship household goods valued at more than 60 cents per pound ($1.32 per kilogram) per article.

(3) You fail to notify your mover in writing of articles valued at more than $100 per pound ($220 per kilogram). (If you *do* notify your mover, you will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.)

What Are Dangerous or Hazardous Materials That May Limit or Reduce My Mover's Normal Liability?

Federal law forbids you shipping hazardous materials in your household goods boxes or luggage without informing your mover. A violation can result in five years'

imprisonment and penalties of $250,000 or more (49 U.S.C. 5124). You may also lose or damage your household goods by fire, explosion, or contamination.

If you offer hazardous materials to your mover, you are considered a hazardous materials shipper and must comply with the hazardous material requirements in 49 CFR parts 171, 172, and 173, including, but not limited to package labeling and marking, shipping papers, and emergency response information. Your mover must comply with 49 CFR parts 171, 172, 173, and 177 as a hazardous materials carrier.

Hazardous materials include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives, and radioactive materials.

Examples: Nail polish remover, paints, paint thinners, lighter fluid, gasoline, fireworks, oxygen bottles, propane cylinders, automotive repair and maintenance chemicals, and radio-pharmaceuticals.

There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your household goods and certain smoking materials carried on your person. For further information contact your mover.

May My Mover Have Agents?

Yes, your mover may have agents. If your mover has agents, your mover must have written agreements with its prime agents. Your mover and its retained prime agent must sign their agreements. Copies of your mover's prime agent agreements must be in its files for a period of at least 24 months following the date of termination of each agreement.

What Items Must Be in My Mover's Advertisements?

Your mover must publish and use only truthful, straightforward, and honest advertisements. Your mover must include certain information in all advertisements for all services (including any accessorial services incidental to or part of interstate transportation). Your mover must require each of its agents to include the same information in their advertisements. The information must include the following two pieces of information about your mover:

(1) Name or trade name of the mover, under whose U.S. DOT number the advertised service will originate.

(2) U.S. DOT number, assigned by the FMCSA authorizing your mover to operate. Your mover must display the information as: USDOT No. (assigned number).

You should compare the name or trade name of the mover and its U.S. DOT number to the name and USDOT number on the sides of the truck(s) that arrive at your residence. The names and numbers should be identical. If the names and numbers are not identical, you should ask your mover immediately why the names and numbers are not identical. You should not allow the mover to load your household goods on its truck(s) until you obtain a satisfactory response from the mover's local agent. The discrepancies may warn of problems you will have later in your business dealings with this mover.

How Must My Mover Handle Complaints and Inquiries?

All movers are expected to respond promptly to complaints or inquiries from you, the customer. Should you have a complaint or question about your move, you should first attempt to obtain a satisfactory response from the mover's local agent, the sales representative who handled the arrangements for your move, or the driver assigned to your shipment.

If for any reason you are unable to obtain a satisfactory response from one of these persons, you should then contact the mover's principal office. When you make such a call, be sure to have available your copies of all the documents relating to your move. *Particularly important is the number assigned to your shipment by your mover.*

Interstate movers are also required to offer neutral arbitration as a means of resolving consumer loss or damage disputes involving loss of, or damage to, household goods. Your mover is required to provide you with information regarding its arbitration program. You have the right to pursue court action under 49 U.S.C. 14704 to seek judicial redress directly and to not participate in your mover's arbitration program.

All interstate moving companies are required to maintain a complaint and inquiry procedure to assist their customers. At the time you make the arrangements for your move, you should ask the mover's representative for a description of the mover's procedure, the telephone number to be used to contact the mover, and whether the mover will pay for such telephone calls. Your mover's procedure must include the following four things:

(1) A communications system allowing you to communicate with your mover's principal place of business by telephone.

(2) A telephone number.

(3) A clear and concise statement about who must pay for complaint and inquiry telephone calls.

(4) A written or electronic record system for recording all inquiries and complaints received from you by any means of communication.

Your mover must give you a clear and concise written description of its procedure. You may want to test the system to see how it works for you.

Do I Have the Right To Inspect My Mover's Tariffs (Schedules of Charges) Applicable to My Move?

Federal law requires your mover to advise you of your right to inspect your mover's tariffs (its schedules of rates or charges) governing your shipment. Mover tariffs are made a part of the contract of carriage (bill of lading) between you and the mover. You may inspect the tariff at the mover's facility, or, upon request, the mover will furnish you a free copy of any tariff provision containing the mover's rates, rules, or charges governing your shipment.

Tariffs may include provisions limiting the mover's liability. This would generally be described in a section on declaring value on the bill of lading. A second tariff provision may set the periods for filing claims. This would generally be described in Section 6 on the reverse side of a bill of lading. A third tariff provision may reserve your mover's right to assess additional charges for additional services performed. For non-binding estimates, another tariff provision may base charges upon the exact weight of the goods transported. Your mover's tariff may contain other provisions that apply to your move. Ask your mover what they might be.

Must My Mover Have an Arbitration Program?

Your mover must have an arbitration program for your use in resolving disputes concerning loss or damage to your household goods. You have the right not to participate in the arbitration program. You may pursue court action under 49 U.S.C. 14704 to seek judicial remedies directly. Your mover must establish and maintain an arbitration program with the following eleven minimum elements:

(1) The arbitration program offered to you must prevent your mover from having any special advantage, because you live or work in a place distant from the mover's principal or other place of business.

(2) Before your household goods are tendered for transport, your mover must provide notice to you of the availability of neutral arbitration, including the following three things.

(a) A summary of the arbitration procedure.

(b) Any applicable costs.

(c) A disclosure of the legal effects of electing to use arbitration.

(3) Upon your request, your mover must provide information and forms it considers necessary for initiating an action to resolve a dispute under arbitration.

(4) Each person authorized to arbitrate must be independent of the parties to the dispute and capable of resolving such disputes fairly and expeditiously. Your mover must ensure the arbitrator is authorized and able to obtain from you or your mover any material or relevant information to carry out a fair and expeditious decision making process.

(5) You must not be required to pay more than one-half of the arbitration's cost. The arbitrator may determine the percentage of payment of the costs for each party in the arbitration decision, but may not make you pay more than half.

(6) Your mover must not require you to agree to use arbitration before a dispute arises.

(7) You will be bound by arbitration for claims of $5,000 or less, if you request arbitration.

(8) You will be bound by arbitration for claims of more than $5,000, only if you request arbitration and your mover agrees to it.

(9) If you and your mover both agree, the arbitrator may provide for an oral presentation of a dispute by a party or representative of a party.

(10) The arbitrator must render a decision within 60 days of receipt of written notification of the dispute, and a decision by an arbitrator may include any remedies appropriate under the circumstances.

(11) The 60-day period may be extended for a reasonable period if you or your mover

fail to provide information in a timely manner.

Your mover must produce and distribute a concise, easy-to-read, accurate summary of its arbitration program.

Must My Mover Inform Me About My Rights and Responsibilities Under Federal Law?

Yes, your mover must inform you about your rights and responsibilities under Federal law. Your mover must produce and distribute this document. It should be in the general order and contain the text of appendix A to 49 CFR part 375.

What Other Information Must My Mover Provide to Me?

Before your mover executes an order for service for a shipment of household goods, your mover must furnish to you the following four documents:

(1) The contents of appendix A, ''Your Rights and Responsibilities When You Move,'' this pamphlet.

(2) A concise, easy-to-read, accurate summary of your mover's arbitration program.

(3) A notice of the availability of the applicable sections of your mover's tariff for the estimate of charges, including an explanation that you may examine the tariff sections or have copies sent to you upon request.

(4) A concise, easy to read, accurate summary of your mover's customer complaint and inquiry handling procedures. Included in this summary must be the following two items:

(a) The main telephone number you may use to communicate with your mover.

(b) A clear and concise statement concerning who must pay for telephone calls.

Your mover may, at its discretion, provide additional information to you.

How Must My Mover Collect Charges?

Your mover must issue you an honest, truthful freight or expense bill for each shipment transported. Your mover's freight or expense bill must contain the following 19 items:

(1) Name of the consignor.

(2) Name of the consignees.

(3) Date of the shipment.

(4) Origin point.

(5) Destination points.

(6) Number of packages.

(7) Description of the freight.

(8) Weight of the freight (if applicable to the rating of the freight).

(9) The volume of the freight (if applicable to the rating of the freight).

(10) The measurement of the freight (if applicable to the rating of the freight).

(11) Exact rate(s) assessed.

(12) Disclose the actual rates, charges, and allowances for the transportation service, when your mover electronically presents or transmits freight or expense bills to you. These rates must be in accordance with the mover's applicable tariff.

(13) Indicate whether adjustments may apply to the bill.

(14) Total charges due and acceptable methods of payment.

(15) The nature and amount of any special service charges.

(16) The points where special services were rendered.

(17) Route of movement and name of each mover participating in the transportation.

(18) Transfer points where shipments moved.

(19) Address where you must pay or address of bill issuer's principal place of business.

Your mover must present its freight or expense bill to you within 15 days of the date of delivery of a shipment at its destination. The computation of time excludes Saturdays, Sundays, and Federal holidays.

If your mover lacks sufficient information to compute its charges, your mover must present its freight bill for payment within 15 days of the date when sufficient information does become available.

May My Mover Collect Charges Upon Delivery?

Yes. Your mover must specify the form of payment acceptable at delivery when the mover prepares an estimate and order for service. The mover and its agents must honor the form of payment at delivery, except when you mutually agree to a change in writing. The mover must also specify the same form of payment when it prepares your bill of lading, unless you agree to a change. See also ''May my mover accept charge or credit cards for my payments?''

You must prepare yourself to pay 10 percent more than the estimated amount, if your goods are moving under a non-binding estimate. Every collect-on-delivery shipper must have available 110 percent of the estimate at the time of delivery.

May My Mover Extend Credit to Me?

Extending credit to you is not the same as accepting your charge or credit card(s) as payment. Your mover may relinquish possession of freight before you pay its tariff charges, at its discretion. Your mover may extend credit to you in the amount of the tariff charges. Your mover must ensure you will pay its tariff charges within the credit period. If your mover extends credit to you, your mover becomes like a bank offering you a line of credit, whose size and interest rate are determined by your ability to pay its tariff charges within the credit period.

The credit period must begin on the day following presentation of your mover's freight bill to you. Under Federal regulation, the standard credit period is 15 days, including Saturdays, Sundays, and Federal holidays, except your mover may establish its own standard credit period of up to 30 calendar days. Your mover may also establish a service charge for extending credit, including a minimum service charge. Your mover's service charge only applies when your payments are made after its established standard credit period. For example, if your mover's established standard credit period is less than the maximum 30-calendar-day period, your mover may extend credit including a service charge for the additional time up to the maximum 30-calendar-day period. If your mover extends such credit, you may elect to postpone payment, including the service charge until the end of the extended credit period.

Your mover may establish additional service charges for payments made after the expiration of the 30-calendar-day period. If your mover establishes additional service charges, your mover must begin to compute service charges on the day following the last day of its standard credit period. If your mover establishes service charges, your mover must notify you about the following three things:

(1) The only purpose of the service charge is to prevent you from having free use of the mover's funds.

(2) The service charge encourages your prompt payment.

(3) Your failure to pay within the credit period will require your mover to determine whether you will comply with the Federal-household-goods-transportation credit regulations in good faith in the future before extending credit again.

May My Mover Accept Charge or Credit Cards for My Payments?

Your mover may allow you to use a charge or credit card for payment of the freight charges. Your mover may accept charge or credit cards whenever you ship with it under an agreement and tariff requiring payment by cash or cash equivalents. Cash equivalents are a certified check, money order, or a cashier's check (a check drawn by a financial institution—bank, credit union, savings & loan, etc.—upon itself and signed by an officer of the financial institution).

If your mover allows you to pay for a freight or expense bill by charge or credit card, your mover deems such a payment to be equivalent to payment by cash, certified check, or a cashier's check. It must note in writing on the order for service and the bill of lading whether you may pay for the transportation and related services using a charge or credit card. You should ask your mover at the time the estimate is written whether it will accept charge or credit cards at delivery.

The mover must specify what charge or credit cards it will accept, such as American Express™, Discover™, MasterCard ™, or Visa™. The mover must arrange with you for delivery during the time when the mover's credit or collection department is open so the mover may seek approval of the payment by the card issuer. The mover does not have to make these delivery arrangements with you when it has equipped its motor vehicle(s) with card transaction processing machines.

If you cause a charge or credit card issuer to reverse a transaction, your mover may consider your action tantamount to forcing your mover to provide an involuntary extension of its credit.

Subpart C—Service Options Provided

What Service Options May My Mover Provide?

Your mover may provide any service options it chooses. It is customary for movers to offer several price and service options.

The total cost of your move may increase if you want additional or special services. Before you agree to have your shipment moved under a bill of lading providing special service, you should have a clear understanding with your mover what the

additional cost will be. You should always consider whether other movers may provide the services you require without requiring you to pay the additional charges.

One service option is a *Space Reservation.* If you agree to have your shipment transported under a space reservation agreement, you will pay for a minimum number of cubic feet of space in the moving van regardless of how much space in the van your shipment actually occupies.

A second option is *Expedited Service.* This aids you if you must have your shipments transported on or between specific dates when the mover could not ordinarily agree to do so in its normal operations.

A third customary service option is *Exclusive Use of a Vehicle.* If for any reason you desire or require your shipment be moved by itself on the mover's truck or trailer, most movers will provide such service.

Another service option is *Guaranteed Service on or Between Agreed Dates.* You enter into an agreement with the mover where the mover provides for your shipment to be picked up, transported to destination, and delivered on specific guaranteed dates. If the mover fails to provide the service as agreed, you are entitled to be compensated at a predetermined amount or a daily rate (per diem) regardless of the expense you actually might have incurred as a result of the mover's failure to perform.

Before requesting or agreeing to any of these price and service options, be sure to ask the mover's representatives about the final costs you will pay.

Transport of Shipments on Two or More Vehicles

Although all movers try to move each shipment on one truck, it becomes necessary, at times, to divide a shipment among two or more trucks. This may occur if your mover has underestimated the cubic meters of space required for your shipment and it will not all fit on the first truck. Your mover will pick up the remainder or ''leave behind'' on a second truck at a later time and this part of your shipment may arrive at the destination at a later time than the first truck. When this occurs, your transportation charges will be determined as if the entire shipment moved on one truck.

If it is important for you to avoid this inconvenience of a ''leave behind,'' be sure your estimate includes an accurate calculation of the cubic meters required for your shipment. Ask your estimator to use a ''Table of Measurements'' form in making this calculation. Consider asking for a binding estimate. A binding estimate is more likely to be conservative with regard to cubic meters than a non-binding estimate. If the mover offers space reservation service, consider purchasing this service for the necessary amount of space plus some margin for error. In any case, you would be prudent to ''prioritize'' your goods in advance of the move so the driver will load the more essential items on the first truck if some are left behind.

If My Mover Sells Liability Insurance Coverage, What Must My Mover Do?

If your mover provides the service of selling additional liability insurance, your mover must follow certain regulations.

Your mover, its employees, or its agents, may sell, offer to sell, or procure additional liability insurance coverage for you for loss or damage to your shipment, if you release the shipment for transportation at a value not exceeding 60 cents per pound ($1.32 per kilogram) per article.

Your mover may offer, sell, or procure any type of insurance policy covering loss or damage in excess of its specified liability.

Your mover must issue you a policy or other appropriate evidence of the insurance you purchased. Your mover must provide a copy of the policy or other appropriate evidence to you at the time your mover sells or procures the insurance. Your mover must issue policies written in plain English.

Your mover must clearly specify the nature and extent of coverage under the policy. Your mover's failure to issue you a policy, or other appropriate evidence of insurance you purchased, will subject your mover to full liability for any claims to recover loss or damage attributed to it.

Your mover must provide in its tariffs for the provision of liability insurance coverage. The tariff must also provide for the base transportation charge, including its assumption for full liability for the value of the shipment. This would be in the event your mover fails to issue you a policy or other appropriate evidence of insurance at the time of purchase.

Subpart D—Estimating Charges

Must My Mover Estimate the Transportation and Accessorial Charges for My Move?

We require your mover to prepare a written estimate on every shipment transported for you. You are entitled to a copy of the written estimate when your mover prepares it. Your mover must provide you a written estimate of all charges, including transportation, accessorial, and advance charges. Your mover's ''rate quote'' is not an estimate. You and your mover must sign the estimate of charges. Your mover must provide you with a dated copy of the estimate of charges at the time you sign the estimate.

You should be aware that if you receive an estimate from a household goods broker, the mover is not required to accept the estimate. Be sure to obtain a written estimate from the mover if a mover tells you orally that it will accept the broker's estimate.

Your mover must specify the form of payment it and its delivering agent will honor at delivery. Payment forms may include, but are not limited to, cash, a certified check, a money order, a cashier's check, a specific charge card such as American Express™, a specific credit card such as Visa™, or your mover's own credit.

If your mover provides you with an estimate based on volume that will later be converted to a weight-based rate, the mover must provide you an explanation in writing of the formula used to calculate the conversion to weight. Your mover must specify that the final charges will be based on actual weight and services. Before loading your household goods, and upon mutual agreement of both you and your mover, your mover may amend an estimate of charges. Your mover may not amend the estimate after loading the shipment.

A *binding estimate* is an agreement made in advance with your mover. It guarantees the total cost of the move based upon the quantities and services shown on your mover's estimate.

A *non-binding estimate* is what your mover believes the total cost will be for the move, based upon the estimated weight of the shipment and the accessorial services requested. A non-binding estimate is not binding on your mover. Your mover will base the final charges upon the actual weight of your shipment, the services provided, and its tariff provisions in effect. You must prepare yourself to pay 10 percent more than the estimated amount at delivery.

How Must My Mover Estimate Charges Under the Regulations?

Binding estimates. Your mover may charge you for providing a binding estimate. The binding estimate must clearly describe the shipment and all services provided.

When you receive a binding estimate, you cannot be required to pay any more than the estimated amount at delivery. If you have requested the mover provide more services than those included in the estimate, the mover may not demand full payment for those added services at time of delivery. Instead he must bill for those services later, as explained below. Such services might include destination charges often not known at origin (*i.e.,* long carry charges, shuttle charges, or extra stair carry charges).

A binding estimate must be in writing and a copy must be made available to you before you move.

If you agree to a binding estimate, you are responsible for paying the charges due by cash, certified check, money order, or a cashier's check. The charges are due your mover at the time of delivery unless your mover agrees, before you move, to extend credit or to accept payment by a specific charge card such as American Express™ or a specific credit card such as Visa™. If you are unable to pay at the time the shipment is delivered, the mover may place your shipment in storage at your expense until you pay the charges.

Other requirements of binding estimates include the following eight elements:

(1) Your mover must retain a copy of each binding estimate as an attachment to the bill of lading.

(2) Your mover must clearly indicate upon each binding estimate's face the estimate is binding upon you and your mover. Each binding estimate must also clearly indicate on its face the charges shown are the charges to be assessed for only those services specifically identified in the estimate.

(3) Your mover must clearly describe binding estimate shipments and all services to be provided.

(4) If, before loading your shipment, your mover believes you are tendering additional household goods or are requiring additional services not identified in the binding

estimate, and you and your mover cannot reach an agreement, your mover may refuse to service the shipment. If your mover agrees to service the shipment, your mover must do one of the following three things:

(a) Reaffirm the binding estimate.

(b) Negotiate a revised written binding estimate listing the additional household goods or services.

(c) Add an attachment to the contract, in writing, stating both of you will consider the original binding estimate as a non-binding estimate. You should read more below. This may seriously affect how much you may pay for the entire move.

(5) Once your mover loads your shipment, your mover's failure to execute a new binding estimate or to agree with you to treat the original estimate as a non-binding estimate signifies it has reaffirmed the original binding estimate. Your mover may not collect more than the amount of the original binding estimate, except as provided in the next two paragraphs.

(6) Your mover may believe additional services are necessary to properly service your shipment after your household goods are in-transit. Your mover must inform you what the additional services are before performing those services. Your mover must allow you at least one hour to determine whether you want the additional services performed. Such additional services include carrying your furniture up additional stairs or using an elevator. If these services do not appear on your mover's estimate, your mover must deliver your shipment and bill you later for the additional services.

If you agree to pay for the additional services, your mover must execute a written attachment to be made an integral part of the bill of lading and have you sign the written attachment. This may be done through fax transmissions. You will be billed for the additional services 30 days following the date of delivery.

(7) If you add additional services after your household goods are in-transit, you will be billed for the additional services, but will only be expected to pay the full amount of the binding estimate to receive delivery. Thirty days after delivery, your mover must bill you for the balance of any remaining charges. For example, if your binding estimate shows total charges at delivery should be $1,000, but your actual charges at destination are $1,500, your mover must deliver the shipment upon payment of $1,000. The mover must bill you for the remaining $500 after 30 days after delivery.

(8) Failure of your mover to relinquish possession of a shipment upon your offer to pay the binding estimate amount constitutes your mover's failure to transport a shipment with ''reasonable dispatch'' and subjects your mover to cargo delay claims pursuant to 49 CFR part 370.

Non-Binding Estimates

Your mover is not permitted to charge you for giving a non-binding estimate.

A non-binding estimate is not a bid or contract. Your mover provides it to you to give you a general idea of the cost of the move, but it does not bind your mover to the estimated cost. You should expect the final cost to be more than the estimate. The actual cost will be in accordance with your mover's tariffs. Federal law requires your mover to collect the charges shown in its tariffs, regardless of what your mover writes in its non-binding estimates. This is why it is important to ask for copies of the mover's tariffs before deciding on a mover. The charges contained in mover's tariffs are essentially the same for the same weight shipment moving the same distance. If you obtain differing non-binding estimates from different movers, you must pay only the amount specified in your mover's tariff. Therefore, a non-binding estimate may have no effect on the amount that you will ultimately have to pay.

You must prepare yourself to pay 10 percent more than the estimated amount at the time of delivery. Every collect-on-delivery shipper must have available 110 percent of the estimate at the time of delivery. If you order additional services from your mover after your goods are in transit, the mover will then bill you 30 days after delivery for any remaining charges.

Non-binding estimates must be in writing and clearly describe the shipment and all services provided. Any time a mover provides such an estimate, the amount of the charges estimated must be on the order for service and bill of lading relating to your shipment. When you are given a non-binding estimate, do not sign or accept the order for service or bill of lading unless the amount estimated is entered on each form when prepared by the mover.

Other requirements of non-binding estimates include the following nine elements:

(1) Your mover must provide reasonably accurate non-binding estimates based upon the estimated weight of the shipment and services required.

(2) Your mover must explain to you that all charges on shipments moved upon non-binding estimates will be those appearing in your mover's tariffs applicable to the transportation. If your mover provides a non-binding estimate of approximate costs, your mover is not bound by such an estimate.

(3) Your mover must furnish non-binding estimates without charge and in writing to you.

(4) Your mover must retain a copy of each non-binding estimate as an attachment to the bill of lading.

(5) Your mover must clearly indicate on the face of a non-binding estimate, the estimate is not binding upon your mover and the charges shown are the approximate charges to be assessed for the services identified in the estimate.

(6) Your mover must clearly describe on the face of a non-binding estimate the entire shipment and all services to be provided.

(7) If, before loading your shipment, your mover believes you are tendering additional household goods or are requiring additional services not identified in the non-binding estimate, and you and your mover cannot reach an agreement, your mover may refuse to service the shipment. If your mover agrees to service the shipment, your mover must do one of the following two things:

(a) Reaffirm the non-binding estimate.

(b) Negotiate a revised written non-binding estimate listing the additional household goods or services.

(8) Once your mover loads your shipment, your mover's failure to execute a new estimate signifies it has reaffirmed the original non-binding estimate. Your mover may not collect more than 110 percent of the amount of this estimate at destination.

(9) Your mover may believe additional services are necessary to properly service your shipment after your household goods are in-transit. Your mover must inform you what the additional services are before performing those services. Your mover must allow you at least one hour to determine whether you want the additional services performed. Such additional services include carrying your furniture up additional stairs or using an elevator. If these services do not appear on your mover's estimate, your mover must deliver your shipment and bill you later for the additional services.

If you agree to pay for the additional services, your mover must execute a written attachment to be made an integral part of the bill of lading and have you sign the written attachment. This may be done through fax transmissions. You will be billed for the additional services after 30 days after delivery.

(10) If you add additional services after your household goods are in-transit, you will be billed for the additional services, but will only be expected to pay no more than 110 percent of the non-binding estimate to receive delivery. Thirty days after delivery, your mover must bill you for the balance of any remaining charges. For example, if your non-binding estimate shows total charges at delivery should be $1,000, but your actual charges at destination are $1,500, your mover must deliver the shipment upon payment of $1,100. The mover must bill you for the remaining $400 after 30 days after delivery.

If your mover furnishes a non-binding estimate, your mover must enter the estimated charges upon the order for service and upon the bill of lading.

Your mover must retain a record of all estimates of charges for each move performed for at least one year from the date your mover made the estimate.

What Payment Arrangements Must My Mover Have in Place To Secure Delivery of My Household Goods Shipment?

If your total bill is 110 percent of the non-binding estimate or less, the mover can require payment in full upon delivery. If the bill exceeds 110 percent of the non-binding estimate, your mover must relinquish possession of the shipment at the time of delivery upon payment of 110 percent of the estimated amount. Your mover should have specified its acceptable form of payment on the estimate, order for service, and bill of lading. Your mover's failure to relinquish possession of a shipment after you offer to pay 110 percent of the estimated charges constitutes its failure to transport the shipment with ''reasonable dispatch'' and subjects your mover to your cargo delay claims under 49 CFR part 370.

Your mover must bill for the payment of the balance of any remaining charges after 30 days after delivery.

Subpart E—Pickup of My Shipment of Household Goods

Must My Mover Write Up an Order for Service?

We require your mover to prepare an order for service on every shipment transported for you. You are entitled to a copy of the order for service when your mover prepares it.

The order for service is not a contract. Should you cancel or delay your move or if you decide not to use the mover, you should promptly cancel the order.

If you or your mover change any agreed dates for pick up or delivery of your shipment, or agree to any change in the non-binding estimate, your mover may prepare a written change to the order for service. The written change must be attached to the order for service.

The order for service must contain the following fifteen elements:

(1) Your mover's name and address and the U.S. DOT number assigned to your mover.

(2) Your name, address and, if available, your telephone number(s).

(3) The name, address, and telephone number of the delivering mover's office or agent located at or nearest to the destination of your shipment.

(4) A telephone number where you may contact your mover or its designated agent.

(5) One of the following three dates and times:

(a) The agreed pickup date and agreed delivery date of your move.

(b) The agreed period(s) of the entire move.

(c) If your mover is transporting the shipment on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation, and delivery. Your mover must enter any penalty or per diem requirements upon the agreement under this item.

(6) The names and addresses of any other motor carriers, when known, who will participate in interline transportation of the shipment.

(7) The form of payment your mover will honor at delivery. The payment information must be the same that was entered on the estimate.

(8) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(9) The maximum amount your mover will demand at the time of delivery to obtain possession of the shipment, when transported on a collect-on-delivery basis.

(10) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The STB's required released rates may be increased annually by your mover based on the Department of Commerce's Cost of Living Adjustment.

(11) A complete description of any special or accessorial services ordered and minimum weight or volume charges applicable to the shipment.

(12) Any identification or registration number your mover assigns to the shipment.

(13) For non-binding estimated charges, your mover's reasonably accurate estimate of the amount of the charges, the method of payment of total charges, and the maximum amount (110 percent of the non-binding estimate) your mover will demand at the time of delivery for you to obtain possession of the shipment.

(14) For binding estimated charges, the amount of charges your mover will demand based upon the binding estimate and the terms of payment under the estimate.

(15) An indication of whether you request notification of the charges before delivery. You must provide your mover with the telephone number(s) or address(es) where your mover will transmit such communications.

You and your mover must sign the order for service. Your mover must provide a dated copy of the order for service to you at the time your mover signs the order. Your mover must provide you the opportunity to rescind the order for service without any penalty for a three-day period after you sign the order for service, if you scheduled the shipment to be loaded more than three days after you sign the order.

Your mover may provide you with blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move for informational purposes. However, your mover is forbidden from requiring you to sign any blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move.

Before loading your shipment, and upon mutual agreement of both you and your mover, your mover may amend an order for service. Your mover must retain records of an order for service it transported for at least one year from the date your mover wrote the order.

Your mover must inform you if the mover reasonably expects a special or accessorial service is necessary to safely transport a shipment. Your mover must refuse to accept the shipment when your mover reasonably expects a special or accessorial service is necessary to safely transport a shipment and you refuse to purchase the special or accessorial service. Your must make a written note if you refuse any special or accessorial services that your move reasonably expects to be necessary.

Must My Mover Write Up an Inventory of the Shipment?

Yes. Your mover must prepare an inventory of your shipment before loading. If your mover's driver fails to prepare an inventory, you should write a detailed inventory of your shipment listing any damage or unusual wear to any items. The purpose is to make a record of the existence and condition of each item.

After completing the inventory, you should sign each page and ask the mover's driver to sign each page. Before you sign it, it is important you make sure the inventory lists every item in the shipment and the entries regarding the condition of each item are correct. You have the right to note any disagreement. When your mover delivers the shipment, if an item is missing or damaged, your ability to dispute the items lost or damaged may depend upon your notations.

You should retain a copy of the inventory. Your mover may keep the original if the driver prepared it. If your mover's driver completed an inventory, the mover must attach the complete inventory to the bill of lading as an integral part of the bill of lading.

Must My Mover Write Up a Bill of Lading?

The bill of lading is the *contract* between you and the mover. The mover is required by law to prepare a bill of lading for every shipment it transports. *The information on a bill of lading is required to be the same information shown on the order for service.* The driver who loads your shipment must give you a copy of the bill of lading before loading your furniture and other household goods.

It is your responsibility to read the bill of lading before you accept it. It is your responsibility to understand the bill of lading before you sign it. If you do not agree with something on the bill of lading, do not sign it until you are satisfied it is correct.

The bill of lading requires the mover to provide the service you have requested. You must pay the charges set forth in the bill of lading.

The bill of lading is an important document. Do not lose or misplace your copy. Have it available until your shipment is delivered, all charges are paid, and all claims, if any, are settled.

A bill of lading must include the following 14 elements:

(1) Your mover's name and address, or the name and address of the motor carrier issuing the bill of lading.

(2) The names and addresses of any other motor carriers, when known, who will participate in the transportation of the shipment.

(3) The name, address, and telephone number of the office of the motor carrier you must contact in relation to the transportation of the shipment.

(4) The form of payment your mover will honor at delivery. The payment information must be the same that was entered on the estimate and order for service.

(5) When your mover transports your shipment under a collect-on-delivery basis, your name, address, and telephone number where the mover will notify you about the charges.

(6) *For non-guaranteed service,* the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods for pickup and delivery entered upon the bill of lading must conform to the agreed dates or periods of time for pickup and delivery entered upon the order for service or a proper amendment to the order for service.

(7) For *guaranteed service,* the dates for pickup and delivery and any penalty or per diem entitlements due you under the agreement.

(8) The actual date of pickup.

(9) The identification number(s) of the vehicle(s) in which your mover loads your shipment.

(10) The terms and conditions for payment of the total charges including notice of any minimum charges.

(11) The maximum amount your mover will demand from you at the time of delivery

for you to obtain possession of your shipment, when your mover transports under a collect-on-delivery basis.

(12) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The STB's required released rates may be increased annually by your mover based on the Department of Commerce's Cost of Living Adjustment.

(13) Evidence of any insurance coverage sold to or procured for you from an independent insurer, including the amount of the premium for such insurance.

(14) Each attachment to the bill of lading. Each attachment is an integral part of the bill of lading contract. The following three items must be added as attachments:

(i) The binding or non-binding estimate.

(ii) The order for service.

(iii) The inventory.

A copy of the bill of lading must accompany your shipment at all times while in the possession of your mover or its agent(s). When your mover loads the shipment upon a vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment. Your mover must retain bills of lading for shipments it transported for at least one year from the date your mover created the bill of lading.

Should I Reach an Agreement With My Mover About Pickup and Delivery Times?

You and your mover should reach an agreement for pickup and delivery times. It is your responsibility to determine on what date, or between what dates, you need to have the shipment picked up and on what date, or between what dates, you require delivery. It is your mover's responsibility to tell you if it can provide service on or between those dates, or, if not, on what other dates it can provide the service.

In the process of reaching an agreement with your mover, you may find it necessary to alter your moving and travel plans if no mover can provide service on the specific dates you desire.

Do not agree to have your shipment picked up or delivered ''as soon as possible.'' The dates or periods you and your mover agree upon should be definite.

Once an agreement is reached, your mover must enter those dates upon the order for service and upon the bill of lading.

Once your goods are loaded, your mover is contractually bound to provide the service described in the bill of lading. Your mover's only defense for not providing the service on the dates called for is the ''Defense of Force Majeure.'' This is a legal term. It means when circumstances change, were not foreseen, and are beyond the control of your mover, preventing your mover from performing the service agreed to in the bill of lading, your mover is not responsible for damages resulting from its non-performance.

This may occur when you do not inform your mover of the exact delivery requirements. For example, because of restrictions trucks must follow in your new city, the mover may not be able to take its truck down the street of your residence and must find helpers to provide long carries to carry your furniture and other household goods down a street where it can drive and park its trucks. Another example would be if your mover is not aware that your new residence is on the third floor, requiring six flight stair carries and workmen that can carry your furniture and household goods up stairs.

Must My Mover Determine the Weight of My Shipment?

Generally yes. If your mover transports your household goods on a non-binding estimate under the mover's tariffs based upon weight, your mover must determine the weight of the shipment. If your mover provided a binding estimate and has loaded your shipment without claiming you have added additional items or services, the weight of the shipment will not affect the charges you will pay. If your mover is transporting your shipment based upon the volume of the shipment (*i.e.*, a set number of cubic yards or meters), the weight of the shipment will also not affect the charges you will pay.

Your mover must determine the weight of your shipment before requesting you pay for any charges dependent upon your shipment's weight.

Most movers usually have a minimum weight or volume charge for transporting a shipment. Usually the minimum is the charge for transporting a shipment of at least 3,000 pounds (1,362 kilograms).

If your shipment appears to weigh less than the mover's minimum weight, your mover must advise you on the order for service of the minimum cost before transporting your shipment. Should your mover fail to advise you of the minimum charges and your shipment is less than the minimum weight, your mover must base your final charges upon the actual weight instead of the minimum weight.

How Must My Mover Determine the Weight of My Shipment?

Your mover must weigh your shipment upon a certified scale.

The weight of your shipment must be obtained by using one of two methods.

Origin weighing—Your mover may weigh your shipment in the city or area where it loads your shipment. If it elects this option, the driver must weigh the truck before coming to your residence. This is called the *tare weight.* At the time of this first weighing, the truck may already be partially loaded with one or more other shipments. This will not affect the weight of your shipment. The truck should also contain the pads, dollies, hand-trucks, ramps, and other equipment normally used in the transportation of household goods shipments.

After loading, the driver will weigh the truck again to obtain the loaded weight, called the *gross weight.* The net weight of your shipment is then obtained by subtracting the *tare weight* before loading from the *gross weight.*

Gross weight − tare weight before loading=net weight

Destination weighing (Also called *back weighing*)—The mover is also permitted to determine the weight of your shipment at the destination after it delivers your load. The fact your mover weighs your shipment at the destination instead of the origin will not affect the accuracy of the weight of your shipment. *The most important difference is your mover will not determine the exact charges on your shipment before it is unloaded.*

Destination weighing is done in reverse of origin weighing. After arriving in the city or area where you are moving, the driver will weigh the truck. Your shipment will still be on the truck. Your mover will determine the *gross weight* before coming to your new residence to unload. After unloading your shipment, the driver will again weigh the truck to obtain the tare weight. The net weight of your shipment will then be obtained by subtracting the *tare weight* after delivery from the *gross weight.*

Gross weight − tare weight after delivery=net weight

At the time of both weighings, your mover's truck must have installed or loaded all pads, dollies, hand trucks, ramps, and other equipment required in the transportation of your shipment. The driver and other persons must be off the vehicle at the time of both weighings. The fuel tanks on the vehicle must be full at the time of each weighing. In lieu of this requirement, your mover must not add fuel between the two weighings when the tare weighing is the first weighing performed.

Your mover may detach the trailer of a tractor-trailer vehicle combination from the tractor and have the trailer weighed separately at each weighing provided the length of the scale platform is adequate to accommodate and support the entire trailer at one time.

Your mover may use an alternative method to weigh your shipment if it weighs 3,000 pounds or less (1,362 kilograms or less). The only alternative method allowed is weighing the shipment upon a platform or warehouse certified scale before loading your shipment for transportation or after unloading.

Your mover must use the net weight of shipments transported in large containers, such as ocean or railroad containers. Your mover will calculate the difference between the tare weight of the container (including all pads, blocking and bracing used in the transportation of your shipment) and the gross weight of the container with your shipment loaded in the container.

You have the right, and your mover must inform you of your right, to observe all weighings of your shipment. Your mover must tell you where and when each weighing will occur. Your mover must give you a reasonable opportunity to be present to observe the weighings.

You may waive your right to observe any weighing or re-weighing. This does not affect any of your other rights you have under Federal law.

Your mover may request you waive your right to have a shipment weighed upon a certified scale. Your mover may want to weigh the shipment upon a trailer's on-board non-certified scale. You should demand your right to have a certified scale used. The use of a non-certified scale may cause you to pay a higher final bill for your move, if the non-

certified scale does not accurately weigh your shipment. Remember, certified scales are inspected and approved for accuracy by a government inspection or licensing agency. Non-certified scales are not inspected and approved for accuracy by a government inspection or licensing agency.

Your mover must obtain a separate weight ticket for each weighing. The weigh master must sign each weight ticket. Each weight ticket must contain the following six items:

(1) The complete name and location of the scale.

(2) The date of each weighing.

(3) Identification of the weight entries as being the tare, gross, or net weights.

(4) The company or mover identification of the vehicle.

(5) Your last name as it appears on the Bill of Lading.

(6) Your mover's shipment registration or Bill of Lading number.

Your mover must retain the original weight ticket or tickets relating to the determination of the weight of your shipment as part of its file on your shipment.

When both weighings are performed on the same scale, one weight ticket may be used to record both weighings.

Your mover must present all freight bills with true copies of all weight tickets. If your mover does not present its freight bill with all weight tickets, your mover is in violation of Federal law.

Before the driver actually begins unloading your shipment weighed at origin and after your mover informs you of the billing weight and total charges, you have the right to demand a re-weigh of your shipment. If you believe the weight is not accurate, you have the right to request your mover re-weigh your shipment before unloading.

You have the right, and your mover must inform you of your right, to observe all re-weighings of your shipment. Your mover must tell you where and when each re-weighing will occur. Your mover must give you a reasonable opportunity to be present to observe the re-weighings.

You may waive your right to observe any re-weighing, however, you must waive that right in writing. You may send the written waiver via fax, e-mail, or any other electronic means. This does not affect any of your other rights you have under Federal law.

Your mover is prohibited from charging you for the re-weighing. If the weight of your shipment at the time of the re-weigh is different from the weight determined at origin, the mover must recompute the charges based upon the re-weigh weight.

Before requesting a re-weigh, you may find it to your advantage to estimate the weight of your shipment using the following three-step method:

1. Count the number of items in your shipment. Usually there will be either 30 or 40 items listed on each page of the inventory. For example, if there are 30 items per page and your inventory consists of four complete pages and a fifth page with 15 items listed, the total number of items will be 135. *If an automobile is listed on the inventory do not include this item in the count of the total items.*

2. Subtract the weight of any automobile included in your shipment from the total weight of the shipment. If the automobile was not weighed separately, its weight can be found on its title or license receipt.

3. Divide the number of items in your shipment into the weight. If the average weight resulting from this exercise ranges between 35 and 45 pounds (16 and 20 kilograms) per article, it is unlikely a re-weigh will prove beneficial to you and could result in you paying higher charges.

Experience has shown the average shipment of household goods will weigh about 40 pounds (18 kilograms) per item. If a shipment contains a large number of heavy items, such as cartons of books, boxes of tools or heavier than average furniture, the average weight per item may be 45 pounds or more (20 kilograms or more).

What Must My Mover Do if I Want To Know the Actual Weight or Charges for My Shipment before Delivery?

If you request notification of the actual weight or volume and charges upon your shipment, your mover must comply with your request when it is moving your goods on a collect-on-delivery basis. This requirement is conditioned upon you supplying your mover with an address or telephone number where you will receive the communication. Your mover must make its notification by telephone, telegram, or in person.

You must receive its notification at least one full 24-hour day before your mover's delivery, excluding Saturdays, Sundays and Federal holidays.

Your mover may disregard this 24-hour notification requirement on shipments subject to one of the following three things:

(1) Back weigh (when your mover weighs your shipment at its destination).

(2) Pickup and delivery encompassing two consecutive weekdays, if you agree.

(3) Maximum payment amounts at time of delivery of 110 percent of the estimated charges, if you agree.

Subpart F—Transportation of My Shipment

Must My Mover Transport the Shipment in a Timely Manner?

Yes, your mover must transport your household goods in a timely manner. This is also known as ''reasonable dispatch service.'' Your mover must provide reasonable dispatch service to you, except for transportation on the basis of guaranteed delivery dates.

When your mover is unable to perform either the pickup or delivery of your shipment on the dates or during the periods of time specified in the order for service, your mover must notify you of the delay by telephone, telegram, or in person, at your mover's expense. As soon as the delay becomes apparent to your mover, it must give you notification it will be unable to provide the service specified in the terms of the order for service.

At the time of your mover's notification of delay, it must advise you of the dates or periods of time it may be able to pickup and/or deliver the shipment. Your mover must consider your needs in its advisement.

Your mover must prepare a written record of the date, time, and manner of its notification. Your mover must prepare a written record of its amended date or period for delivery. Your mover must retain these records as a part of its file on your shipment. The retention period is one year from the date of notification. Your mover must furnish a copy of the notification to you by first class mail or in person if you request a copy of the notice.

Your mover must tender your shipment for delivery upon the agreed delivery date or within the period specified on the bill of lading. Upon your request or concurrence, your mover may deliver your shipment on another day.

The establishment of a delayed pickup or delivery date does not relieve your mover from liability for damages resulting from your mover's failure to provide service as agreed. However, when your mover notifies you of alternate delivery dates, it is your responsibility to be available to accept delivery on the dates specified. If you are not available and are not willing to accept delivery, your mover has the right to place your shipment in storage at your expense or hold the shipment on its truck and assess additional charges.

If after the pickup of your shipment, you request your mover to change the delivery date, most movers will agree to do so providing your request will not result in unreasonable delay to its equipment or interfere with another customer's move. However, your mover is under no obligation to consent to amended delivery dates. Your mover has the right to place your shipment in storage at your expense if you are unwilling or unable to accept delivery on the date agreed to in the bill of lading.

If your mover fails to pick up and deliver your shipment on the date entered on the bill of lading and you have expenses you otherwise would not have had, you may be able to recover those expenses from your mover. This is what is called an inconvenience or delay claim. Should your mover refuse to honor such a claim and you continue to believe you are entitled to be paid damages, you may take your mover to court under 49 U.S.C. 14704. *The Federal Motor Carrier Safety Administration (FMCSA) has no authority to order your mover to pay such claims.*

While we hope your mover delivers your shipment in a timely manner, you should consider the possibility your shipment may be delayed and find out what payment you can expect if a mover delays service through its own fault before you agree with the mover to transport your shipment.

What Must My Mover Do if It Is Able To Deliver My Shipment More Than 24 Hours Before I Am Able To Accept Delivery?

At your mover's discretion, it may place your shipment in storage. This will be under its own account and at its own expense in a warehouse located in proximity to the destination of your shipment. Your mover may do this if you fail to request or concur with an early delivery date, and your mover is able to deliver your shipment more than 24 hours before your specified date or the first day of your specified period.

If your mover exercises this option, your mover must immediately notify you of the

name and address of the warehouse where your mover places your shipment. Your mover must make and keep a record of its notification as a part of its shipment records. Your mover has full responsibility for the shipment under the terms and conditions of the bill of lading. Your mover is responsible for the charges for redelivery, handling, and storage until it makes final delivery. Your mover may limit its responsibility to the agreed delivery date or the first day of the period of delivery as specified in the bill of lading.

What Must My Mover Do for Me When I Store Household Goods in Transit?

If you request your mover to hold your household goods in storage-in-transit (SIT) and the storage period of time is about to expire, your mover must notify you, in writing, about the four following items:

(1) The date when storage-in-transit will convert to permanent storage.

(2) The existence of a nine-month period after the date of conversion to permanent storage when you may file claims against your mover for loss or damage occurring to your goods while in transit or during the storage-in-transit period.

(3) Your mover's liability will end.

(4) Your property will be subject to the rules, regulations, and charges of the warehouseman.

Your mover must make this notification at least 10 days before the expiration date of one of the following two periods of time:

(1) The specified period of time when your mover is to hold your goods in storage.

(2) The maximum period of time provided in its tariff for storage-in-transit.

Your mover must notify you by facsimile transmission, overnight courier, e-mail, or certified mail, return receipt requested.

If your mover holds your household goods in storage-in-transit for a period of time less than 10 days, your mover must notify you of the same information specified above one day before the expiration date of the specified time when your goods are to be held in such storage.

Your mover must maintain a record of all notifications to you as part of the records of your shipment. Your mover's failure or refusal to notify you will automatically effect a continuance of your mover's liability according to the applicable tariff provisions with respect to storage-in-transit, until the end of the day following the date when your mover actually gives you notice.

Subpart G—Delivery of My Shipment

May My Mover Ask Me To Sign a Delivery Receipt Purporting To Release It From Liability?

At the time of delivery, your mover will expect you to sign a receipt for your shipment. You generally will sign each page of your mover's copy of the inventory.

Your mover's delivery receipt or shipping document must not contain any language purporting to release or discharge it or its agents from liability.

Your mover may include a statement about your receipt of your property in apparent good condition, except as noted on the shipping documents.

DO NOT SIGN the delivery receipt if it contains any language purporting to release or discharge your mover or its agents from liability. Strike out such language before signing or refuse delivery if the driver or mover refuses to provide a proper delivery receipt.

What Is the Maximum Collect-on-Delivery Amount My Mover May Demand I Pay at the Time of Delivery?

On a binding estimate, the maximum amount is the exact estimate of the charges. Your mover must specify on the estimate, order for service, and bill of lading the form of payment acceptable to it (*e.g.*, a certified check).

On a non-binding estimate, the maximum amount is 110 percent of the approximate costs. Your mover must specify on the estimate, order for service, and bill of lading the form of payment acceptable to it (*e.g.*, cash).

If My Shipment Is Transported on More Than One Vehicle, What Charges May My Mover Collect at Delivery?

Although all movers try to move each shipment on one truck, it becomes necessary at times to divide a shipment among two or more trucks. This frequently occurs when an automobile is included in the shipment and it is transported on a vehicle specially designed to transport automobiles. When this occurs your transportation charges are the same as if the entire shipment moved on one truck.

If your shipment is divided for transportation on two or more trucks, the mover may require payment for each portion as it is delivered.

Your mover may delay the collection of all the charges until the entire shipment is delivered, at its discretion, not yours. When you order your move, you should ask the mover about its policies in this respect.

If My Shipment Is Partially Lost or Destroyed, What Charges May My Mover Collect at Delivery?

Movers customarily make every effort to not lose, damage, or destroy your items while your shipment is in their possession for transportation. However, despite the precautions taken, articles are sometimes lost or destroyed during the move.

In addition to any money you may recover from your mover to compensate for lost or destroyed articles, you may also recover the transportation charges represented by the portion of the shipment lost or destroyed. Your mover may only apply this paragraph to the transportation of household goods. Your mover may disregard this paragraph if loss or destruction was due to an act or omission by you. Your mover must require you to pay any specific valuation charge due.

For example, if you pack a hazardous material (*i.e.*, gasoline, aerosol cans, motor oil, etc.) and your shipment is partially lost or destroyed by fire in storage or in the mover's trailer, your mover may require you to pay for the full cost of transportation.

Your mover may first collect its freight charges for the entire shipment, if your mover chooses. At the time your mover disposes of claims for loss, damage, or injury to the articles in your shipment, it must refund the portion of its freight charges corresponding to the portion of the lost or destroyed shipment (including any charges for accessorial or terminal services).

Your mover is forbidden from collecting, or requiring you to pay, any freight charges (including any charges for accessorial or terminal services) when your household goods shipment is totally lost or destroyed in transit, unless the loss or destruction was due to an act or omission by you.

How Must My Mover Calculate the Charges Applicable to the Shipment as Delivered?

Your mover must multiply the percentage corresponding to the delivered shipment times the total charges applicable to the shipment tendered by you to obtain the total charges it must collect from you.

If your mover's computed charges exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges must apply. This will apply only to the transportation of your household goods.

Your mover must require you to pay any specific valuation charge due.

Your mover may not refund the freight charges if the loss or destruction was due to an act or omission by you. For example, you fail to disclose to your mover your shipment contains perishable live plants. Your mover may disregard its loss or destruction of your plants, because you failed to inform your mover you were transporting live plants.

Your mover must determine, at its own expense, the proportion of the shipment, based on actual or constructive weight, not lost or destroyed in transit.

Your rights are in addition to, and not in lieu of, any other rights you may have with respect to your shipment of household goods your mover lost or destroyed, or partially lost or destroyed, in transit. This applies whether or not you have exercised your rights provided above.

Subpart H—Collection of Charges

Does This Subpart Apply to Most Shipments?

No, this subpart does not apply to most shipments. Most movers perform COD service subject to the 110 percent rule for non-binding estimates. Read and understand this subpart only if your mover is providing a shipment subject to a binding estimate.

How Must My Mover Present Its Freight or Expense Bill to Me?

At the time for payment of transportation charges, your mover must give you a freight bill identifying the service provided and the charge for each service. It is customary for most movers to use a copy of the bill of lading as a freight bill; however, some movers use an entirely separate document for this purpose.

Except in those instances where a shipment is moving on a binding estimate, the freight bill must specifically identify each service performed, the rate per unit for each service, and the total charges for each service. *If this information is not on the freight bill, DO NOT accept or pay the freight bill.*

Movers customarily provide in tariffs the freight charges must be paid in cash, by

certified check, or by a cashier's check. When this requirement exists, the mover will not accept personal checks. At the time you order your move, you should ask your mover about the form of payment your mover requires.

Some movers permit payment of freight charges by use of a charge or credit card. However, do not assume your nationally recognized charge, credit, or debit card will be acceptable for payment. Ask your mover at the time you request an estimate. Your mover must specify the form of payment it will accept at delivery.

If you do not pay the transportation charges at the time of delivery, your mover has the right, under the bill of lading, to refuse to deliver your goods. The mover may place them in storage, at your expense, until the charges are paid. However, the mover must deliver your goods upon payment of 100 percent of a binding estimate.

If, before payment of the transportation charges, you discover an error in the charges, you should attempt to correct the error with the driver, the mover's local agent, or by contacting the mover's main office. If an error is discovered after payment, you should write the mover (the address will be on the freight bill) explaining the error and request a refund.

Movers customarily check all shipment files and freight bills after a move has been completed to make sure the charges were accurate. If an overcharge is found, you should be notified and a refund made. If an undercharge occurred, you may be billed for the additional charges due.

On ''to be prepaid'' shipments, your mover must present its freight bill for all transportation charges within 15 days, from the date your mover received the shipment. This period excludes Saturdays, Sundays, and Federal holidays.

On ''collect'' shipments, your mover must present its freight bill for all transportation charges on the date of delivery, or, at its discretion, within 15 days, measured from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays.

Your mover's freight bills and accompanying written notices must state the following five items:

(1) Penalties for late payment.

(2) Credit time limits.

(3) Service or finance charges.

(4) Collection expense charges.

(5) Discount terms.

If your mover extends credit to you, freight bills or a separate written notice accompanying a freight bill or a group of freight bills presented at one time must state ''You may be subject to tariff penalties for failure to timely pay freight charges'' or a similar statement. Your mover must state on its freight bills or other notices when it expects payment, and any applicable service charges, collection expense charges and discount terms.

When your mover lacks sufficient information to compute its tariff charges at its time of billing, your mover must present its freight bill for payment within 15 days following the day when sufficient information becomes available. This period excludes Saturdays, Sundays, and Federal holidays.

Your mover must not extend more credit to you, if you fail to furnish sufficient information to your mover. Your mover must have sufficient information to render a freight bill within a reasonable time after the shipment.

When your mover presents freight bills by mail, it must deem the time of mailing to be the time of presentation of the bills. The term ''freight bills,'' as used in this paragraph, includes both paper documents and billing by use of electronic media such as computer tapes, disks, or the Internet when the mails (U.S. mail, e-mail) are used to transmit them.

When you mail acceptable checks or drafts in payment of freight charges, your mover must deem the act of mailing the payment within the credit period to be the proper collection of the tariff charges within the credit period for the purposes of Federal law. In the case of a dispute as to the date of mailing, your mover must accept the postmark as the date of mailing.

If I Forced My Mover To Relinquish a Collect-on-Delivery Shipment Before the Payment of All Charges, How Must My Mover Collect the Balance?

On ''collect-on-delivery'' shipments, your mover must present its freight bill for all transportation charges within 15 days, measured from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays.

What Actions May My Mover Take To Collect From Me the Charges Upon Its Freight Bill?

Your mover must present a freight bill within 15 days (excluding Saturdays, Sundays, and Federal holidays) of the date of delivery of a shipment at your destination.

The credit period must be 15 days (including Saturdays, Sundays, and Federal holidays).

Your mover must provide in its tariffs the following three things:

(1) A provision automatically extending the credit period to a total of 30 calendar days for you if you have not paid its freight bill within the 15-day period.

(2) A provision indicating you will be assessed a service charge by your mover equal to one percent of the amount of the freight bill, subject to a $20 minimum charge, for the extension of the credit period. The mover will assess the service charge for each 30-day extension that the charges go unpaid.

(3) A provision your mover must deny credit to you, if you fail to pay a duly presented freight bill within the 30-day period. Your mover may grant credit to you, at its discretion, when you satisfy your mover's conditions you will pay all future freight bills duly presented. Your mover must ensure all your payments of freight bills are strictly in accordance with Federal rules and regulations for the settlement of its rates and charges.

Do I Have a Right To File a Claim To Recover Money for Property My Mover Lost or Damaged?

Should your move result in the loss or damage to any of your property, you have the right to file a claim with your mover to recover money for such loss or damage.

You have nine months following either the date of delivery, or the date when the shipment should have been delivered, to file a claim. You should file a claim as soon as possible. If you fail to file a claim within nine months following delivery and later bring a legal action against the mover to recover the damages, you may not be able to recover your attorney fees even though you win the court action.

While the Federal Government maintains regulations governing the processing of loss and damage claims (49 CFR part 370), it cannot resolve those claims. If you cannot settle a claim with the mover, you may file a civil action to recover your claim in court under 49 U.S.C. 14704. You may obtain the name and address of the mover's agent for service of legal process in your state by contacting the Federal Motor Carrier Safety Administration. You may also obtain the name of a process agent via the Internet at *http://www.fmcsa.dot.gov* and click on Licensing and Insurance (L&I) section.

In addition, your mover must participate in an Arbitration Program. The program, described earlier in this pamphlet, provides you with the opportunity to settle certain types of unresolved loss or damage claims through a neutral arbitrator. You may find submitting your claim to arbitration under such a program to be a less expensive and more convenient way to seek recovery of your claim. If the mover does not provide you with information about its arbitration program before you move as it must do, ask the mover for the details of the program.

Subpart I—Resolving Disputes With My Mover

What May I Do To Resolve Disputes With My Mover?

The Federal Motor Carrier Safety Administration does not help you settle your dispute with your mover.

Generally, you must resolve your own disputes with your mover. You enter a contractual arrangement with your mover. You are bound by each of the following three things:

(1) The terms and conditions you negotiated before your move.

(2) The terms and conditions you accepted when you signed the bill of lading.

(3) The terms and conditions you accepted when you signed for delivery of your goods.

You have the right to take your mover to court. We require your mover to offer you arbitration to settle your disputes with it.

The Federal Motor Carrier Safety Administration does not have the resources to seek a court injunction on your behalf to obtain your household goods if your mover is holding your goods ''hostage.''

PART 377—PAYMENT OF TRANSPORTATION CHARGES

■ 2. The authority citation for part 377 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13701–13702, 13706, 13707, and 14101; 49 CFR 1.73.

§ 377.215 [Removed and Reserved]

■ 3. Section 377.215 is removed and reserved.

Issued on: June 4, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–14439 Filed 6–10–03; 8:45 am]

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Federal Register

Wednesday,
June 11, 2003

Part III

Department of the Interior

Forest Service

36 CFR Part 251

Land Uses; Revenue-Producing Visitor Services in Alaska; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB57

Land Uses; Revenue-Producing Visitor Services in Alaska

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting regulations to establish procedures by which certain persons may conduct revenue-producing visitor services in Conservation System Units within the National Forests in Alaska. These regulations are required by section 1307 of the Alaska National Interest Lands Conservation Act. This final rule will guide the solicitation, selection of applications, and issuance of permits for visitor services within Conservation System Units for the National Forests in Alaska. The intent is to establish workable procedures for recognizing and administering statutory rights and preferences for conducting visitor services within these units.

EFFECTIVE DATE: This rule is effective July 11, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Hagadorn, Recreation, Lands, and Minerals Staff, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802, (907) 586–9336.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101 *et seq.*) provides for the disposition and use of a variety of federally administered lands in Alaska. Section 1307 (16 U.S.C. 3197) contains two provisions concerning persons and entities who are to be given special rights and preferences with respect to revenue-producing visitor services on certain lands designated by ANILCA as Conservation Units (CSUs) under the administration of the Secretary of Agriculture.

Under section 102(4) of ANILCA, a CSU, as it relates to the National Forests, means any unit in Alaska of the National Wild and Scenic Rivers System, National Trails System, and National Wilderness Preservation System, or a National Forest Monument, including existing units or any such unit established, designated, or expanded hereafter (16 U.S.C. 3102(4)).

Section 1307(a) of ANILCA (16 U.S.C. 3197(a)) provides that, notwithstanding any other provision of law, the Secretary of Agriculture, under such terms and conditions as the Secretary deems reasonable, shall allow any person who, on or before January 1, 1979, was engaged in adequately providing any type of visitor service within any area established as, or added to a CSU, to continue providing that type of service and similar types of visitor services within that CSU, if those services are consistent with the purposes for which the CSU was established or expanded.

Section 1307(b) of ANILCA (16 U.S.C. 3197(b)) provides that in selecting a person to provide any type of visitor service for any CSU, except sport fishing and hunting guiding activities, and except as provided in section 1307(a), the Secretary of Agriculture shall (1) give preference to the Native Corporation which the Secretary determines is most directly affected by the establishment or expansion of that CSU; and (2) give preference to persons determined to be local residents.

Section 1307(c) of ANILCA (16 U.S.C. 3197(c)) defines ''visitor service'' to mean any service made available for a fee or charge to persons who visit a CSU, including such services as providing food, accommodations, transportation, tours, and outfitting and guiding, except the guiding of sport hunting and fishing.

Summary of Public Comments

The Forest Service proposed rule at 36 CFR part 251, subpart E, was published in the **Federal Register** on April 25, 1997 (62 FR 20140) and provided for a 60-day comment period ending June 24, 1997. Efforts to notify the public of this proposal included news releases, published legal notices, and notification letters to permit holders, Native Corporations in southeast and southcentral Alaska, and Federal, State, and local community officials. Four written comments on the proposed rule were received: One from the State of Alaska, two from Native Corporations, and one from a private, nonprofit corporation.

Most of the comments dealt with (1) § 251.120, involving the scope and applicability of the regulations; (2) § 251.122, the process of how historical rights would be determined; and (3) § 251.123, the administration of preferred operator preferences, including the effect of the regulations on other operators without preferred status. No comments were received on the information collection requirements or criteria for determining the most directly affected Native Corporation status. One Native Corporation responded enthusiastically about the prospect for participating in the visitor industry and requested a determination of most directly affected status. Minor changes have been made in the final rule to respond to the comments received and to achieve clarity and consistency with Forest Service policy. In addition, to be consistent with section 1307 of ANILCA, the final rule will apply only to CSUs on the Tongass and Chugach National Forests in Alaska and not to other designations of National Forest System lands.

Interagency Coordination

The Forest Service has coordinated with the National Park Service and the U.S. Fish and Wildlife Service in the U.S. Department of the Interior in the development of this final rule. While not identical, this final rule is consistent (insofar as is practical within the framework of each agency's legal mandates) with provisions of the final rules of the U.S. Department of the Interior implementing section 1307 of ANILCA for the National Park Service at 36 CFR part 13 (61 FR 54334, Oct. 18, 1996) and for the U.S. Fish and Wildlife Service at 50 CFR part 36 (62 FR 1838, Jan. 14, 1997).

Analysis of Public Comments and Section-by-Section Description of Final Rule

The following is an analysis of public comments received on the proposed rule and a section-by-section description of the final rule for revenue-producing visitor services in Alaska.

Section 251.120 Scope and Applicability

Section 251.120 of the proposed rule explained that the regulations at subpart E would implement section 1307 of ANILCA with regard to the continuation of visitor services existing as of January 1, 1979. It also explained the preferences granted to local residents and certain Native Corporations for obtaining special use authorizations for visitor services on designated lands within National Forest System lands in Alaska. The proposed rule stated that the provisions of subpart E would apply only to existing and future Forest Service-administered CSUs in Alaska, not to all National Forest System lands, and provided a comprehensive list of CSUs within the Tongass and Chugach National Forests.

This section also explained that existing regulations in 36 CFR part 251, subpart B, apply to all requests involving revenue-producing visitor services in Alaska unless expressly waived by subpart E, and that subpart E would not apply to the guiding of sport hunting and fishing.

The following is an analysis of and response to comments received on § 251.120 of the proposed rule.

Comment: The State of Alaska wanted the Forest Service to clarify that the proposed regulations would not apply to State-owned lands and waters, including navigable waters, shore lands, tidelands, and submerged lands within the boundaries of national forests in Alaska. The State of Alaska contends that these lands and waters are, and will continue to be, managed and regulated by the State.

Response: The regulations at 36 CFR part 251, subpart E, apply only to CSUs, which, in accordance with section 103(c) of ANILCA, exclude State and private lands. To provide further clarification of the application of subpart E, the words ''National Forest System lands'' have been added to § 251.120(a) in the final rule.

Comment: The State of Alaska believed that it was unclear whether the proposed regulation applied to the Nellie Juan-College Fiord Wilderness Study Area and to rivers identified as eligible for inclusion in the Wild and Scenic Rivers System. The State of Alaska supported application of these regulations to the wilderness study area and to these rivers.

Response: Section 102(4) of ANILCA defines CSUs as existing units or units that are established, designated, or expanded in the future. Therefore, the statutory rights and preferences created by section 1307 of ANILCA do not apply to study areas or areas identified as eligible units of the Wild and Scenic Rivers System. To clarify the applicability of the regulations, the following wording based on section 102(4) of ANILCA has been added to the end of the definition of ''Conservation System Unit'' in § 251.121 of the final rule: ''* * * including existing units and any such unit established, designated, or expanded hereafter.''

Comment: One respondent stated that section 506 of ANILCA provides certain Alaska natives specific rights on Admiralty Island in addition to the more general rights granted by section 1307 of ANILCA.

Response: Section 506 of ANILCA addresses a number of specific lands issues associated with the Admiralty Island National Monument that involve several Native Corporations, including a provision for consultation and cooperation in the management of specific lands with Kootznoowoo, Incorporated. The regulations at 36 CFR part 251, subpart E, are not intended to diminish or supersede the provisions of section 506 of ANILCA; therefore, no change has been made in the final rule with regard to this issue.

In the final rule, the Department has added a sentence to § 251.120(b) providing that in case of a conflict between subpart B and subpart E, subpart E controls.

Section 251.121 Definitions

Proposed § 251.121 provided definitions for special terms used in the regulations. No public comments were received on § 251.121. However, the Department has made minor changes in the final rule to clarify definitions, revise references, and maintain a format consistent with subpart B.

The term *best offer* in the proposed rule has been changed to *best application* in the final rule for consistency with the agency's competitive application process.

The definition of *Conservation System Unit* has been clarified to address the applicability of the rule to future CSUs and to additions to existing CSUs, consistent with the wording in section 102(4) of ANILCA. This change was made in response to a comment from the State of Alaska regarding application of the rule to Wilderness Study areas and areas eligible for inclusion in the Wild and Scenic Rivers System.

The definition of *controlling interest* has been revised by adding the phrase ''or its capital'' following ''the entity'' to clarify that a controlling interest includes ownership of capital assets. Additionally, the word ''business,'' which preceded the word ''entity,'' has been deleted because it was unnecessary.

The definition of *historical operator* has been simplified to remove the word ''current'' as a description of a holder because the three criteria adequately describe a qualifying holder. Additionally, the words ''revenue-producing'' as a description of visitor services have been removed because this concept applies to all of subpart E and is addressed in its title.

Local area in the proposed rule was defined as ''that area within 100 miles * * *'' In the final rule, the definition has been modified to read ''any site within 100 miles * * *'' to allow for greater specificity in determining the point to which a measurement will be made.

The definition of *local resident* for individuals has been changed by adding the phrase ''Alaska residents.'' This revision clarifies the intent of the proposed rule that persons otherwise qualifying as local area residents must be Alaska residents. Additionally, the other entities in which a controlling interest may be held that are referenced in the definition for *controlling interest* have been added to paragraph (2) of the definition for *local resident.* Finally, the following sentence was removed from the definition for *local resident* and inserted at § 251.124(d) to improve the organization and clarity of the rule: ''Factors demonstrating the location of an individual's primary, permanent residence and business include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska, tax returns, and voter registration.''

In the definition for *preferred operator,* the reference to § 251.124 has been changed to § 251.123, and the reference to § 251.123 has been changed to § 251.124, in accordance with the renumbering of those sections in the final rule, as discussed in the following descriptions of those sections.

Responsive offer has been changed to *responsive application* in the final rule for consistency with nomenclature in the agency's competitive application process. The phrase ''terms and conditions'' was replaced with ''requirements'' because ''terms and conditions'' are contained in a permit, not a prospectus.

Section 251.122 Historical Operator Special Use Authorizations

Section 251.122 of the proposed rule provided that persons who were adequately providing visitor services within CSUs on National Forest System lands in Alaska prior to January 1, 1979, would be permitted to continue to provide those services and similar types of services under appropriate terms and conditions, if these services are consistent with the purposes for which the CSUs were established or expanded. Consequently, persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service within a CSU in Alaska, have continued to provide that visitor service and have retained the controlling interest in the business providing the visitor service, would be considered ''historical operators'' under these regulations and would be entitled to the rights conferred by section 1307(a) of ANILCA. However, a right to continue to provide visitor services under section 1307(a) is not unlimited; rather, it is subordinate to the management of the CSU and does not grant a monopoly to provide all visitor services in a given area to the exclusion of other individuals or entities.

This section of the proposed rule also specified under what circumstances the rights of a historical operator would be lost. These included revocation due to failure to comply with special use

authorization terms and conditions; refusal of an offer to reissue a special use authorization; and failure to provide authorized services for 24 consecutive months. In addition, the rights of a historical operator would terminate upon a change in the controlling interest in the business providing the visitor services, unless the controlling interest passed to those who otherwise qualify as historical operators.

The following is an analysis of and response to a comment on § 251.122 of the proposed rule.

Comment: One respondent suggested that a provision be added to § 251.122 to require that before making a decision to grant historical operator status, the authorized officer notify any Native Corporations that have applied for designation as the most directly affected Native Corporation for the CSU and give them the opportunity to comment before making the determination. The respondent stated that notice and opportunity to comment are equitable and consistent with due process because a determination granting historical operator status for a particular CSU may defeat the most directly affected Native Corporation's preference right within the same CSU. According to the respondent, information that can be provided by the most directly affected Native Corporation should, therefore, be obtained before any final determination is made regarding historical operator rights within an affected CSU.

Response: The Department disagrees with this respondent and has not revised the rule to require notice and comment prior to granting historical operator status because the Department disagrees that a determination granting historical operator status for a particular CSU may defeat a most directly affected Native Corporation's preference right within the same CSU. Historical operator rights conferred by section 1307(a) of ANILCA are separate from the preferences granted to local residents and most directly affected Native Corporations under section 1307(b) of ANILCA. In addition, historical operator determinations are based on objective, specific statutory criteria applied to information contained in established special use authorization files. Consequently, the Department believes that public notice and comment would be an unnecessary administrative burden and would not greatly aid in making historical operator determinations. Finally, the Department wants its rule to be as consistent as possible with the final rules published by the National Park Service and the U.S. Fish and Wildlife Service, neither of which provides for public notice and comment in connection with historical operator determinations.

In the final rule, the Department has added a paragraph to § 251.122 to address a concept in the statute that was omitted in the proposed rule. The new paragraph (c) clarifies that a historical operator may apply for an authorization to provide visitor services similar to but in lieu of those provided by that historical operator before January 1, 1979, and specifies the criteria under which that type of application will be granted. The new language is almost identical to the language governing this subject in the National Park Service rule. Under this new provision, the authorized officer shall approve the application if the visitor services to be provided are (1) similar in kind and scope to the visitor services provided by the historical operator before January 1, 1979; (2) consistent with the purposes for which the applicable CSU was established or expanded; and (3) consistent with the legal rights of any other person.

A corresponding change was made to paragraph (i) to clarify that the preference granted to historical operators applies only to the use authorized pursuant to paragraph (d). Any increase in the scope or level of use authorized pursuant to paragraph (d) for either the same or similar services is not subject to the preference granted to historical operators.

In the final rule, a sentence has been added to paragraph (e)(2)(ii) to make it clear that when only historical operators participate in a competitive process to allocate use because reductions in visitor capacity make it necessary to reduce operators in an area, they may not claim a preference as a preferred operator under § 124.

Section 251.123—Most Directly Affected Native Corporation Determination

Proposed § 251.124 (which has been redesignated at § 251.123 in the final rule) specified the process for making the most directly affected Native Corporation determination.

No comments were received on this section, and no comments were received on the related information requirements or the process for applying for most directly affected Native Corporation status.

In addition to the change in the numbering of this section in the final rule, the Department is replacing the phrases ''more than one Native Corporation is'' with ''two or more Native Corporations are,'' and ''within the meaning of this section'' with ''for purposes of the most directly affected Native Corporation determination pursuant to this section.'' These changes clarify that if two or more Native Corporations are determined to be equally affected for purposes of the most directly affected Native Corporation determination, each of those Native Corporations is considered a preferred operator.

Section 251.124—Preferred Operator Competitive Special Use Authorization Procedures

Section 251.123 of the proposed rule, which has been redesignated at § 251.124 in the final rule, provided for implementation of section 1307(b) of ANILCA and would grant a preference to local residents (as defined in proposed § 251.121) and to most directly affected Native Corporations, as determined under proposed § 251.124 (§ 251.123 of the final rule), in the competitive issuance of special use authorizations to provide visitor services in CSUs. In the proposed and final rules, local residents and most directly affected Native Corporations are collectively referred to as ''preferred operators'' and have equal preference in the issuance of a special use authorization.

This section further provided that if a preferred operator's offer under this subpart was in the form of a joint venture, the offer would be considered valid only when it is documented to the satisfaction of the authorized officer that the preferred operator holds the controlling interest in the joint venture. Additionally, Native Corporations and local residents who submitted an offer in the form of a joint venture with other persons would retain their preferred operator status as long as the Native Corporations or local residents have the controlling interest in the joint venture. This provision would allow flexibility without compromising the statutory intent of section 1307 of ANILCA.

Section 251.123 in the proposed rule is redesignated § 251.124 in the final rule, and § 251.124 in the proposed rule is redesignated § 251.123 in the final rule. The new sequence in the final rule is more logical for two reasons: (1) The section governing the determination of most directly affected Native Corporation status (§ 251.123) now precedes the section in the final rule governing the competitive selection process (§ 251.124), where the preference for most directly affected Native Corporations is applied; and (2) the section addressing preferred operator competitive special use authorization procedures (§ 251.124) now precedes the section governing preferred operator privileges and limitations (§ 251.125).

Proposed § 251.123(a) (§ 251.124(a) in the final rule) set out a procedure for the solicitation and issuance of special use authorizations that would effectuate the rights of preferred operators under section 1307(b) of ANILCA. The proposed rule provided that an authorized officer must publicly solicit offers to provide visitor services by issuing a prospectus, when the Forest Service determines that:

(1) There is a need for visitor services within the area of a CSU;

(2) There is a need to limit authorized visitor use in the area and/or the number of authorized operators;

(3) There is an opportunity for competitive bidding to provide such services; and

(4) The proposed visitor services are consistent with the Forest Plan direction and all applicable laws and regulations.

In all other situations, except as provided in proposed § 251.122 for historical operators, special use authorizations would be issued noncompetitively on a first-come, first-served basis upon application to the authorized officer in accordance with the provisions at 36 CFR part 251, subpart B.

The following is an analysis of and response to a comment received on § 251.123(a) of the proposed rule (now § 251.124(a) of the final rule).

Comment: One respondent was concerned about the process the Forest Service would use to determine when authorized use needs to be restricted. The respondent stated that determination to restrict use should be made only as part of the public planning process, with adequate opportunity for notice and comment prior to implementation of restrictions.

Response: The Department agrees with this respondent. Existing Forest Service policy provides that decisions to limit use be made in accordance with the National Environmental Policy Act of 1969, its implementing regulations, and Forest Service Manual (FSM) 1950, which provides for public notice and comment. Additionally, land use allocations are made through the forest planning process and delineated in Forest land and resource management plans. Therefore, no changes were made in the final rule in response to this comment.

The Department has made the following changes to proposed § 251.123(a), which has been redesignated as § 251.124(a) in the final rule. The requirement for public solicitation through issuance of a prospectus has been moved to § 251.124(b) in the final rule. The remaining provisions in § 251.123(a) of the proposed rule have been removed in their entirety since they duplicate agency policy in Forest Service Manual (FSM) 2712 and 2343 and in Forest Service Handbook (FSH) 2709.11, chapter 40, that applies to a competitive selection process and establishment of limitations on use. Section 251.124(a) of the final rule is similar to § 13.85 of the final National Park Service rule, which provides that a preference shall be given to a preferred operator when a competitive selection process is used to select a provider for visitor services.

Proposed § 251.123(b) (§ 251.124(b) in the final rule) specified the evaluation criteria that would be used to select an applicant. There were no comments on proposed § 251.123(b). However, the Department has made the following changes in the final § 251.124(b). The provisions contained in § 251.123(b) of the proposed rule have been removed in their entirety since they duplicate policy in the FSM 2712 and 2344 that establishes evaluation criteria used in a competitive evaluation process. Section 251.124(b) of the final rule includes a requirement for public solicitation through issuance of a prospectus when the opportunity to issue authorizations is limited. This section also provides that when authorizations, including priority use permits, expire they shall not be reissued if there is a need to limit use and when there is competitive interest by preferred operators.

Proposed § 251.123(c) (§ 251.124(c) in the final rule) specified that in order to be a preferred operator under subpart E, an applicant responding to a prospectus must be a local resident or a most directly affected Native Corporation. There were no comments on this provision, and no substantive changes have been made in § 251.124(c) of the final rule.

Proposed § 251.123(d) (§ 251.124(f) in the final rule) specified that a qualified preferred operator would be given preference over all other operators, except historical operators. The following is an analysis and response to comments received on § 251.123(d) of the proposed rule.

Comment: One respondent stated that the proposed regulations do not make clear the impacts of a Forest Service decision to restrict access, solicit applications, and grant a preference on other commercial operators in the affected area and questioned whether existing permits, including priority use outfitter-guide permits, would be revoked.

Response: Existing special use authorizations in CSUs in Alaska will be revoked only for cause, such as for noncompliance with their terms and conditions. Except for permits held by historical operators, authorizations will not be reissued when there is a need to limit use and there is competitive interest by preferred operators. The business opportunities previously authorized by these permits will be allocated through issuance of a prospectus, as provided in § 251.124 of the final rule.

This section of the final rule will preempt the Forest Service's national outfitting and guiding policy in FSH 2709.11, chapter 40 (60 FR 30830), that authorizations providing for priority use are subject to renewal. To make the preemptive effect of this rule clearer, the Department has added the following sentence at the end of § 251.124(b): ''Notwithstanding Forest Service outfitting and guiding policy in Forest Service Handbook (FSH) 2709.11, chapter 40, when authorizations, including priority use permits for activities other than sport hunting and fishing, expire in accordance with their terms, they shall not be reissued if there is a need to limit use and when there is competitive interest by preferred operators.'' Preemption of agency policy authorizing reissuance of priority use outfitting and guiding permits without competition is required to effectuate the preferences granted to Native Corporations and local residents under section 1307(b) of ANILCA.

Additionally, to make clear that priority use permits shall not be reissued without competition if the criteria under 36 CFR 251.124(b) are met, the Forest Service is issuing Amendment 2709.11–2003–2 to FSH 2709.11, chapter 40, to revise direction at sections 41.53c and 41.54f regarding priority use by adding a reference to 36 CFR part 251, subpart E. This amendment is available via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives*.

Comment: One respondent questioned if the Forest Service intended that preferred operators would have exclusive rights to provide visitor services in a specific area. The respondent further stated that if this were so, it would be clearly contrary to the intent of Congress that the preference is not a license to create a monopoly, and that public policy favors diversity in the provision of visitor services.

Response: Section 1307(b) of ANILCA grants a preference, rather than exclusive rights or a monopoly, to Native Corporations and local residents in the issuance of a visitor service authorization. Where the need exists, and where use limits allow, the prospectus may provide for more than

one operator to be allocated a portion of the available use.

Comment: One respondent questioned how the Forest Service would allocate permits if all available use were not allocated to a preferred operator. The respondent noted that the preamble to the proposed rule suggested that remaining use be allocated by permits on a first-come, first-served basis, which would be highly unfair to operators who have provided quality, reliable services for a number of years and who have made a substantial investment in the continuation of these services.

The respondent further stated that in all instances where use is restricted but some commercial operators, other than those with a statutory preference, will be permitted to operate in the area, priority should be given to those seeking reissuance of a special use authorization, in order of the date their authorization was first issued (assuming continuous service).

Response: If there is a limit on the number of special use authorizations for a CSU and all available use is not allocated to a preferred operator, the Forest Service will allocate the remaining use according to the competitive process set forth in § 251.124 of the final rule. The commentary about first-come, first-served in the preamble of the proposed rule discussing § 251.123 refers to situations where there are no limitations on the number of special use authorizations being issued and therefore no competitive issuance of special use authorizations.

In CSUs where there are limits on the number of special use authorizations, all authorizations, other than those for historic operators under § 251.122, will be issued competitively in accordance with § 251.124 of the final rule. However, commercial operators without a statutory preference who have performed satisfactorily under a special use authorization likely will be more competitive than other operators without a statutory preference who either do not have satisfactory evaluations or who have not had an authorization. No change from the proposed rule is warranted based on this comment.

The Department has added a new § 251.124(d) to the final rule to clarify and describe factors that demonstrate local residency for applicants seeking preferred operator status. This new paragraph incorporates the factors previously set out in the definition of *local resident* at § 251.121 of the proposed rule.

Proposed § 251.123(e) (§ 251.124(g) in the final rule) specified that if the best offer to a prospectus is made by a non-preferred operator, the preferred operator with the best offer would be given an opportunity to amend its offer to meet the offer of the non-preferred operator. No comments were received on this provision. However, the Department has made minor changes in the final rule. The word ''offer'' has been changed to ''application'' for consistency with the definitions and Forest Service policy, and the provisions governing application of the preference have been modified for clarity and consistency with the final rules promulgated by the National Park Service and the U.S. Fish and Wildlife Service.

Proposed § 251.123(f) (§ 251.124(e) in the final rule) required a preferred operator to document that it holds the controlling interest in a joint venture submitting an application. No comments were received on this provision of the proposed rule. The Department has, however, modified and clarified this section by adding examples of the types of entities for which documentation of a controlling interest might be required.

Section 251.125 Preferred Operator Privileges and Limitations

Proposed § 251.125 contained a number of provisions enumerating preferred operator privileges and limitations.

No comments were received on § 251.125, and no substantive changes were made to this section in the final rule; only minor changes have been made in this section for consistency with existing Forest Service policy. In addition, the order of the paragraphs in this section has been changed for clarity. Paragraph (a) in the proposed rule has been removed because it repeats a provision in § 251.124(f) in the final rule, and paragraph (d) in the proposed rule has been removed because it repeats a provision in § 251.124(e) in the final rule; the remaining paragraphs have been re-designated (a) through (e) in the final rule.

Section 251.126 Appeals

Proposed § 251.126 provided that decisions related to the issuance of special use authorizations in response to written solicitations by the Forest Service or to the modification of special use authorizations to reflect historical use are subject to administrative appeal under subpart C of this part.

No comments were received on § 251.126, and no substantive changes were made from the proposed rule.

Regulatory Certifications

Environmental Impact

An environmental assessment (EA) was prepared for the proposed rule. Notice of the availability of this EA was published in the **Federal Register** notice of the proposed rule (62 FR 20143). No comments were received on the EA. The Department has determined that there are no significant environmental impacts associated with adoption of this final rule. A copy of the EA and Finding of No Significant Impact may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** earlier in this document.

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 rule. This rule will not have an annual effect of $100 million or more on the economy, nor will this rule adversely affect productivity, competition, jobs, the environment, public health and safety, or State and local governments. This rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. Finally, this rule will not alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients under such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Proper Consideration of Small Entities

This final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the act. Section 1307 of ANILCA provides a competitive advantage for Native Corporations and local residents that qualify as small entities. This rule merely implements section 1307 and does not increase or decrease any preference granted by the statute. This final rule will not impose record-keeping requirements; will not affect the competitive position of small entities in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism

The Department has considered this final rule under the requirements of Executive Order 13132 on federalism and has determined that the rule conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further consultation with State governments is necessary upon adoption of this 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 final rule does not pose a risk of a taking.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988 on civil justice reform. Upon adoption of this final rule, (1) all State and local laws and regulations that are in conflict with this final rule or that will impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) this final rule does not require 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 Department 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.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply.'' It has been determined that this final rule will not have an adverse effect on the supply, distribution, and use of energy.

Consultation With Tribal Governments

This final rule has been reviewed under Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments.'' It has been determined that this final rule does not implicate the consultation provisions of that Executive order. Native corporations are not Indian tribes. Providing a preference for certain providers of visitor services in CSUs in Alaska does not directly affect Indian tribes or the relationship between the Federal government and the tribes in the State of Alaska.

Controlling Paperwork Burdens on the Public

The information requirements associated with implementation of this regulation were set out in the proposed rule. No comments were received concerning information requirements associated with this rule.

The information collection required to determine which Alaska Native Corporations qualify for the statutory preference in the award of competitively issued special use authorizations for commercial visitor services on designated lands within the National Forests in Alaska is currently covered under the information requirements in subpart B of this part, which are assigned OMB control number 0596–0082.

List of Subjects in 36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands—rights-of-way, Reporting and record-keeping requirements, and Water resources.

■ Therefore, for the reasons set forth in the preamble, amend part 251 of Title 36 of the Code of Federal Regulations by adding a new subpart E to read as follows:

PART 251—LAND USES

Subpart E—Revenue-Producing Visitor Services in Alaska

Sec.

251.120 Applicability and scope.
251.121 Definitions.
251.122 Historical operator special use authorizations.
251.123 Most directly affected Native Corporation determination.
251.124 Preferred operator competitive special use authorization procedures.
251.125 Preferred operator privileges and limitations.
251.126 Appeals.

Subpart E—Revenue-Producing Visitor Services in Alaska

Authority: 16 U.S.C. 3197.

§ 251.120 Applicability and scope.

(a) These regulations implement section 1307 of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3197) with regard to the continuation of visitor services offered as of January 1, 1979, and the granting of a preference to local residents and certain Native Corporations to obtain special use authorizations for visitor services provided on National Forest System lands within Conservation System Units of the Tongass and Chugach National Forests in Alaska.

(b) Except as may be specifically provided in this subpart, the regulations at subpart B shall apply to special use authorizations issued under this subpart. However, if subpart B conflicts with subpart E, subpart E controls.

(c) This subpart does not apply to the guiding of sport hunting and fishing.

§ 251.121 Definitions.

In addition to the definitions in subpart B of this part, the following terms apply to this subpart:

Best application—the application, as determined by the authorized officer, that best meets the evaluation criteria contained in a prospectus to solicit visitor services.

Conservation System Unit (CSU) as it relates to the Tongass and Chugach National Forests in Alaska—a National Forest Monument or any unit of the National Wild and Scenic Rivers System, National Trails System, or National Wilderness Preservation System, including existing units and any such unit established, designated, or expanded hereafter.

Controlling interest—in the case of a corporation, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation. In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity. In other circumstances, any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

Historical operator—a holder of a valid special use authorization to provide visitor services in a CSU under Forest Service jurisdiction who:

(1) On or before January 1, 1979, was lawfully and adequately providing visitor services in that CSU;

(2) Has continued lawfully and adequately to provide the same or similar types of visitor services within that CSU; and

(3) Is otherwise determined by the authorized officer to have a right to continue to provide the same or similar visitor services.

Local area—any site within 100 miles of the location within a CSU where any visitor services covered by a single solicitation by the Forest Service are to be authorized.

Local resident:

(1) *For individuals*—Alaska residents who have lived within the local area for 12 consecutive months prior to issuance of a solicitation of applications for a visitor services authorization for a CSU; who maintain their primary, permanent residence and business within the local area; and who, whenever absent from this primary, permanent residence, have the intention of returning to it.

(2) *For corporations, partnerships, limited partnerships, joint ventures, individual entrepreneurships, and other circumstances*—where the controlling interest is held by an individual or individuals who qualify as local residents within the meaning of this section.

(3) *For nonprofit entities*—where a majority of the board members and a majority of the officers qualify as local residents within the meaning of this section.

Native Corporation has the same meaning as under section 102(6) of ANILCA (16 U.S.C. 3197).

Preferred operator—a Native Corporation that is determined, pursuant to § 251.123, to be most directly affected by establishment or expansion of a CSU; or a local resident, as defined in this section, who competes for a visitor service special use authorization under § 251.124 of this subpart.

Responsive application—an application that is received in a timely manner and that meets the requirements stated in the prospectus.

Visitor service—any service or activity for which persons who visit a CSU pay a fee, commission, brokerage, or other compensation, including such services as providing food, accommodations, transportation, tours, and outfitting and guiding, except the guiding of sport hunting and fishing.

§ 251.122 Historical operator special use authorizations.

(a) A historical operator has the right to continue to provide visitor services under appropriate terms and conditions contained in a special use authorization, as long as such services are determined by the authorized officer to be consistent with the purposes for which the CSU was established or expanded. A historical operator may not operate without such an authorization.

(b) Any person who qualifies as a historical operator under this subpart and who wishes to exercise the rights granted to historical operators under section 1307(a) of ANILCA (16 U.S.C. 1397(a)) must notify the authorized officer responsible for the CSU.

(c) A historical operator may apply for a special use authorization to provide visitor services similar to but in lieu of those provided by that historical operator before January 1, 1979. The authorized officer shall grant the application if those visitor services are determined by the authorized officer to be:

(1) Consistent with the purposes for which the applicable CSU was established or expanded;

(2) Similar in kind and scope to the visitor services provided by the historical operator before January 1, 1979; and

(3) Consistent with the legal rights of any other person.

(d) Upon the authorized officer's determination that the person qualifies as a historical operator, under either paragraph (a) or paragraph (c) of this section, the authorized officer shall amend the current special use authorization or issue a new special use authorization to identify that portion of the authorized services that is deemed to be historical operations. The special use authorization shall identify the location, type, and frequency or volume of visitor services to be provided.

(e) When a historical operator's special use authorization expires, the authorized officer shall offer to reissue the special use authorization for the same or similar visitor services, as long as the visitor services remain consistent with the purposes for which the CSU was established or expanded, the historical operator was lawfully and adequately providing visitor services under the previous special use authorization, and the historical operator continues to possess the capability to provide the visitor services adequately.

(1) If the operator accepts the offer to reissue, the authorized officer shall issue a new special use authorization that clearly identifies the historical operations as required by paragraph (d) of this section.

(2) If the authorized officer determines that it is necessary to reduce the visitor services to be provided by a historical operator, the authorized officer shall modify the historical operator's special use authorization to reflect the reduced services as follows:

(i) If more than one historical operator provides services in the area where visitor service capacity is to be reduced, the authorized officer shall apportion the reduction among the historical operators, taking into account historical operating levels and such other factors as are relevant to achieve a proportionate reduction among the operators.

(ii) If the reductions in visitor service capacity make it necessary to reduce operators in an area, the authorized officer shall select, through a competitive process that is limited to historical operators only, the operator or operators to receive a special use authorization from among the historical operators. Historical operators participating in this competitive process may not claim a preference as a preferred operator under § 251.124.

(f) Any of the following shall result in the loss of historical operator status:

(1) Revocation of a special use authorization for historical types and levels of visitor services for failure to comply with the terms and conditions of the special use authorization;

(2) A historical operator's refusal of an offer to reissue a special use authorization made pursuant to paragraph (e) of this section;

(3) A change in the controlling interest of a historical operator through sale, assignment, devise, transfer, or otherwise, except as provided in paragraph (g) of this section; or

(4) An operator's failure to provide the authorized services for a period of more than 24 consecutive months.

(g) A change in the controlling interest of a historical operator that results only in the acquisition of the controlling interest by an individual or individuals, who were personally engaged in the visitor service activities of the historical operator before January 1, 1979, shall not be deemed a change in the historical operator's controlling interest for the purposes of this subpart.

(h) Nothing in this section shall prohibit the authorized officer from authorizing persons other than historical operators to provide visitor services in the same area, as long as historical operators receive authorization to provide visitor services that are the same as or similar to those they provided on or before January 1, 1979.

(i) If an authorized officer grants to a historical operator an increase in the scope or level of visitor services from

what was provided on or before January 1, 1979, beyond what was authorized under paragraph (d) of this section, for either the same or similar visitor services, the historical operator has no right of preference for the increased amount of authorized services. If additional operations are authorized, the special use authorization shall explicitly state that they are not subject to the historical operator preference.

§ 251.123 Most directly affected Native Corporation determination.

(a) Before issuance of the first special use authorization for a specific CSU pursuant to § 251.124 on or after the effective date of this subpart, the authorized officer shall give notice to Native Corporations interested in providing visitor services within the CSU and give them an opportunity to submit an application to be considered the Native Corporation most directly affected by the establishment or expansion of the CSU under section 1307(b) of ANILCA (16 U.S.C. 1397(b)). In giving notice of the application procedure, the authorized officer shall make clear that this is the only opportunity to apply for most directly affected status for that particular CSU.

(1) At a minimum, an application from an interested Native Corporation shall include the following:

(i) Name, address, and telephone number of the Native Corporation; date of its incorporation; its articles of incorporation and structure; and the name of the applicable CSU and the solicitation to which the Native Corporation is responding;

(ii) Location of the Native Corporation's population centers; and

(iii) An assessment of the socioeconomic impacts (including changes in historical and traditional use and landownership patterns) on the Native Corporation resulting from establishment or expansion of the applicable CSU.

(2) In addition to the minimum information required by paragraph (a)(1) of this section, Native Corporations may submit such additional information as they consider relevant.

(b) Upon receipt of all applications from interested Native Corporations, the authorized officer shall determine the most directly affected Native Corporation considering the following factors:

(1) Distance and accessibility from the Native Corporation's population centers and/or business address to the applicable CSU;

(2) Socioeconomic impacts (including changes in historical and traditional use and landownership patterns) on Native Corporations resulting from establishment or expansion of the applicable CSU; and

(3) Information provided by Native Corporations and other information considered relevant by the authorized officer to assessment of the effects of establishment or expansion of the applicable CSU.

(c) In the event that two or more Native Corporations are determined to be equally affected for purposes of the most directly affected Native Corporation determination pursuant to this section, each such Native Corporation shall be considered a preferred operator under this subpart.

(d) A Native Corporation determined to be most directly affected for a CSU shall maintain that status for all future visitor service solicitations for that CSU.

§ 251.124 Preferred operator competitive special use authorization procedures.

(a) In selecting persons to provide visitor services for a CSU, the authorized officer shall, if the number of visitor service authorizations is to be limited, give a preference (subject to any rights of historical operators under this subpart) to preferred operators as defined in this subpart who are determined to be qualified to provide such visitor services.

(b) In such circumstances, the authorized officer shall solicit applications competitively by issuing a prospectus for persons to apply for a visitor services authorization. Notwithstanding Forest Service outfitting and guiding policy in Forest Service Handbook 2709.11, chapter 40, when authorizations, including priority use permits for activities other than sport hunting and fishing, expire in accordance with their terms, they shall not be reissued if there is a need to limit use and when there is competitive interest by preferred operators.

(c) To qualify as a preferred operator under this subpart, an applicant responding to a solicitation made under this section must be determined by the authorized officer to be a local resident as defined in § 251.121 of this subpart, or the Native Corporation most directly affected by establishment or expansion of the CSU covered by the solicitation pursuant to § 251.123 of this subpart.

(d) Applicants seeking preferred operator status based on local residency must provide documentation verifying their claim. Factors demonstrating the location of an individual's primary, permanent residence and business include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska, tax returns, and voter registration.

(e) An application from a preferred operator in the form of a corporation, partnership, limited partnership, joint venture, individual entrepreneurship, nonprofit entity, or other form of organization shall be considered valid only when the application documents to the satisfaction of the authorized officer that the preferred operator holds the controlling interest in the corporation, partnership, limited partnership, joint venture, individual entrepreneurship, nonprofit entity, or other form of organization.

(f) A qualified preferred operator shall be given preference, pursuant to paragraph (g) of this section, over all other applicants, except with respect to use allocated to historical operators pursuant to § 251.122 of this subpart.

(g) If the best application from a preferred operator is at least substantially equal to the best application from a non-preferred operator, the preferred operator shall be issued the visitor service authorization. If an application from an applicant other than a preferred operator is determined to be the best application (and no preferred operator submits a responsive application that is substantially equal to it), the preferred operator who submitted the best application from among the applications submitted by preferred operators shall be given the opportunity, by amending its application, to meet the terms and conditions of the best application received. If the amended application of that preferred operator is considered by the authorized officer to be at least substantially equal to the best application, the preferred operator shall be issued the visitor service authorization. If a preferred operator does not amend its application to meet the terms and conditions of the best application, the authorized officer shall issue the visitor service authorization to the applicant who submitted the best application in response to the prospectus.

§ 251.125 Preferred operator privileges and limitations.

(a) A preferred operator has no preference within a National Forest in Alaska beyond that authorized by section 1307 of ANILCA (16 U.S.C. 1397) and by § 251.124 of this subpart.

(b) Local residents and most directly affected Native Corporations have equal priority for consideration in providing visitor services pursuant to § 251.124 of this subpart.

(c) Nothing in this subpart shall prohibit the authorized officer from issuing special use authorizations to other applicants within the CSU, as long

as the requirements of § 251.124 are met.

(d) If an operator qualifies as a local resident for any part of an area designated in the solicitation for a specific visitor service, in matters related solely to that solicitation, the operator shall be treated as a local resident for the entire area covered by that solicitation.

(e) The preferences described in this section may not be sold, assigned, transferred, or devised, either directly or indirectly, in whole or in part.

§ 251.126 Appeals.

Decisions related to the issuance of special use authorizations in response to written solicitations by the Forest Service under this subpart or related to the modification of special use authorizations to reflect historical use are subject to administrative appeal under subpart C of this part.

Dated: May 27, 2003.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 03–14630 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–11–P

Federal Register

Wednesday,
June 11, 2003

Part IV

Department of Education

Office of Elementary and Secondary Education—Evaluating State Education Technology Programs Grant Competition; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.318A]

Office of Elementary and Secondary Education—Evaluating State Education Technology Programs Grant Competition—Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The purpose of this program is to increase the capacity of States to design, conduct, and procure high-quality evaluations of educational technology. To do so, this competition supports grants to States to: (1) Build their capacity to conduct scientifically based evaluations of educational technology interventions, by planning and conducting an experimental or quasi-experimental evaluation of a State-selected educational technology initiative; and (2) widely disseminate pertinent information, based on what is learned about the evaluation methods, practices, analyses, and instruments used, that will help other States enhance their ability to conduct similar empirical evaluations.

States receiving awards will:

(1) Develop a plan to conduct a scientifically based evaluation of an educational intervention that uses technology applications as a tool to increase student achievement in one or more core academic subjects.

(2) Conduct the evaluation in a manner that tests the impact of the intervention as well as the efficacy of the empirical methods, practices, and instruments used to assess the impact of the intervention on student achievement.

(3) Disseminate information about the evaluation plan, its implementation, and the results to other States and to school districts so they may learn from and replicate the approach.

For FY 2003, the competition for new awards focuses on projects designed to meet the priority we describe in the Priority section of this application notice.

Eligible Applicants: The Secretary seeks to fund applications that are submitted by a State educational agency (SEA), or an SEA on behalf of a consortium (partnership).

Eligible partnerships are comprised of an SEA (that must serve as the fiscal agent) and at least one entity from among the following entities:

(1) Institutions of higher education.

(2) Other public institutions.

(3) Research organizations.

(4) Not-for-profit organizations.

(5) For-profit organizations.

(6) Other State educational agencies (SEAs).

(7) Local educational agencies (LEAs).

(8) Regional educational entities.

Applications Available: June 11, 2003.

Deadline for Transmittal of Applications: July 28, 2003.

Estimated Available Funds: $4,200,000.

Estimated Range of Awards: $300,000 to $650,000 (per annum).

Estimated Average Size of Awards: $475,000 (per annum).

Maximum Award: We will reject any application that proposes a budget that exceeds $650,000 for any of the three 12-month budget periods.

Estimated Number of Awards: 6–9.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Statute and Regulations: (a) Section 2421(c) of part D of the Elementary and Secondary Education Act (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB); (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION:

Background

Section 2421(c) of part D (Enhancing Education Through Technology Act) of the ESEA authorizes the Secretary to award competitive grants for technical assistance to States to carry out activities to achieve the purposes of that part. Section 2402 (a)(7) of part D provides that one of the purposes of the Act is ''To support the rigorous evaluation of programs funded under this part, particularly regarding the impact of such programs on student academic achievement, and ensure that timely information on the results of such evaluations is widely accessible through electronic means.''

The intent of this competition is to help States learn to conduct and procure high-quality evaluations by making funds available to a limited number of States to plan, conduct, and report such evaluations. States receiving awards will be expected not only to benefit directly from the experience, but actively share their work with other States. Therefore, grant awards from this competition are for States, with assistance from their grant partners or contractors, to: Plan and conduct rigorous, scientifically based evaluations of technology-enhanced educational interventions; test and refine the methods, practices, analyses, and instruments used; document project activities and outcomes; and to inform the evaluation efforts of other States by making available to those States documented information about the evaluation plan, its implementation, and results.

The Department expects that the projects it funds under this grant announcement will yield the following outcomes:

(1) Increased capacity within recipient States to routinely design and conduct scientifically based evaluations, particularly in carrying out directed State technology grant competitions under title II, part D of the ESEA.

(2) A body of knowledge that can inform other States about effective methods, practices, instruments, and conditions for conducting scientifically based evaluations, including:

a. Replicable methods, practices, analyses, and instruments States and districts can use to conduct rigorous scientifically based evaluations of educational interventions that use technology as a tool to enhance teaching and learning.

b. Methodological frameworks States and districts can use to identify technology-enhanced educational interventions that measurably increase student academic achievement, improve instruction, and enhance curriculum, including interventions that integrate new and emerging technologies into the curriculum.

In addition, the Department expects the evaluation findings that result from this competition will yield empirical evidence about the conditions and practices under which educational technology is effective in helping students meet challenging academic content standards and in increasing student academic achievement.

The Department expects to have substantial involvement with applicants that obtain grants under this competition. Therefore, the Department will enter into a cooperative agreement with each grantee. Under the agreement, the Department will work with the grantee to refine the evaluation and dissemination plans proposed in the application and will review plans and other deliverables before further work proceeds. (The terms ''cooperative agreement'' and ''grant'' are used interchangeably in this solicitation.)

In applying for awards under this announcement, applicants must propose a plan to evaluate the impact of technology-based educational interventions on student achievement in the core academic subjects. Of particular interest to the Department are elementary and secondary school technology interventions that are consistent with the mission and goals of

the No Child Left Behind Act of 2001, that is, interventions to help students meet challenging State academic content standards and student academic achievement standards and to close the achievement gap between low-income and minority students and their peers. To identify and select an intervention for evaluation applicants might consider, for example:

(a) Innovative distance learning strategies that deliver, particularly to high-need student populations, specialized or rigorous academic courses and curricula through the use of advanced technologies, including video conferencing and virtual instruction strategies.

(b) Professional development programs to enable teachers to integrate advanced technologies, including emerging technologies, into curricula and instruction in order to prepare students to meet challenging State academic content and academic achievement standards.

(c) Programs that use technology to connect schools and teachers with parents and students in order to promote meaningful parental involvement; foster increased communication (about curricula, assignments, and assessments) between students, parents, and teachers; and assist parents to understand the technology being applied in their child's education, so that parents are able to reinforce at home the instruction that their child receives at school.

(d) Classroom-based courses and curricula that include integration of technology and are designed to help students meet challenging State academic content and student academic achievement standards.

(e) Programs that use technology to help teachers meet the high standards of teacher quality defined in ESEA.

(f) Programs that use technology to meet the educational needs of students in rural areas.

Examples of evaluation activities that may be funded include, but are not limited to:

(a) Studies that compare the achievement of students who take high school virtual courses with the achievement of students who take the same courses in regular classrooms in order to determine whether the virtual courses result in the same or different levels of student achievement as courses taught in the regular classroom;

(b) Studies to determine the relative effectiveness of various locally adopted, technology-enhanced instructional programs in increasing student achievement. These studies might compare the academic achievement of students in classrooms or schools where one instructional program or approach is being used with the academic achievement of students in classrooms or schools where another technology-enhanced instructional program or approach is being used; or

(c) Studies to determine the impact on student achievement of technology-enhanced instruction in specific academic content areas versus academic content area instruction without the use of technology.

Applicants, in developing their proposals, should detail:

1. The evaluation approach they propose to take, including the methods, practices, and analyses for: (a) Selecting the intervention, population, and problem for study; (b) choosing the sample; and (c) collecting and analyzing data.

2. Provisions for assessing the efficacy of the evaluation approach and making refinements as warranted.

3. Plans for documenting project activities and disseminating to other States and school districts the knowledge gained over the course of the grant about how and under what conditions similar evaluations can be replicated. Proposed strategies should include, but not be limited to, the use of the Internet and other emerging technologies and venues. At a minimum, dissemination strategies should include the establishment and maintenance of a project Website that will host continually updated information about: (a) The technology intervention being evaluated; (b) the evaluation methods, practices, and analyses carried out, including the data collection plans and instruments used; (c) any modifications that occurred during the implementation of the project along with the rationale for those modifications; (d) the processes and conditions necessary for other States and school districts to replicate the approach; and (e) the evaluation results and other project findings.

Priority

This competition focuses on projects designed to meet the following priority. Under 34 CFR 75.105(c)(2)(i), applications will receive up to 20 additional points depending on how well they meet the priority. These points are in addition to any points the application earns under the selection criteria.

Competitive Preference Priority

The project is designed to determine whether the program implemented produces meaningful effects on student achievement or teacher performance through a rigorous evaluation. Evaluations using an experimental design are the strongest for determining program effectiveness. Thus, the project preferably uses an experimental design. An evaluation using an experimental design is one where subjects (students, teachers, classrooms, or schools) are randomly assigned to receive the program being evaluated or to be in a control group that does not receive the program. Evaluations using an experimental design will receive up to 20 points.

If random assignment is not feasible, the project may employ a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching program participants (students, teachers, classrooms or schools) with non-participants possessing similar pre-program characteristics. Evaluations of this type will receive up to 10 points.

Proposed evaluations that use neither experimental designs with random assignment or quasi-experimental designs using a matched comparison group will receive 0 points under the competitive preference priority.

Data from reliable and valid measures of the intervention that the program intends to implement and of the outcomes that the program intends to effect should be collected before and after participation in the program or the comparison condition.

Points awarded under this priority will be determined by the quality of the proposed evaluation. In determining the quality of the evaluation, we will consider the extent to which the applicant presents a feasible, credible plan that includes: The type of design to be used (random assignment or matched comparison); outcomes to be measured; a discussion of how students, teachers, classrooms, or schools will be assigned to the program or matched for comparison with other students, teachers, classrooms, or schools; and a proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation.

Selection Criteria

We will use the following selection criteria to evaluate applications for new grants under this program.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Significance* (20 points). In determining the significance of the

proposed project, the Secretary will consider the following factors:

(1) The extent to which the application supports the Department's strategic interests embodied in the No Child Left Behind Act of 2001: greater accountability for student achievement, increased flexibility and local control, more parental choice, and a focus on what works.

(2) The extent to which the application offers a reasonable and sound plan that likely will produce outcomes, products, or publications that will inform the field about evaluation practice to determine the effectiveness of new and advanced technology tools and applications in education, and that are easily exportable to different settings, including urban, rural, and suburban communities.

(3) The extent to which the application proposes to disaggregate evaluation results so that the impact of the intervention on the academic achievement of sub-groups of students, such as students who are ethnic or language minorities, rurally isolated, or from families with incomes below the poverty line, can be determined.

(b) *Quality of the project design* (35 points). In determining the quality of the design of the proposed project, the Secretary will consider the following factors:

(1) The extent to which the methodology proposed is thorough, feasible, and employs a methodologically sound experimental or quasi-experimental design to determine the effectiveness of the educational technology intervention under study.

(2) The extent to which the methodology proposed includes the use of valid, reliable, and objective performance measures that are clearly related to the intended outcomes of the intervention being evaluated.

(3) The extent to which the proposed project is designed to build evaluation capacity and practice that will extend beyond the period of Federal financial assistance.

(4) The extent to which the design for implementing the proposed evaluation, documenting evaluation activities, and disseminating knowledge, will result in information to guide replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(c) *Quality of project personnel* (15 points). In determining the quality of project personnel, the Secretary will consider:

(1) The extent to which the applicant encourages applications for employment from persons without regard to race, color, national origin, gender, age, or disability.

(2) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(d) *Adequacy of resources* (15 points). In determining the adequacy of resources for the proposed project, the Secretary will consider the following factors:

(1) The extent to which the partnership members contribute to the activities assisted under the grant by providing substantial support in the form of non-Federal funds and/or in-kind contributions, including staff and facilities.

(2) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(3) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(e) *Quality of the management plan* (15 points). In determining the quality of the management plan for the proposed project, the Secretary will consider the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and other program requirements. Ordinarily, this practice would have applied to the competitive priority, selection criteria, and requirements in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts rules that apply to the first competition under a new program from this requirement. The competition covered by this notice is a new activity under the National Technology Activities authorized by the ESEA, as reauthorized by the No Child Left Behind Act of 2001. The Secretary, in accordance with section 437(d)(1) of GEPA, in order to ensure timely grant awards, has decided to forego public comment with respect to the competitive priority, selection criteria and program requirements. The competitive priority, selection criteria, and requirements of this grant notice will apply only to the FY 2003 grant competition.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications to the FY 2003 Evaluating State Education Technology Programs Grant Competition be submitted electronically using e-Application available through the Education Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

Applicants who are unable to submit an application through the e-GRANTS system may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason(s) that prevent them from using the Internet to submit their applications. The reasons(s) must be outlined in a letter addressed to: Enid Simmons, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E215, Washington, DC 20202. We must receive your letter no later than two weeks before the closing date.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional

discretionary grant competitions. The Evaluating State Education Technology Programs Grant Competition is one of the programs included in the pilot project.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We shall continue to evaluate the success of the electronic submission of applications and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-Application system.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Evaluating State Education Technology Programs at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (*see* Parity Guidelines Between Paper and Electronic Applications) in the application package.

FOR FURTHER INFORMATION CONTACT: Enid Simmons, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E215, Washington, DC 20202. Telephone: (202) 708–9499 or via Internet: *enid.simmons@ed.gov.*

If you use a telecommunications device for the deaf (TODD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Program Authority: 20 U.S.C. 6771(c).

Dated: June 5, 2003.

Eugene W. Hickock,

Under Secretary of Education.

[FR Doc. 03–14716 Filed 6–10–03; 8:45 am]

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Federal Register

Wednesday,

June 11, 2003

Part V

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 579

Reporting of Information and Documents About Potential Defects; Final Rules

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–8677; Notice 5]

RIN 2127–AI92

Reporting of Information and Documents About Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to previously-unaddressed issues raised in petitions for reconsideration of the final rule published on July 10, 2002, that implemented the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will be required to report information and to submit documents about customer satisfaction campaigns and other activities and events that may assist NHTSA to promptly identify defects related to motor vehicle safety. NHTSA responded to some of the issues raised in the petitions in a notice published on April 15, 2003, and stated that it would respond to the remaining issues in the future.

DATES: *Effective Date:* The effective date of the amendments made by this final rule is July 11, 2003. *Petitions for Reconsideration:* Petitions for reconsideration of any amendments made by this final rule must be received not later than July 28, 2003.

ADDRESSES: Petitions for reconsideration of the amendments made by this final rule must refer to the docket or Regulatory Identification Number (RIN) for this rulemaking, and be addressed to the Administrator, National Highway Traffic Safety Administration (NHTSA). You may submit a petition by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting petitions.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2002, NHTSA published a final rule implementing the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, established by 49 U.S.C. 30166(m) (67 FR 45822). The reader is referred to that document, and the prior Notice of Proposed Rulemaking (NPRM) (66 FR 66190) for further information.

Petitions for reconsideration of the rule were filed on or before August 26, 2002, by the Alliance of Automobile Manufacturers (the Alliance), General Motors Corporation (GM), the National Association of Trailer Manufacturers (NATM), the National Truck Equipment Association (NTEA), the Recreational Vehicle Industry Association (RVIA), and the Juvenile Products Manufacturers Association (JPMA).

GM and NATM filed untimely supplemental comments on October 15, 2002, and a petition for rulemaking was filed by the National Trailer Dealers Association (NTDA) on November 1, 2002 relating to the threshold for full reporting. On November 23, 2002, NATM filed a petition for rulemaking to delay the initial reporting date under the rule, as did NTEA and RVIA jointly, on December 5, 2002. Additional comments were filed by Public Citizen on November 26, 2002, and Stephen E. Selander on November 27, 2002.

On October 10, 2002, the Alliance wrote NHTSA requesting that certain issues it had raised in its petition be treated on a prioritized basis. It separated its issues into three groups and explained that ''Generally, those issues given a priority ''1'' rating are those that require resolution to allow Alliance members to effectively plan and efficiently execute actions needed to develop compliant reporting systems.'' These issues concerned field reports, in-plant inspection records and other documents, one-time historical reports, and multiple ''substantially similar'' platforms. After reviewing the Alliance's comments and letter of October 10, the agency concluded that granting this request would aid in an orderly implementation of the final rule and, on April 15, 2003, we published a notice addressing the Alliance's priority ''1'' issues as well as other issues (68 FR 18136).

This notice addresses remaining issues raised by the Alliance and other persons in timely filed petitions for reconsideration of the final rule. Issues related to thresholds for reporting will be addressed in a subsequent notice.

II. Petitions Concerning the Recordkeeping Requirements of 49 CFR Part 576

Each manufacturer of motor vehicles and motor vehicle equipment is required to retain the underlying records on which the information that it reports to NHTSA under the final early warning reporting rule is based. These records must be kept for a period of five calendar years from the date on which they were generated or acquired by the manufacturer (see 49 CFR 576.5(b)). Among the information to be reported to NHTSA under the early warning reporting final rule is the one-time submission by certain manufacturers of certain historical information for a period that begins April 1, 2000 (Section 579.28(c)). Section 576.5(b) requires manufacturers of motor vehicles to retain the underlying records for the one-time historical report, which covers the 12-quarterly period ending March 31, 2003, until the same date in 2008. The Alliance asserted that these two regulatory provisions have the effect of requiring manufacturers to retain records for periods longer than five years, ''a burden that was not identified or estimated in connection with the adoption of the final rule or in the Paperwork Reduction Act clearance request submitted by the agency to OMB.'' The Alliance suggested that ''manufacturers [could] retain the supporting information for each historic report for a period of time equal to five years from the beginning of the reporting quarter. Thus, for example, the record used to prepare the historic report for the third quarter of 2002 would be retained until the third quarter of 2007—five years after their creation.''

The Alliance's interpretation differs from ours. The regulatory requirement is to retain the underlying records for a period of five years ''from the date on which they were generated, or acquired by the manufacturer'' not five years after the date of the report to NHTSA. Under the existing regulation, as we interpret it, the records underlying the oldest data used to prepare the historical report, those for the second quarter of 2000,

would be retained until the second quarter of 2005, five years after the records were generated. This is consistent with the outcome that the Alliance requested.

JPMA asked whether it was necessary to retain ''non-substantive information (such as name, address, telephone number of claimant), or hard-copies of incoming or outgoing correspondence related to the claim (such as letters obtaining additional information from the claimant), that complete the entire underlying claim record.'' The answer is yes, it is necessary to retain this information. It is substantive material. For example, we may wish to contact the claimant. The records underlying the reports to NHTSA will not be complete without the information referred to by JPMA.

III. Petitions To Clarify Production Numbers To Be Reported Under Part 579

The final rule requires reporting of production numbers by manufacturers who sell vehicles in the United States even if those vehicles are made outside the United States. The Alliance, JPMA, and RMA viewed the production reporting as ambiguous, that it could be interpreted as requiring a manufacturer to report its world-wide production. The Alliance assumed that NHTSA only wants production figures for units destined for sale in the United States, otherwise NHTSA could be comparing U.S. trend-indicator data against a world-wide production number. The Alliance is correct, with the caveat that vehicles destined for lease in the United States are included as well. Moreover, for the same reason, manufacturers producing vehicles in the United States for export should not include the exported vehicles in their production numbers.

IV. Petitions To Amend or To Clarify Section 579.4(c), Other Terms

Section 579.4(c) contains definitions of terms used in the early warning reporting final rule. We were asked to amend or to clarify a number of these terms as well as to add definitions.

1. *Affiliate.* The final rule defines ''affiliate'' in pertinent part as ''a person that directly, or indirectly through one or more intermediates, controls or is controlled by, or is under common control with, the person specified.'' RMA recognized that we had based this definition on regulations of the Securities and Exchange Commission (SEC) (17 CFR 230.405), which also provide a separate definition of ''control.'' RMA urged us to adopt the SEC definition ''in order to ensure that the term 'affiliate' is defined with specificity.'' We concur with this recommendation, and are defining the term ''control'' as follows:

> Control (including the terms controlling, controlled by, and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

2. *Base.* JPMA asked whether ''base'' means only a detachable base used with an infant seat and not the permanently-installed base associated with some designs of convertible child restraints that allow changing positions for child comfort. We defined ''base'' as ''the detachable bottom portion of a child restraint system that may remain in the vehicle to provide a base for securing the system to a seat in a motor vehicle.'' Thus, this term applies only to the detachable base used with an infant seat.

3. *Buckle and release harness.* JPMA also asked whether the definition of ''buckle and restraint harness'' included ''harness clips.'' See Section 579.25(b)(2). Our definition included ''the components that are intended to restrain a child seated in such a system. * * *'' A harness clip can help ensure that the harness is properly positioned on the child's shoulders and chest at time of impact. However, under the early warning rule, we do not view it as a component intended to restrain a seated child. If a manufacturer receives a claim or notice of a death or injury that is alleged to be due to a problem or defect in a harness clip, the incident would be reported under ''other'' rather than ''buckle and restraint harness.''

4. *Claim.* In its comments on the NPRM, the Alliance recommended that early warning reports of injuries should not include claims or notices about ''emotional'' and other non-physical injuries because these are not ordinarily the type of injury with which NHTSA is concerned under the Vehicle Safety Act. We disagreed, noting that a claim for emotional distress following (for example) an inadvertent airbag deployment or a loss of vehicle control would be of interest to us (p. 45840). The final rule requires manufacturers of 500 vehicles or more, and manufacturers of tires and child restraint systems, to provide information on claims of injuries and on notices of injuries occurring in the United States that are alleged or proven to be due to a defect in the manufacturer's product. Reportable injuries were not limited in the regulatory text. The preamble indicated that NHTSA intends the term ''injury'' to include non-physical as well as physical injuries. Saying that it had not been clear as to what we meant, the Alliance requested that we exclude from the definitions of ''claim'' and ''notice'' any injury claim ''that is derivative of a fatality/injury claim that is separately reportable under the early warning system.'' In support of its latest request, the Alliance evoked the specter of derivative claims by persons related to persons injured in a crash but who themselves were not physically present when the injury occurred. The Alliance asserted that reporting of derivative injury claims will distort the real injury accident rate for a particular make/model of vehicle.

We have reviewed the Alliance's request and are modifying the regulations in part. Claims may be asserted until the statute of limitations runs. In some cases, the initial claim against a manufacturer will be made by a person physically injured as a direct result of a crash, whether the claimant is inside a vehicle or outside of it. But in other cases, the initial claim may be filed by a person outside the vehicle who was not physically injured by the crash or physically present at the crash. There could be a considerable difference in time between the submission of the two claims. We want to be aware of claims arising out of alleged defects as soon as possible, and therefore do not want to broadly exempt all derivative claims. However, a derivative injury claim would appear to provide little benefit for early warning reporting purposes when an incident involving a death or injury that is the predicate for the derivative claim has been reported to NHTSA. We are balancing these concerns by retaining the general requirement that manufacturers report claims and notices by vehicle occupants and people outside vehicles who were not physically injured in a crash but presented claims for emotional distress, but are adding an exclusion that these claims and notices need not be reported if the manufacturer has reported the incident as an incident involving a death or injury. This exclusion includes a claim for a non physical injury presented in the same document as a claim for death or a physical injury, and a claim for a non physical injury received by the manufacturer in the same reporting period as the claim for death or physical injury, regardless of which was received first. To clarify this point, we are adding a subsection to Section 579.28 that states that if a manufacturer has reported a claim or notice relating to an incident involving

death or injury, the manufacturer need not report a claim or notice arising out of the incident by a person who was not injured physically. For further discussion of this subsection, see Paragraph VI below relating to property damage claims.

RMA also urged NHTSA to exclude non-physical injuries. It was concerned that such a requirement ''could lead to the filing of frivolous or baseless claims that may be part of a campaign designed solely to damage the reputation of a tire manufacturer.'' RMA has not demonstrated that in reality this would be a likely problem. We addressed the issue in the final rule. We further note that the rules of many courts preclude the filing of frivolous claims. *See, e.g.*, Rule 11(b), Fed. R. Civ. P. In any event, we will be able to deal with such matters during the screening process.

5. *Field report.* We reviewed our revised redefinition of ''field report'' after its publication on April 15, 2003 (68 FR 18136 at 18142) and concluded that it could be clarified and simplified by removal of some commas. We have revised the definition accordingly.

6. *Fire.* The final rule defined ''fire'' to mean ''combustion or burning of any material in a vehicle as evidenced by, but not limited to, flame, smoke, sparks, or smoldering.'' The Alliance objected to the definition and asserted that the definition includes events which may not result in a fire. Consequently, in their view, the reporting category may overstate ''fires'' to the uninformed when ''they may involve nothing more than reports of exhaust smoke * * * .'' The Alliance recommended that the title of the reporting category be changed to ''FSSS'' to indicate that more events are included than just fire events, *i.e.*, ''flame, smoke, sparks, or smoldering.''

We agree that some of the events referred to under the current definition of ''fire'' are not generally considered fires as that term is normally used by the public. However, many of the system and component categories include items that are not fully consistent with a layman's use of the word. That is why we developed regulatory definitions. Therefore, we see no need to revise the definition as requested. However, we will make a wording change to clarify that not all events covered by the definition involve flame. Moreover, we have recently encountered euphemistic descriptions of fires by manufacturers as ''thermal events.'' We are adding a reference to ''thermal events'' to assure that they are not omitted in reporting. Of course, thermal events would not include heat generated by a normally operating engine or heating/cooling by a vehicle's climate control system. Therefore, the term ''fire'' is amended to mean

> combustion or burning of any material or fuel in or from a vehicle as evidenced by flame. The term also includes, but is not limited to, thermal events and fire-related phenomena such as smoke, sparks, or smoldering, but does not include events and phenomena associated with a normally functioning vehicle such as combustion of fuel within the engine or exhaust from an engine.

7. *Handle.* JPMA pointed out that the final rule requires child restraint system manufacturers to report incidents involving ''handles.'' Because some child restraints do not have separate handles, and are designed to be carried by the shell, JPMA asserted that it is necessary to define ''handle'' as a separate element of a child restraint. It suggested a definition of ''handle,'' with which we generally concur. We are adopting a definition of ''handle'' to read as follows:

> *Handle* means any element of a child restraint system that is designed to facilitate carrying the restraint outside a motor vehicle, other than an element of the seat shell.

8. *Minimal specificity.* Under the final rule, a tire manufacturer must report the aggregate number of property damage claims it received during a calendar quarter that identify the manufacturer, model, and tire line. The reporting manufacturer must also identify the component of the tire allegedly giving rise to the claim. However, if the property damage claim fails to specify the component, the manufacturer is not required to include the report in the aggregate number reported.

RMA reiterated its comment to the NPRM that the tire identification number (TIN) be added to the definition of ''minimal specificity.'' Its request focused on property damage claims. RMA argued that a report of property damage claims is meaningless unless the TIN of the tire involved in the claim is known, and that, in many instances, the TIN and other information, including the component code to be identified, will not be specified in a claim. RMA urged us to ''reconsider this issue,'' and ''require the inclusion of the TIN information for purposes of satisfying the 'minimal specificity' necessary to trigger a tire manufacturer's obligation to report property damage claims.'' In support, RMA argued that without the TIN, manufacturers will not be able to report at the level of the stock keeping unit (SKU) number for a tire, which is a required reporting element under Section 579.26. Without the TIN, RMA claimed that data could only be completed by tire line and size and would be of limited benefit to NHTSA. With respect to property damage claims, we agree and are amending the last sentence of Section 579.26(c) to state that ''No reporting is necessary if the system or component involved is not specified in such codes, or if the TIN is not specified in any property damage claim.'' As elsewhere under the early warning rule, the term ''claim'' includes both the initial document received by the manufacturer and subsequent documents. However, we are not changing the definition of minimal specificity with respect to tires, so claims and notices of deaths or injuries must be reported under Section 579.26(b) even if the TIN is not known. As specified in Section 579.28(f)(2)(i), if the tire manufacturer subsequently became aware of the TIN, it must submit an updated report.

RMA also claimed that an actual physical inspection is necessary to provide meaningful information about potential tire problems. However, we decline RMA's suggestion to only report property damage claims involving tires that have been inspected. For early warning reporting purposes, we are collecting information on the basis of what is ''claimed'' rather than the manufacturer's view of the claim.

9. *Model.* Under the final rule, a child restraint system is defined as ''equipment.'' Under Section 579.25(a), manufacturers of child restraint systems must provide information on each make and ''model.'' For equipment, we defined ''model'' as ''the name that its manufacturer uses to designate it.'' JPMA asserted that the industry uses model designators for reasons that do not always correspond with structural or material differences in the product. Manufacturers may assign a different ''model number'' to identify different patterns on the pad fabric or to identify products destined for different retailers. Requiring reporting by ''model number'' could result in separating similar restraints into different reports. Accordingly, JPMA recommended that ''model'' be defined ''to be child restraints with the same shell and same restraint/harness system.'' Thus, in its opinion, child restraints offered with and without bases would be the same ''model'' if they nevertheless have the same shell and restraint/harness system. If two restraints use the same shell but different restraint/harness configurations, they would be defined as separate ''models.''

The definitional problem is that ''model'' has been defined to mean a ''name'' that a manufacturer uses to designate a vehicle or equipment. JPMA's comment did not indicate that child restraint system manufacturers use

the same name to identify systems with the same shell and restraint/harness if they otherwise differ. However, it is our understanding that they do. We have considered whether adopting JPMA's suggested definition, which does not include ''base'' as a definitional criterion, might result in a reduction of reporting that could lead to a failure to receive early indicators of problems with bases. If Model X, for example, having the same shell and restraint/harness is manufactured in two configurations, one with a base and one without, and its manufacturer receives reportable data regarding the configuration with a base, the data cannot be realistically evaluated for early warning purposes if it is considered in the context of a total production that includes the configuration without a base. Ordinarily, it should be considered in the context of the total production of Model X systems with bases. Therefore, we have concluded that it is necessary to add ''base (if so equipped)'' to JPMA's suggested definition. Accordingly, we are amending the definition of ''model'' to state that, for child restraint systems, model means ''the name that the manufacturer uses to identify child restraint systems with the same seat shell, buckle, base (if so equipped), and restraint system.'' Under this definition of ''model,'' a restraint system with the same seat shell, buckle, and restraint system would nevertheless be divided into different models for reporting purposes if it were available both with a base and without a base.

10. *Model year.* With reference to vehicles and equipment to which manufacturers have not designated a model year, the definition of ''model year'' in the final rule means the year in which the vehicle equipment item was produced. This year is generally understood to be the calendar year. Because the final rule contains numerous references to ''production year'' (*see, e.g.*, Section 579.25) without a definition for the term, we have decided to revise the definition of ''model year'' and adopt a definition of ''production year.'' Under the revised definition, ''model year'' means ''the year that a manufacturer uses to designate a discrete model of vehicle, irrespective of the calendar year in which the vehicle was manufactured.'' The added term ''production year'' means ''for a vehicle, the calendar year in which a vehicle is produced if the vehicle's manufacturer has not assigned it a model year. For equipment and tires, it means the calendar year in which the item was produced.''

11. *Seat shell.* JPMA sought assurance that the term ''seat shell'' does not include ''shell accessories,'' such as the tether, the label, or the seat pad. The final rule defined ''seat shell'' to mean the component, be it plastic or other material, which forms the structural shape, form, and support for the child seating system and other components to allow the seat to be secured to a passenger seat. The ''accessories'' listed by JPMA are not any of these components. JPMA also sought our assurance that accessories sold separately from child restraint systems (such as tether strap sets, latch retrofit units and bases) are not covered as well. We confirm that these separately-sold accessories are not covered under Section 579.25(c). However, information about claims or notices of deaths and injuries allegedly due to a defect in accessories such as tether strap sets, latch retrofit units and bases would have to be submitted pursuant to Section 579.27.

12. *Service brake system.* The definition of ''service brake system'' includes brake-related ''equipment installed in a vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135.'' The Alliance pointed out that certain components of the parking brake system (a separate defined system for early warning reporting purposes) are covered in Standards Nos. 105 and 135, and that the definition should be amended to clarify that ''service brake system'' does not include parking brakes. The point is well taken, and we are amending the definition to add an exclusion after the reference to ''135'' to read ''(except equipment relating specifically to a parking brake).'' This will clarify that dual reporting is not required with respect to problems with a parking brake installed pursuant to either FMVSS No. 105 or No. 135.

13. *Tire.* RMA took issue with that portion of our definition of ''tire'' that includes ''the tire inflation valves, tubes, and tire pressure monitoring regulating systems, as well as all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.) and mounting elements (such as brackets, fasteners, etc.).'' The latter included tire pressure monitoring system components. RMA objected ''to including non-tire components'' on the grounds that NHTSA did not propose a definition of ''tire,'' and thus the industry had no chance to comment on it. They have taken the opportunity to comment in their request for reconsideration.

Although we recognize that these components are not actually ''tires'' in the common usage of the word, we believe that it is important to retain the definition as adopted in order to capture tire-related information in the possession of vehicle manufacturers that can affect the performance of a tire on a vehicle, as well as the actual tire itself. Therefore, we are denying RMA's petition on this point. However, to clarify that the broad definition of tire does not affect the reporting responsibilities of tire manufacturers under Section 579.26, we are amending the definition to state that it only applies to Sections 579.21–.24 and 579.27.

14. *Warranty claim.* The definition of ''warranty claim'' excludes ''work performed .* * * in connection with an emissions-related recall under the Clean Air Act.'' The Alliance requested us to amend this definition to exclude work performed in connection with any emissions-related recall under state emissions laws, such as might be required by the California Air Resources Board (CARB). It asserted that such an exclusion is consistent with the exclusion of Federal emissions recall work. We agree that there is no need to report work to satisfy State emissions-related recalls such as CARB might require on the so-called California car which distinguishes it from the EPA-regulated vehicles for initial sale in almost all other states. See 42 U.S.C. 7543(b), 7507; *Motor Vehicle Manufacturers Ass'n* v. *N.Y. State,* 17 F.3d 521 (2d Cir. 1994). Therefore, we are amending the definition of ''warranty claim'' to exclude ''claims for reimbursement * * * in connection with a motor vehicle emissions-related recall under the Clean Air Act, or, in accordance with State law as authorized under 42 U.S.C. 7543(b) or 7507.''

V. Petition by the Alliance Requesting Clarification of Property Damage Claims To Be Reported by Manufacturers of Motor Vehicles and Tires

With respect to the reporting of property damage claims with associated fatalities/injuries, the NPRM stated (66 FR 45846) that ''If the incident that allegedly led to the property damage also resulted in a death or injury, the manufacturer would only report the incident as one involving a death or injury, and it would not be required to report the incident under the property damage requirement. Otherwise there could be a misleading 'double count.' '' The Alliance noted that this clarification was not repeated in the final rule and asked for confirmation ''that property damage claims are not separately reportable if the same

incident resulted in a reported death or injury.''

Our omission in the final rule was unintentional. However, to simplify reporting by manufacturers, we will not require such property damage claims to be included. Therefore, we are adding new subsection (h) to Section 579.28, which also includes the exclusion of derivative claims discussed above, and which reads as follows:

(h) When a report involving a claim or notice or is not required. If a manufacturer has reported a claim or notice relating to an incident involving death or injury, the manufacturer need not:

(i) report a claim or notice arising out of the incident by a person who was not injured physically, and

(ii) include in its number of property damage claims a property damage claim arising out of the incident.

This exemption includes property damage claims that may be received during or subsequent to the quarter in which a claim or notice of death or injury is reported.

We are redesignating existing subsections (h) through (l) as (i) through (m) respectively.

VI. Petition by JPMA To Reconsider Some Requirements of Section 579.25 That Apply to Manufacturers of Child Restraint Systems

JPMA commented that the preamble to the final rule indicated that child restraint system manufacturers would have to identify the ''type'' of restraint (*e.g.*, rear-facing infant seat, booster seat, or other) for which a quarterly report is being made. However, this requirement was not contained in Section 579.25. When NHTSA posted reporting templates on its Web site on August 14, 2002, only the production template specified that the ''type'' of child restraint be indicated. This requirement was not included in the templates for any of the substantive reporting categories such as death/injury. This led JPMA to believe that it was unclear ''what value it is to NHTSA to require segregating production numbers by 'type.' ''

Our omission of the word ''type'' in Section 579.25(a) was inadvertent, and we are correcting that omission here (we previously included ''type'' in Section 579.21(a), which applies to light vehicles). With regard to JPMA's other comment, the production template links the make, model, and production year with the ''type.'' The reporting templates for categories of death/injury, warranty/consumer complaints, etc., contain the make, model, and production year. The data reported on the production template provide the information which will allow us to link the make, model, and production year data on the death/injury, warranty/consumer complaints etc. to a particular ''type.''

JPMA also commented that the three reporting categories of ''rear facing infant seat,'' ''booster seat,'' and ''other'' do not cover the range of products available. It asked how its members should categorize a hybrid product that is both a rear-facing infant seat and a toddler seat. We believe that these three categories are sufficient; in response to the specific question, hybrids such as infant/toddler or toddler/booster should be reported under ''other.''

We note here that the definitions of ''rear-facing infant seat,'' ''booster seat,'' and ''other'' were revised in the earlier final rule on reconsideration, published on April 15, 2003 (68 FR 18136).

Section 579.25(b)(1) requires a child restraint manufacturer to submit ''a report on each incident involving one or more deaths or injuries that is identified in a claim against and received by the manufacturer * * *.'' JPMA asked for clarification of how its members should report to NHTSA ''when there are injuries to adults or unrestrained children in a collision that also involved an allegedly restrained child.'' JPMA presented the following example: Manufacturer A receives a claim for an injury to a child allegedly restrained in a child restraint manufactured by A. The same claim is also served on child restraint manufacturer B, in whose product a second child was allegedly injured, and on vehicle manufacturer C, in whose vehicle the two restrained children, their unrestrained brother, and their two parents were allegedly injured.

In JPMA's view, it would contaminate the data base if JPMA member reports also included the adult injuries or unrestrained child injuries that occurred in the same motor vehicle collision, or if they included the injuries that allegedly occurred to a child restrained in a competitor's product. JPMA members will likely be on notice of these other injuries because any claim/lawsuit will list all the theories on which the claimants seek relief. JPMA sought our concurrence that only those injuries/fatalities to children purportedly restrained in child restraints manufactured by the reporting manufacturer should be reported by its members.

We do not concur with JPMA's interpretation. The hypothetical presented by JPMA likely would result in a separate claim against two separate manufacturers of child restraints and the manufacturer of the motor vehicle in which the child restraints were installed. Each manufacturer is required to report only the claim against it; other manufacturers receiving a multiple-party claim will report the claim as it applies to them, which would relate to their products. Also, if a restraint broke and impacted a child seated in a different manufacturer's restraint, the manufacturer of the broken restraint would have to report a claim against it by the child in the other restraint.

Another question asked by JPMA was whether the early warning reporting rule requires manufacturers to report warranty claims/consumer complaints related to lower anchor/tether issues. The commenter observed that under NHTSA's definitions, all complaints/claims regarding vehicle components installed in accordance with FMVSS No. 225 are reportable by the vehicle manufacturer as ''seat belt'' issues. We confirm JPMA's interpretation is correct, insofar as it states that child restraint manufacturers are not required to report on claims that by their terms are based on lower anchor/tether anchorage issues involving vehicle equipment. However, if a child restraint manufacturer receives a claim or a notice of death or injury alleging, for example, that a defect in the child restraint caused it to detach from such an anchorage, that claim or notice would have to be reported under Section 579.25(b).

JPMA sought NHTSA's guidance on ''how to handle the situation in which a consumer complaint/warranty claim comes into the company but the production date is not ascertainable because the date code is not legible.''

For child restraint systems, ''minimal specificity'' does not include the production year. Thus, the absence of a statement specifying the year the restraint was produced does not excuse the manufacturer from reporting a claim, notice, consumer complaint, warranty claim, or field report to the agency. This issue does not create a problem in the vehicle or tire context since the model/production year is almost always known by the manufacturer through the VIN or the TIN. To address this situation in the child restraint system context, we will require manufacturers to add a separate category of ''unknown'' model year (designated by the number ''9999'') in addition to the up-to-five production years on which they currently must report the number of consumer complaints/warranty claims. We are amending Section 579.25 appropriately. Moreover, since the production year may not be specified in a claim or notice involving other types of equipment (aside from tires) we are making a similar addition to Section 579.27(c).

These changes will also be reflected in the reporting templates.

JPMA commented that child restraint systems are often returned to the manufacturer for inspection following a consumer complaint. In many cases, the inspection may also cover aspects of the system not directly related to the complaint of the customer who returned the restraint. JPMA cited as an example, ''a restraint returned for a customer complaint of a 'sticky buckle' may be inspected and deemed to have a properly functioning buckle, but the inspector notes a deformation in the seat shell that indicates potential misuse.'' JPMA asked how a ''field report'' describing that inspection should be categorized in the quarterly report.

The fact that the employee or representative of the manufacturer who conducted the inspection believes that the buckle functioned properly and that the shell may have been misused in service does not excuse the manufacturer from reporting both of these conditions in the field report category. A written communication does not have to be verified or assessed to have merit to be reported in this category (see definition of ''field report''). In the example given, the report would be included in the number of field reports under both ''buckle and restraint harness'' and ''seat shell'' since there was an indication of a review and assessment related to both components. However, the original consumer complaint would only have to be reported in the ''buckle and restraint harness'' category.

Finally, JPMA pointed out that the template on NHTSA's Web site for reporting incidents of death or injury contains five spaces for entering a code number corresponding to one of four component codes, one for ''other'' and one for ''unknown,'' a total of six possibilities. JPMA asked that the templates be revised to add a sixth space.

We do not believe that this is necessary. The spaces in the template are not dedicated to particular component categories, and there are no circumstances under which all six spaces would be required (*e.g.*, a manufacturer reporting problems in all four component categories, and ''other'' as well, will not be reporting ''unknown'').

VII. Petition by RMA To Reconsider Some Requirements of Section 579.26 That Apply to Manufacturers of Tires

RMA asserted that the vast majority of property damage claims fail to provide information needed to properly categorize the tire or assign the proper component code for reporting. It cited a recent survey in which each of its six members reviewed ten consecutive property damage claims; of the 60 claims, only 13 had information concerning the condition of the tire allegedly associated with the claim. For this reason, it asked that tire manufacturers not be required to report a property damage claim until it had inspected a tire.

Section 579.26(c) requires a report on the number of property damage claims ''which involve the components specified in codes 71 through 73, and 98;'' that is to say, a tire manufacturer must report claims involving tread, sidewall, bead, or a component other than tread, sidewall, and bead. The operative word here is ''involve.'' A property damage claim need not be reported until the component ''involved'' in the claim is identified in some fashion (especially for code 98). However, this does not mean that the manufacturer can wait until it inspects the tire, since the claim itself may identify an alleged problem component, and, in any event, the result of a manufacturer's inspection cannot justify a failure to report based on a claim. The manufacturer would include the claim in the number of claims for the quarter in which the component is identified, even if that is a different quarter from the one in which the manufacturer initially receives the claim. If the component is never identified, either by the claimant or upon the manufacturer's inspection of the tire, the manufacturer would not have to report the claim.

RMA asked us to reconsider the decision we made in issuing the final rule (67 FR at 45853) not to include ''customer satisfaction conditions'' as a reportable category under ''warranty adjustments.'' We have re-examined the discussion of this issue in the NPRM (66 FR 66190), RMA's comment to it, and our response in the preamble to the final rule, cited above. We have concluded that it is not necessary to establish a separate category to address RMA's concern. To explain: in the NPRM, proposed Section 579.27(c) referred to reporting by tire manufacturers of ''warranty claims (adjustments).'' The NPRM defined ''warranty claim'' as including any claim presented to a manufacturer for payment pursuant to ''good will.'' ''Good will,'' in turn, was defined in the NPRM as repair or replacement ''not covered under warranty.'' RMA commented that not all good will claims would be captured in the categories of ''warranty claims (adjustment) that manufacturers must report on'' and that to capture all good will claims, we should add a category of ''customer satisfaction conditions.''

The final rule differed from the proposal. With respect to tire manufacturers, the final rule adopted the term ''warranty adjustment,'' which was defined without reference to good will, *i.e.*, a ''warranty adjustment'' is ''payment or other restitution'' by a tire manufacturer made pursuant ''to a warranty program offered by the manufacturer.'' The definition adopted for ''good will,'' which applies to all manufacturers, included, as proposed, repair or replacement ''not covered under warranty.'' The issue raised by RMA is that the warranty (adjustment) systems of tire manufacturers may or may not have separate entries/designations for ''good will.'' Thus, if a manufacturer's warranty (adjustment) program does not include restitution where the tread, bead, sidewall, or other component has not performed satisfactorily due to adverse operating conditions, customer abuse, or service abuse, but the manufacturer nevertheless compensates for them, it would not have to report these restitutions as ''warranty adjustments.'' However, this is not what we intended. To address this, we are amending the definition of ''warranty adjustment'' to include reference to ''a warranty program offered by the manufacturer or good will.''

Notwithstanding this change, we also want to confirm that we adhere to our view that we do not want to receive data on warranty adjustments that do not relate to one or more of the four identified component categories. Information about adjustments made for other reasons (*e.g.*, replacing three additional tires when only one experienced a problem) would not help us to identify potential safety defects.

In the NPRM, we proposed that a manufacturer of tires need only report information (other than incidents involving a death, as specified in paragraph (b) of this section, if the tires of the same size and design were not manufactured or imported in quantities greater than 15,000 in any single calendar year. However, the final rule substituted for the figure 15,000 ''tires that are limited production tires or are otherwise exempted from the Uniform Tire Quality Grading Standards [UTQGS] by Section 575.104(c)(1)'' (*i.e.*, ''deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less''). See the last sentence in the introductory paragraph of Section 579.26. A ''limited production tire'' is one that meets four criteria, ''as applicable,'' which are posited on

annual limits of 15,000, 10,000, and 35,000 tires. In its petition for reconsideration, RMA asserted that ''determining whether a tire meets the UTQGS exemption is not a simple matter and could lead to vastly different interpretations by tire manufacturers. Whether or not NHTSA intended the early warning reporting exemption to be identical to the UTQGS exemption, by doing so the agency has introduced a great deal of complexity into what should be a relatively straightforward issue.'' In light of this, RMA requested ''that the final rule be revised to exempt all tires with an annual production of 5,000 or less from the early warning reporting requirements in Sec. 579.26, and to delete the reference to UTQGS.''

Our intent through this rulemaking has been to establish a threshold for full reporting of an annual production or importation of 15,000 tires, as originally proposed (66 FR at 66225). Our decision to reference the UTQGS was an effort to simplify the process. It appears from RMA's statement that by referring to ''limited production tires,'' we inadvertently made it more complicated. Therefore, we have decided to return to the specific number of 15,000 tires per year. However, we will retain the exclusion from full reporting for the types of tires excepted by Section 575.104(c)(1), since we believe that full reports on such tires would be unlikely to yield valuable information. Accordingly, the excepted phrase has been amended to incorporate the substance of Section 575.104(c)(1) without referencing UTQGS.

Our review of this issue revealed that we had made an inadvertent omission in the sentence establishing this exclusion. We stated that, with respect to the excluded tires, a manufacturer ''need only report information on incidents involving a death, as specified in paragraph (b) of this section.'' However, Section 579.26(b) actually requires reports of ''incidents involving death *or injury*'' (emphasis supplied). Therefore, we will add the words ''or injury'' to the sentence allowing exclusions from full reporting, which will now read:

> For each group of tires with the same SKU, plant, and year for which the volume produced or imported is less than 15,000, or are deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less, or are not passenger car tires, light truck tires, or motorcycle tires, the manufacturer need only report information on incidents involving a death or injury, as specified in paragraph (b) of this section.

We decline to adopt RMA's suggestion to reduce the threshold to 5,000 tires per year. While a lower threshold would result in additional reporting (and increase the reporting burden on manufacturers producing between 5,000 and 15,000 of a given tire annually), it is unlikely that this additional information would lead to the identification of significant numbers of safety defects.

Under Section 579.26(d), a tire manufacturer must provide NHTSA with a list of common green tires on a quarterly basis. Included in the information to be provided is the plant where the common green tire was manufactured, brand names, and brand name owners. RMA asserted that this would not enhance the value of common green information, which is to be able to group tires ''according to common internal manufacturing specifications.'' We are willing to simplify reporting by tire manufacturers by eliminating the requirement identify the tire plant, which the RMA asserted is repetitive with production charts and may be linked through the SKU number provided in common green tire reporting. However, we believe that a tire fabricator must identify in the common green listing tire brand name and brand name owners for the applicable tire line. Otherwise, we would not have reports of who is a brand name owner and should be reporting under Subpart C. Accordingly, we are revising the second sentence of Section 579.26(d) to read as follows:

> (d) Common green tire reporting. * * * For each specific common green tire grouping, the list shall provide all relevant tire lines, tire type codes, SKU numbers, and brand name owners.

RMA asked how manufacturers should treat tires that are imported as original equipment on imported motor vehicles, or imported as replacement tires. With respect to imported replacement tires, it recommended that the final rule be amended to allow tire manufacturers to report only the quantity of tires imported during the quarterly reporting period for purposes of complying with Section 579.26(a). For tires that are imported as original equipment on motor vehicles, RMA asserted that tire manufacturers do not have access to all information required by Section 579.26(a), since it is proprietary to the vehicle manufacturer. For such imported tires, tire manufacturers can only report fatalities and injuries ''for which they receive notification.'' RMA recommended that the final rule be revised ''to require tire manufacturers to report only injuries and fatalities associated with imported tires on OE vehicles.''

The final rule requires reporting by a ''manufacturer'' who has imported tires into the United States. See Section 579.26(a). Clearly, this covers an importer of replacement tires who, by virtue of being an importer of motor vehicle equipment for resale, is a manufacturer as defined by statute. See 49 U.S.C. 30102(a)(5)(B).

Under Section 579.26(a), a tire manufacturer must report ''Information that states the manufacturer's name, the quarterly reporting period, the tire line, the tire size, the tire type code, the SKU, the plant where manufactured, whether the tire is approved for use as original equipment on a motor vehicle, if so, the make, model, and model year of each vehicle for which it is approved, the cumulative warranty production, and the cumulative total production through the end of the reporting period.'' An importer of tires for resale can determine this information from an examination of the tires, with the possible exception of the SKU, and the make, model, and model year of vehicles for which the tire is approved for original equipment. As the statute equates the act of importation with the act of production, the importer should not report total worldwide production, but only the number of tires of each tire line, size, etc., imported cumulatively through the end of the reporting period.

We generally do not consider importers of motor vehicles (with tires manufactured abroad) to be importers of the tires installed as OE on their vehicles, even though such tires are considered as ''replacement equipment'' for purposes of defect and noncompliance responsibility. See 49 CFR 573.4. Thus, with one exception (discussed below), we will not require importers of motor vehicles with foreign-made tires installed on the vehicle when imported to report under Section 579.26 as a tire manufacturer (though they would be required to report as a tire manufacturer if they import such tires separately for replacement purposes). If a vehicle manufacturer receives a claim, complaint, or field report about a tire on one of its vehicles (whether the tire was manufactured in the United States or imported), it must report that claim, etc. in the ''tire'' component category (code 19). Such claims, etc., would have to be reported to us even if the vehicle manufacturer forwarded them to the tire manufacturer for action or payment.

Nor would we expect tire manufacturers to report comprehensively on tires installed on new motor vehicles that they did not import themselves, since they would not have complete information as to

production or other matters. Nevertheless, tire manufacturers must report information that they do receive, from whatever source, regarding claims or notices of death or injury, property damage claims, and warranty adjustments on their tires in the United States, whether they imported them or not. If such information were not reported, we would have an incomplete picture of emerging safety problems with such tires.

Notwithstanding the above discussion, an importer/manufacturer of vehicles equipped with tires at the time of importation must report as a tire manufacturer under Section 579.26 with respect to the tires installed as original equipment on its imported vehicles under the rare circumstance where the foreign fabricator of the tires does not itself import any tires into the United States and therefore would not be reporting any early warning information to us. We have made a corresponding revision to Section 579.26.

Turning to motorcycle tires, RMA asserted that because of the way they are sold and distributed, it is not possible for tire manufacturers to identify the manufacturer of the motorcycle on which their tires will be OE, ''nor to easily obtain this information.'' It urged deletion of the OEM column from the early warning reporting format for motorcycle tires. We are retaining the column (for all tires) because where a tire manufacturer does know the make, model, and model year for the OE application(s) of a tire, that information should be reported. If the tire manufacturer knows that a particular tire line, size, etc. is not used as OE on any vehicles, it should state ''N'' (for ''none'') in that field in the template. If it is not sure, it should state ''U'' (for ''unknown'') in that field.

Section 579.26 requires the reporting of early warning data ''for each reporting period.'' The format that RMA suggested in its comment to the NPRM would provide for cumulative (*i.e.*, to the date of the report) reporting. Although NHTSA adopted RMA's suggested format to a large extent, the final rule required quarterly rather than cumulative reporting. In its petition, RMA reiterated its view that Section 579.26 should require the reporting of cumulative early warning data received by a manufacturer, by year of manufacture, through the end of each reporting period. We are denying RMA's petition on this point for the reasons stated in the final rule and because we want consistency in the manner of reporting among all manufacturers.

Finally, RMA raised several concerns about disclosure of early warning data. The reconsideration of the early warning final rule is not the appropriate forum for resolving issues of substance regarding confidential submissions of early warning reporting information, which will be addressed in our ongoing rulemaking to revise 49 CFR Part 512.

VIII. Petition by the Alliance Requesting Reconsideration and Clarification of Some Requirements of Sections 579.21 and 579.28

In its petition for reconsideration, the Alliance contended that the requirement imposed by Section 579.28(b) to file reports ''not later than 30 days after the last day of the reporting period'' does not take into account that the 30th day could be a Saturday, Sunday, or Federal holiday. It suggested that the rule should explicitly provide that the due date would be the first business day following the weekend or Federal holiday. We are granting this request, and amending Section 579.28(b) appropriately.

Finally, in its letter of October 10, 2002, the Alliance noted an inconsistency between Section 579.21(c), and Sections 579.21(b) and (d). Section 579.21(c) requires submission of information relating to ''the nine model years prior to the earliest model year in the reporting period,'' whereas the information to be submitted under Sections 579.21(b) and (d) relates to vehicles ''less than ten calendar years old at the beginning of the reporting period.'' The Alliance recommended that subsections (b) and (d) be revised to use the same language as subsection (c). We are granting the Alliance's request, and, as well, are revising similar subsections in Sections 571.22–26.

IX. Issues Arising at NHTSA's Artemis Workshop

In January 2003, we conducted a workshop to familiarize personnel from industry with the data collection and retention system that we have established for the submission of early warning reporting data (referred to as ''Artemis''). The workshop indicated several areas where clarifications and simplifications could be made, and we are ''fine tuning'' the final rule with some minor amendments.

1. Cover Sheets

Based on our previous experience with safety recalls and from a canvass of manufacturers at the workshop, some manufacturers may wish to provide cover sheets to explain or clarify one or more portions of the data they submit. For example, a manufacturer may wish to provide an explanation for a spike appearing in data regarding a particular make, model, and model year of vehicle. We are willing to accept cover sheets provided on a voluntary basis. They may be sent to the Chief of the Defect Assessment Division, Office of Defects Investigation, NHTSA.

2. Reporting of Deaths and Injuries

At the workshop, some manufacturers requested that a new field be added to the Death and Injury Reporting Template that would allow a manufacturer to assign a unique alphanumeric code to its submission of information under paragraph (b) of Sections 579.21–26. We are adding this field to the data template but wish to emphasize that assigning such a code is voluntary and is not required. If a manufacturer has not assigned a code, it may leave the field blank.

We also want to emphasize that subsequent submissions of information to supplement that previously reported is required only for reporting of incidents involving death or injury. See Section 579.28(f) and the associated preamble discussion at 67 FR 45862–63.

The question arose whether a manufacturer who reports under Section 579.27(a) must file a report on deaths and injuries at the end of a quarter in which it received no claims or notices of death or injury. The answer is no, and we are amending Section 579.27(b) to make this clear. To require such a report would impose an unnecessary burden upon low-volume vehicle manufacturers and manufacturers of original or replacement equipment other than child restraint systems and tires. On the other hand, we believe that reports should be required of all manufacturers reporting under Sections 579.21–.26 and cover all categories of reporting, even when no relevant information has been received during a quarter. If we do not require a ''zero'' report, we will not know at the end of a quarter whether a report is overdue. This will assure that we have an uninterrupted flow of reports. We are making an appropriate amendment to Section 579.28(b).

3. Field Reports

The final rule requires that copies of non-dealer field reports be submitted ''alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.'' See, *e.g.*, Section 579.21(d). This information standing alone will not allow us to easily identify, review, and analyze the subject of these field reports in any organized manner. We need to know the applicable system(s) or component(s) covered by a given field report. This

should not complicate reporting since manufacturers already have to review field reports to sort them by model and model year.

To accomplish this goal, and to allow efficient analysis of these non-dealer field reports, we have developed a naming convention for them and have included an appropriate template on our website. That template will include fields to allow identification of the manufacturer submitting the field report, the make, model, and model year(s) of the vehicle(s) covered by the field report, and the component(s) or system(s) addressed in the report. If a non-dealer field report refers to more than one system or component category, the manufacturer must identify each such category, up to five such categories.

While ordinarily a field report will address a single make/model of vehicle, we recognize that on occasion a field report may address more than one make/model. For example, a General Motors field report could address a possible problem with a component of the fuel system and specifically mention certain Buick and Pontiac passenger cars. In order to assure consistency and to simplify reporting, we have decided that, for vehicles, when a field report refers to more than one model built on a single platform (as defined in Section 579.4(c)), in the submission of field reports it should be identified by that platform rather than by one or more of the particular makes/models referred to in the field report. In the relatively rare case where a field report refers to makes/models built on more than one platform, in order to allow us to effectively use the information, manufacturers will be required to submit multiple copies, one for each platform.

If a field report refers to more than one model year (or production year) of a given make/model or platform, the manufacturer shall submit it as though it applied to the earliest model year covered by the report. (However, when identifying the field report using the template, each model year covered by the report shall be specified.) We are making appropriate amendments in the sections on field reports to implement these changes.

Electronic submissions of field reports must be submitted as one report per file, so that we will be able to identify and review them individually. However, where a number of files are involved, manufacturers may ''Zip'' the files together.

4. Designation of Types of Trailers and Medium-Heavy Trucks and Buses

TTMA requested that we consider requiring trailer manufacturers to identify the ''model'' of trailers using the DOT VIN code designation, and provided a list of nine ''models.'' We have accepted this suggestion, but note that the ''models'' described by TTMA are more properly considered ''types.'' We are making an appropriate amendment to Section 579.24, adding a ''type'' field to the template, and amending the definition of ''type'' in Section 579.4(c) to specify, for trailers, that it refers to one of the ten separate categories, the nine suggested by TTMA (van trailer, flatbed, trailer converter dolly, lowbed, dump, tank, dry bulk, live stock, boat, auto transporter, and other), plus recreational trailers.

We had previously required manufacturers to identify the ''type'' of light vehicles and of child restraint systems. The TTMA request has led us to conclude that it would also be appropriate to also require manufacturers of medium-heavy vehicles and buses to identify the ''type'' of such vehicle. Viewed broadly, these types include truck, tractor, school bus as defined in 49 CFR 571.3, transit bus (a bus for local travel), coach (a bus for intercity travel), recreational vehicle (a motor vehicle other than a trailer that is designed and equipped for leisure travel), emergency vehicle (a motor vehicle, other than a light vehicle, designed for emergency service, such as fire fighting, ambulance, rescue, police use, and similar applications), and other (a medium heavy vehicle or bus not otherwise included in the types listed above). Therefore, we are making appropriate amendments to Sections 579.22 and 579.4(c), and to the template for this category of vehicles.

5. Tires

At the workshop, some tire manufacturers asked that they be allowed to use the DOT standardized plant code that NHTSA assigns (see 49 CFR 574.5(a) and 574.6(b)) for tires produced for sale in the United States as an identification of the plant where a tire was manufactured when they submit information required by Section 579.26(a) and (c). We have concurred with this. If a tire manufacturer so chooses, it may reference the two-character DOT alphanumeric codes for U.S.-located production plants. However, the full plant name must be provided for foreign tire production plants.

6. Correction of Section 579.23(c)

The reporting requirements for motorcycle manufacturers cover 20 specific systems or components identified by codes 01–20 in Section 579.23(b)(2). Section 579.23(c) erroneously refers to ''codes 01 through 22 in paragraph (b)(2) of this section.'' We are correcting the reference to ''22'' in subsection (c) to ''20.''

X. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

XI. Rulemaking Analyses

Regulatory Policies and Procedures. Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

We have considered the impact of this rulemaking under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking has been determined to be significant by the Office of Management and Budget under E.O. 12866 because of congressional interest. For the same reason, this action has also been determined to be significant under DOT's regulatory policies and

procedures. A detailed discussion of impacts can be found in the Final Regulatory Evaluation (FRE) that the agency has prepared for this rulemaking and filed in the docket. This action does not impose requirements on the design or production of motor vehicles or motor vehicle equipment; it only requires reporting of information in the possession of the manufacturer.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980 (5 U.S.C. § 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm; another criteria is annual receipts. For establishments primarily engaged in manufacturing or assembling automobiles, light and heavy duty trucks, buses, motor homes, new tires, or motor vehicle body manufacturing, the firm must have less than 1,000 employees to be classified as a small business. For establishments manufacturing many of the safety systems for which reporting will be required, steering, suspension, brakes, engines and power trains, or electrical system, or other motor vehicle parts not mentioned specifically in this paragraph, the firm must have less than 750 employees to be classified as a small business. For establishments manufacturing truck trailers, motorcycles, child restraints, lighting, motor vehicle seating and interior trim packages, alterers and second-stage manufacturers, or re-tread tires the firm must have less than 500 employees to be classified as a small business.

The changes made in this final rule on reconsideration are relatively minor and may reduce burdens on some small manufacturers although not in a quantifiable way.

Based on the best information available to us at this time, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism). Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of ''regulatory policies that have federalism implications.'' The Executive Order defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final rule regulates the manufacturers of motor vehicles and motor vehicle equipment and will not have 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, as specified in Executive Order 13132.

Civil Justice Reform. This final rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act. The final rule requires manufacturers of motor vehicles and motor vehicle equipment to report information and data to NHTSA periodically. While we have not adopted a standardized form for reporting information, we will be requiring manufacturers to submit information utilizing specified templates. The provisions of this rule, including document retention provisions, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. To obtain a three-year clearance for information collection, we published a Paperwork Reduction Act notice on June 25, 2002 (67 FR 42843) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We received clearance from OMB on December 20, 2002, which will expire on December 31, 2005. The clearance number is 2127–0616. The amendments made by this final rule on reconsideration are relatively minor and may reduce paperwork burdens on some manufacturers though not in a quantifiable way.

Data Quality Act. Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Pub. L. 106–554, § 515, codified at 44 U.S.C. § 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the ''quality,'' ''objectivity,'' ''utility,'' and ''integrity'' of information that federal agencies disseminate to the public. The Act also required agencies to develop their own conforming data quality guidelines, based upon the OMB model. OMB issued final guidelines implementing the Data Quality Act (67 FR 8452, Feb. 22, 2002). On October 1, 2002, the Department of Transportation promulgated its own final information quality guidelines that take into account the unique programs and information products of DOT agencies (67 FR 61719). The DOT guidelines were reviewed and approved by OMB prior to promulgation.

NHTSA made information quality a primary focus well before passage of the Data Quality Act, and has made implementation of the new law a priority. NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines, and plans to review and update these procedures as appropriate.

Unfunded Mandates Reform Act. The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments.

These amendments to the final rule (67 FR 45822 at 45872–45883) are not estimated to result in expenditures by State, local or tribal governments of more than $109 million annually. It is not estimated to result in the expenditure by motor vehicle and motor vehicle equipment manufacturers, child restraint system manufacturers, and tire manufacturers of more than $109 million annually.

List of Subjects in 49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 49 CFR part 579 is amended as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart A—General

■ 2. Section 579.4(c) is amended by revising the definitions of ''Field report,'' ''Fire,'' the second sentence of ''Model,'' ''Model year,'' the first sentence of ''Service brake system,'' ''SKU (Stock Keeping Unit),'' ''Tire,'' ''Warranty adjustment,'' and the second sentence of ''Warranty claim,'' and adding the definitions of ''Control,'' ''Handle,'' a third sentence to ''Model,'' ''Production year,'' and two new sentences in the definition of ''Type'' before the present second sentence, in alphabetical order, to read as follows:

§ 579.4 Terminology.

* * * * *

(c) Other terms. * * *

Control (including the terms controlling, controlled by, and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

* * * * *

Field report means a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment with respect to a vehicle or equipment that has been transported beyond the direct control of the manufacturer, or from a dealer, an authorized service facility of such manufacturer, or an entity known to the manufacturer as owning or operating a fleet, to a manufacturer regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment or any part thereof produced for sale by that manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include a document covered by the attorney-client privilege or the work product exclusion.

Fire means combustion or burning of material in or from a vehicle as evidence by flame. The term also includes, but is not limited to, thermal events and fire-related phenomena such as smoke, sparks, or smoldering, but does not include events and phenomena associated with a normally functioning vehicle, such as combustion of fuel within an engine or exhaust from an engine.

* * * * *

Handle means any element of a child restraint system that is designed to facilitate carrying the restraint outside a motor vehicle, other than an element of the seat shell.

* * * * *

Model * * * For equipment other than child restraint systems, it means the name that the manufacturer uses to designate it. For child restraint systems, it means the name that the manufacturer uses to identify child restraint systems with the same seat shell, buckle, base (if so equipped) and restraint system.

Model year means the year that a manufacturer uses to designate a discrete model of vehicle, irrespective of the calendar year in which the vehicle was manufactured. If the manufacturer has not assigned a model year, it means the calendar year in which the vehicle was manufactured.

* * * * *

Production year means, for equipment and tires, the calendar year in which the item was produced.

* * * * *

Service brake system means all components of the service braking system of a motor vehicle intended for the transfer of braking application force from the operator to the wheels of a vehicle, including the foundation braking system, such as the brake pedal, master cylinder, fluid lines and hoses, braking assist components, brake calipers, wheel cylinders, brake discs, brake drums, brake pads, brake shoes, and other related equipment installed in a motor vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135 (except equipment relating specifically to a parking brake). * * *

* * * * *

SKU (Stock Keeping Unit) means the alpha-numeric designation assigned by a manufacturer to uniquely identify a tire product. This term is sometimes referred to as a product code, a product ID, or a part number.

Tire means an item of motor vehicle equipment intended to interface between the road and a motor vehicle. The term includes all the tires of a vehicle, including the spare tire. For purposes of §§579.21 through 579.24 and §579.27 of this part, this term also includes the tire inflation valves, tubes, and tire pressure monitoring and regulating systems, as well as all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

* * * * *

Type * * * In the context of a medium heavy vehicle and bus, it means one of the following categories: Truck, tractor, transit bus, school bus, coach, recreational vehicle, emergency vehicle, or other. In the context of a trailer, it means one of the following categories: Recreational trailers, van trailers, flatbed trailer, trailer converter dolly, lowbed trailer, dump trailer, tank trailer, dry bulk trailer, livestock trailer, boat trailer, auto transporter, or other.

* * *

* * * * *

Warranty adjustment means any payment or other restitution, such as, but not limited to, replacement, repair, credit, or cash refund, made by a tire manufacturer to a consumer or to a dealer, in reimbursement for payment or other restitution to a consumer, pursuant to a warranty program offered by the manufacturer or goodwill.

Warranty claim * * * It does not include claims for reimbursement for costs or related expenses for work performed to remedy a safety-related defect or noncompliance reported to NHTSA under part 573 of this chapter, or in connection with a motor vehicle emissions-related recall under the Clean Air Act or in accordance with State law as authorized under 42 U.S.C. 7543(b) or 7507.

Subpart C—Reporting of Early Warning Information

■ 3. The introductory text of paragraph (b) and paragraph (d) of §579.21 are revised to read as follows:

§ 579.21 Reporting requirements for manufacturers of more than 500 light vehicles annually.

* * * * *

(b) *Information on incidents involving death or injury.* For all light vehicles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period:

* * * * *

(d) *Copies of field reports.* For all light vehicles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing any assessment of an alleged failure,

malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year. For purposes of this paragraph, if a field report refers to more than one make or model of light vehicle produced by a manufacturer on a particular platform, the manufacturer shall submit the report alphabetically by platform rather than by make or model. If such a field report refers to more than one platform, separate copies shall be submitted for each such platform. If a field report refers to more than one model year of a specified make/model or platform, the manufacturer shall submit it by the earliest model year to which it refers.

■ 4. In §579.22, the first sentence of paragraph (a), the introductory text of paragraph (b), and paragraph (d) are revised to read as follows:

§ 579.22 Reporting requirements for manufacturers of 500 or more medium heavy vehicles and buses annually.

* * * * *

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, the type, and the production. * * *

(b) *Information on incidents involving death or injury.* For all medium heavy vehicles and buses manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period:

* * * * *

(d) *Copies of field reports.* For all medium heavy vehicles and buses manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year. For purposes of this paragraph, if a field report refers to more than one make or model of vehicle produced by a manufacturer on a particular platform, the manufacturer shall submit the report alphabetically by platform rather than by make or model. If such a field report refers to more than one platform, separate copies shall be submitted for each such platform. If a field report refers to more than one model year of a specified make/model or platform, the manufacturer shall submit it by the earliest model year to which it refers.

■ 5. In §579.23, the number ''22'' in paragraph (c) is revised to read ''20'', and the introductory text of paragraph (b) and paragraph (d) are revised to read as follows:

§ 579.23 Reporting requirements for manufacturers of 500 or more motorcycles annually.

* * * * *

(b) *Information on incidents involving death or injury.* For all motorcycles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period:

* * * * *

(d) *Copies of field reports.* For all motorcycles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section or fire, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motorcycle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year. For purposes of this paragraph, if a field report refers to more than one make or model of motorcycle produced by a manufacturer on a particular platform, the manufacturer shall submit the report alphabetically by platform rather than by make or model. If such a field report refers to more than one platform, separate copies shall be submitted for each such platform. If a field report refers to more than one model year of a specified make/model or platform, the manufacturer shall submit it by the earliest model year to which it refers.

■ 6. In §579.24, paragraph (a), the introductory text of paragraph (b), and paragraph (d) are revised to read as follows:

§ 579.24 Reporting requirements for manufacturers of 500 or more trailers annually.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, the type, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total model year production for each model year for which production has ceased. For each model that is manufactured and available with more than one type of service brake system (*i.e.*, hydraulic and air), the information required by this subsection shall be reported by each of the two brake types (*i.e.*, ''H'' for hydraulic, ''A'' for air). If the service brake system in a trailer is not readily characterized as either hydraulic or air, the trailer shall be considered to have hydraulic service brakes. If a model has no brake system, it shall be reported as ''N,'' for none.

(b) *Information on incidents involving death or injury.* For all trailers manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period:

* * * * *

(d) *Copies of field reports.* For all trailers manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section or fire, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a trailer or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year. For purposes of this paragraph, if a field report refers to more than one make or model of trailer produced by a manufacturer on a particular platform, the manufacturer

shall submit the report alphabetically by platform rather than by make or model. If such a field report refers to more than one platform, separate copies shall be submitted for each such platform. If a field report refers to more than one model year of a specified make/model or platform, the manufacturer shall submit it by the earliest model year to which it refers.

■ 7. §579.25 is amended by adding a sentence at the end of the introductory text, by revising the first sentence of paragraph (a) and the introductory text of paragraph (b), by adding a sentence at the end paragraph (b)(2), and by revising paragraph (d) to read as follows:

§ 579.25 Reporting requirements for manufacturers of child restraint systems.

* * * For paragraph (c) of this section, if any consumer complaints or warranty claims regarding a model of child restraint system do not specify the production year of the system, the manufacturer shall submit information for ''unknown'' production year in addition to the up-to-five production years for which the manufacturer must otherwise report the number of such consumer complaints/warranty claims.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the production year, the type, and the production. * * *

(b) *Information on incidents involving death or injury.* For all child restraint systems manufactured during a production year covered by the reporting period and the four production years prior to the earliest production year in the reporting period:

* * * * *

(2) * * * If the production year of the child restraint system is unknown, the manufacturer shall specify the number ''9999'' in the field for production year.

* * * * *

(d) *Copies of field reports.* For all child restraint systems manufactured during a production year covered by the reporting period and the four production years prior to the earliest production year in the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a child restraint system (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by production year. For purposes of this paragraph, if a field report refers to more than one make or model of child restraint system produced by a manufacturer, the manufacturer shall submit the report under the first such model in alphabetical order. If a field report refers to more than one production year of a specified make/model, the manufacturer shall submit it by the earliest production year to which it refers.

■ 8. In §579.26, the introductory text is revised, a sentence is added at the end of paragraph (a), introductory text is added in paragraph (b), and the last sentences of paragraph (c) and of paragraph (d) are revised to read as follows:

§ 579.26 Reporting requirements for manufacturers of tires.

For each reporting period, a manufacturer (including a brand name owner) who has manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported tires in the United States shall submit the information described in this section. For purposes of this section, an importer of motor vehicles for resale is deemed to be the manufacturer of the tires on and in the vehicle at the time of its importation if the manufacturer of the tires is not required to report under this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each tire line, size, SKU, plant where manufactured, and model year of tire manufactured during the reporting period and the four calendar years prior to the reporting period, including tire lines no longer in production. For each group of tires with the same SKU, plant where manufactured, and year for which the volume produced or imported is less than 15,000, or are deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less, or are not passenger car tires, light truck tires, or motorcycle tires, the manufacturer need only report information on incidents involving a death or injury, as specified in paragraph (b) of this section. For purposes of this section, the two-character DOT alphanumeric code for production plants located in the United States assigned by NHTSA in accordance with §§574.5(a) and 574.6(b) of this chapter may be used to identify ''plant where manufactured.'' If the production plant is located outside the United States, the full plant name must be provided.

(a) *Production information.* * * * If the manufacturer knows that a particular group of tires is not used as original equipment on a motor vehicle, it shall state ''N'' in the appropriate field, and if the manufacturer is not certain, it shall state ''U'' in that field.

(b) *Information on incidents involving death or injury.* For all tires manufactured during a production year covered by the reporting period and the four production years prior to the earliest production year in the reporting period:

* * * * *

(c) *Numbers of property damage claims and warranty adjustments.* * * * No reporting is necessary if the system or component involved is not specified in such codes, or if the TIN is not specified in any property damage claim.

(d) *Common green tire reporting.* * * * For each specific common green tire grouping, the list shall provide all relevant tire lines, tire type codes, SKU numbers, brand names, and brand name owners.

■ 9. Section 579.27 is amended by adding a sentence at the end of paragraph (b) and by adding a new paragraph (c)(6) to read as follows:

§ 579.27 Reporting requirements for manufacturers of fewer than 500 vehicles annually, for manufacturers of original equipment, and for manufacturers of replacement equipment other than child restraint systems and tires.

* * * * *

(b) *Information on incidents involving deaths.* * * * If a manufacturer has not received such a claim or notice during a reporting period, the manufacturer need not submit a report to NHTSA for that reporting period.

(c) * * *

(6) For original and replacement equipment, if the production year of the equipment is unknown, the manufacturer shall specify the number ''9999'' in the field for model or production year.

■ 10. Section 579.28 is amended by adding two sentences at the end of paragraph (b), by redesignating paragraphs (h), (i), (j), (k), and (l) as (i), (j), (k), (l), and (m), respectively, and by adding new paragraph (h) to read as follows:

§ 579.28 Due date of reports and other miscellaneous provisions.

* * * * *

(b) *Due date of reports.* * * * Except as provided in §579.27(b), if a manufacturer has not received any of

the categories of information or documents during a quarter for which it is required to report pursuant to §§579.21 through 579.26, the manufacturer's report must indicate that no relevant information or documents were received during that quarter. If the due date for any report is a Saturday, Sunday, or a Federal holiday, the report shall be due on the next business day.

* * * * *

(h) *When a report involving a claim or notice is not required.* If a manufacturer has reported a claim or notice relating to an incident involving death or injury, the manufacturer need not:

(1) Report a claim or notice arising out of the incident by a person who was not injured physically, and

(2) Include in its number of property damage claims a property damage claim arising out of the incident.

* * * * *

■ 11. Section 579.29(b) is amended by adding a new last sentence to read as follows:

§ 579.29 Manner of reporting.

* * * * *

(b) *Submission of documents.* * * * Each document shall be identified in accordance with the templates provided at NHTSA's early warning Web site, which is identified in paragraph (a)(1) of this section.

* * * * *

Issued on: June 5, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–14702 Filed 6–6–03; 4:12 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–8677; Notice 6]

RIN 2127–AI92

Reporting of Information and Documents About Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; partial response to petitions for reconsideration.

SUMMARY: This document responds to petitions to extend the initial period for quarterly reporting and the due date for one-time historical reports established by the final rule published on July 10, 2002, and implementing the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will continue to be required to report information and to submit documents that may assist NHTSA to promptly identify defects related to motor vehicle safety.

This document changes the initial reporting period for quarterly incident and statistical data reports from the second quarter of 2003 to the third quarter of 2003, changes the reporting period for one-time historical reports by one quarter, and makes a corresponding change of the reporting date for the one-time historical report to December 31, 2003. The document also defers the initial reporting period for copies of non-dealer field reports for two quarters until the first quarter of 2004, and changes the due dates for the submission of copies of non-dealer field reports.

The agency's response to petitions for reconsideration of certain other provisions of the final rule appears in another notice separately published in the **Federal Register**.

DATES: *Effective Date:* The effective date of the amendments made by this final rule is July 11, 2003. *Applicability Dates:* Various provisions of this final rule are applicable on the dates stated in the regulatory text. Petitions for Reconsideration: Petitions for reconsideration of amendments made by this final rule must be received not later than July 28, 2003.

ADDRESSES: Petitions for reconsideration of the amendments made by this final rule must refer to the docket or Regulatory Identification Number (RIN) for this rulemaking, and be addressed to the Administrator, National Highway Traffic Safety Administration (NHTSA). You may submit a petition by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery : Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.*

See Section IV ''Privacy Act Statement'' for electronic access and filing addresses.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2002, NHTSA published a final rule implementing the early warning reporting (EWR) provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, established by 49 U.S.C. 30166(m) (67 FR 45822). The reader is referred to that document, and the prior Notice of Proposed Rulemaking (NPRM) (66 FR 66190) for further information. The reader is also referred to a response to some issues raised by other petitions for reconsideration of the final rule. 68 FR 18136 (April 15, 2003). We are responding to other issues raised by such petitions in a separate notice published in the **Federal Register**.

The EWR provisions addressed by this notice appear in Subchapter C of 49 CFR part 579, *Reporting of Information and Documents About Potential Defects,* specifically Sections 571.21–29. The final rule establishes a schedule for the reporting of information and documents by calendar quarters. Under that schedule, the first reporting quarter is the second quarter of 2003 (April 1–June 30), with reports and copies of non-dealer field reports due not later than 60 days after the end of the quarter, that is to say, August 29, 2003. See Sections 579.28(a) and (b). In addition, not later than September 30, 2003, all manufacturers of 500 or more motor vehicles annually, manufacturers of child restraint systems, and manufacturers of tires must file a one-time report of historical information on the numbers of warranty claims or warranty adjustments and field reports that they received in each calendar quarter from April 1, 2000 to March 31, 2003. See Section 579.28(c), as amended (68 FR 18143 (April 15, 2003)).

II. Petitions for Extension of the Date of Reporting Requirements

NHTSA has received a number of petitions related to the final rule. For example, General Motors Corporation (GM) submitted a petition for reconsideration raising issues about the date established by the final rule for submission of the one-time historical reports. Thereafter, we received a number of related petitions.

On November 22, 2002, the National Association of Trailer Manufacturers (NATM) filed a ''Petition for Postponement of Compliance Date for Certain Trailers.'' NATM sought delayed compliance dates for reporting of information. Shortly thereafter, on December 5, 2002, the National Truck Equipment Association (NTEA) and the Recreational Vehicle Industry Association (RVIA) jointly petitioned NHTSA to ''extend for a period of six months'' the periods for and the dates that manufacturers of motorhomes, multi-stage vehicles, alterers, and trailers and trailer equipment would report, or, alternatively, ''all affected manufacturers that meet the Small Business Administration's definition of 'small entities' as stated in 13 CFR Sec. 121.201.'' This petition asked that the first quarterly reporting period begin October 1, 2003, with the first report due not later than February 29, 2004, and that the one-time historical report be due on March 31, 2004.

Finally, on March 18, 2003, the Rubber Manufacturers Association (RMA) submitted a petition to postpone the periods for which reporting is required until after NHTSA has responded to RMA's timely petition for reconsideration of various provisions of the final rule. We are responding to RMA's petition for reconsideration in Notice 5.

We have decided to extend the reporting dates, for the reasons discussed below, which we regard as a partial grant of these petitions.

III. Revisions to the Dates in the EWR Regulation

In the final rule, we addressed how NHTSA plans to handle and utilize information submitted under the rule. See 67 FR at 45865. We noted that 49 U.S.C. 30166(m)(4)(A)(i) and (ii) require that our early warning rule specify how the information reported to us will be used. Among other things, we stated that data submitted by manufacturers would be entered into a new computer system and data warehouse called ARTEMIS—Advanced Retrieval (Tire, Equipment, Motor vehicles) Information System. ARTEMIS is being developed for NHTSA's Office of Defects Investigation (ODI) under an agreement with the Volpe National Transportation Systems Center (Volpe) in Cambridge, Massachusetts. ARTEMIS will provide for centralized storage of information, include a document management system, use data analysis tools, and facilitate the provision of appropriate information to the public.

There are three basic types of EWR data that will be reported quarterly (with slight variations depending on the type of manufacturer): (1) Information about incidents involving deaths and injuries in claims and notices received by a manufacturer; (2) statistical data about the number of items produced, property damage claims, consumer complaints, warranty claims,and field reports; and (3) copies of non-dealer field reports.

Numerous interpretation questions have been submitted by manufacturers and their associations. The agency has been responding to these questions. In addition, our April 15, 2003, notice (Notice 4) responding to some issues raised in petitions for reconsideration made changes to some requirements, and other changes are being made in the response to other issues raised by these petitions (Notice 5). To ensure that we have consistent data and that manufacturers have time to incorporate all needed changes into their data collection systems, in response to these regulatory changes and in light of NHTSA's interpretations, we are extending the reporting period one quarter. We are correspondingly extending the date these reports are due, to Monday, December 1, 2003. (To make it more convenient for manufacturers to submit their data and to protect against a possible system overload that could occur if every manufacturer tried to submit its data on the afternoon of December 1, we plan to work with the larger manufacturers to develop a schedule under which their data will be submitted over several days at the end of November and/or early December.)

We are extending the requirement for the submission of copies of non-dealer field reports, which must be submitted to ODI pursuant to subsection (d) of Sections 579.21–579.25, for a longer period. Manufacturers use a myriad of data retention and transmission tools and procedures to generate, describe, store, and submit these field reports. In view of the different approaches, various issues must be addressed before manufacturers transmit these field reports electronically to assure that ODI will be able to receive, store, access, and effectively utilize these reports. To capture the unique attributes of each specific field report and to make the field report data retrievable in an effective manner, ODI has decided to create a file naming convention that will allow the field reports to be stored in a relational and accessible manner. Although we have advised the industry that we plan to create such a convention, we have not yet notified manufacturers of its specific terms. We anticipate that we will be able to do so before the end of the second quarter of 2003.

Because each non-dealer field report will have to be individually reviewed and coded by the manufacturers, to allow manufacturers time to become familiar with the file naming convention, we are deferring the initial reporting period for the submission of copies of non-dealer field reports for two calendar quarters beyond the calendar quarter for which numerical reports will be required, *i.e.*, until the first quarter of 2004.

In addition, since transmission of electronic copies of field reports will utilize a great deal of bandwidth, which could delay or interfere with the transmission of other EWR data, we have decided that the submission date for these documents should be different from the date that other EWR information is due. Thus, we are amending the regulation to provide that copies of these reports will be due 30 days after the other quarterly EWR data are due. This amendment will reduce the burden on the manufacturers' computer facilities and on ARTEMIS.

With regard to one-time historic reporting, we understand that the September 30, 2003 due date is presenting a challenge to some manufacturers, notwithstanding the use of temporary staff. In its petition for reconsideration, GM represented that many of the documents it maintains exist in uncoded systems, requiring manual retrieval, review, and coding into the specified system/component categories, concluding that ''GM estimates that it will take multiple labor years—just to compile the historical report.'' We note that NTEA/RVIA asked for a six-month delay in this requirement as well. An extension beyond September 30 will ease the burden on manufacturers and will also provide ODI with additional time to complete its review of the initial quarterly submissions. The period covered by the one-time historical report is also adjusted by one quarter (*e.g.*, for motor vehicles, the period for which data must be reported begins on July 1, 2000 (rather than April 1, 2000), and ends on June 30, 2003 (rather than March 31, 2003). Therefore, the due date for one-time historical reports submitted pursuant to Section 579.28(c), as amended, will be December 31, 2003.

IV. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

V. Rulemaking Analyses

Regulatory Policies and Procedures. Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

We have considered the impact of this rulemaking under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. The underlying rulemaking has been determined to be significant by the Office of Management and Budget under E.O. 12866 because of Congressional interest. For the same reason, this action has also been determined to be significant under DOT's regulatory policies and procedures. A detailed discussion of impacts of the underlying rulemaking can be found in the Final Regulatory Evaluation (FRE) that the agency has prepared for the rulemaking completed in July 2002 and filed in the docket. The changes made by today's rule simply delay the reporting and applicability dates of the provisions of the EWR rule. Except for this short-term adjustment, they do not change the reporting requirements.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980 (5 U.S.C. § 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. This was addressed in the final rule. 67 FR 45870–71. The changes made by today's rule simply delay the reporting and applicability dates of the provisions of the EWR rule. Based on the best information available to us at this time, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism). Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of ''regulatory policies that have federalism implications.'' The Executive Order defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The agency has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This rule regulates the manufacturers of motor vehicles and motor vehicle equipment and will not have 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, as specified in Executive 13132.

Civil Justice Reform. This rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act. The final rule requires manufacturers of motor vehicles and motor vehicle equipment to report information and data to NHTSA periodically. Provisions of the final rule, including document retention provisions, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. To obtain a three-year clearance for information collection, we published a Paperwork Reduction Act notice on June 25, 2002 (67 FR 42843) pursuant to the requirements of that Act (44 U.S.C. 3501 *et seq.*). We received clearance from OMB on December 20, 2002, which will expire on December 31, 2005. The clearance number is 2127–0616. The amendments made by this rule do not change the overall paperwork burden. They simply delay the reporting and applicability dates of the provisions of the EWR rule.

Data Quality Act Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Public Law 106–554, § 515, codified at 44 U.S.C. § 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the ''quality,'' ''objectivity,'' ''utility,'' and ''integrity'' of information that Federal agencies disseminate to the public. As noted in the final rule, NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines. The changes made by today's rule simply delay the reporting and applicability dates of the provisions of the EWR rule and do not have any effects on data quality.

Unfunded Mandates Reform Act. The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). The rule did not have unfunded mandates implications. 67 FR 49263 (July 30, 2002). The changes made by today's rule simply delay the reporting and applicability dates of the provisions of the EWR rule and do not create any unfunded mandates within the meaning of this Act.

List of Subjects in 49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR chapter V is amended as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart A—General

■ 2. In § 579.5(d), the date of ''April 1, 2003,'' is revised to read ''July 1, 2003.''

Subpart C—Reporting of Early Warning Information

■ 3. In § 579.28, paragraphs (a), (b), and (c)(1) are revisedm and paragraph (n) is added, to read as follows:

§ 579.28 Due date of reports and other miscellaneous provisions.

(a) *Initial submission of reports.* Except as provided in paragraph (n) of this section, the first calendar quarter for which reports are required under §§ 579.21 through 579.27 of this subpart is the third calendar quarter of 2003.

(b) *Due date of reports.* Except as provided in paragraph (n) of this section, each manufacturer of motor vehicles and motor vehicle equipment shall submit each report that is required by this subpart not later than 30 days after the last day of the reporting period. Notwithstanding the prior sentence, the due date for reports covering the third and fourth calendar quarter of 2003 and the first calendar quarter of 2004 shall be 60 days after the last day of the reporting period.

(c) *One-time reporting of historical information.* (1) No later than December 31, 2003:

(i) Each manufacturer of vehicles covered by §§ 579.21 through 579.24 of this part shall file separate reports providing information on the numbers of warranty claims recorded in the manufacturer's warranty system, and field reports, that it received in each calendar quarter from July 1, 2000, to June 30, 2003, for vehicles manufactured in model years 1994 through 2003 (including any vehicle designated as a 2004 model);

(ii) Each manufacturer of child restraint systems covered by § 579.25 of this part shall file separate reports covering the numbers of warranty claims recorded in the manufacturer's warranty system and consumer complaints (added together), and field reports, that it received in each calendar quarter from July 1, 2000, to June 30, 2003, for child restraint systems manufactured from July 1, 1998, to June 30, 2003, and

(iii) Each manufacturer of tires covered by § 579.26 of this part shall file separate reports covering the numbers of warranty adjustments recorded in the manufacturer's warranty adjustment system for tires that it received in each calendar quarter from July 1, 2000, to June 30, 2003, for tires manufactured from July 1, 1998, to June 30, 2003.

* * * * *

(n) *Submission of copies of field reports.* Copies of field reports required under this subpart shall be submitted not later than 30 days after reports are due pursuant to paragraphs (a) and (b) of this section. The first calendar quarter for which copies of field reports are required to be submitted under §§ 579.21(d), 579.22(d), 579.23(d), 579.24(d), and 579.25(d) of this subpart is the first calendar quarter of 2004.

Issued on: June 6, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–14703 Filed 6–6–03; 4:12 pm]

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S. 243/P.L. 108–28

Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29

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To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

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